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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2012-02538-3

COUNSEL: *Work-Product*

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his uncharacterized character of service to an honorable discharge.

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1), who was separated from the Air Force on 10 Jul 03 with an uncharacterized entry-level separation and credited with 4 months and 23 days of active service.

On 29 Jan 04, in another AFBCMR request, BC-2003-03630, the Board considered and denied the applicant's request to change his uncharacterized character of service discharge to honorable, finding the applicant had provided insufficient evidence of an error or injustice to justify relief. Furthermore, the Board adopted the AFPC/DPRSP rationale that airmen are given entry-level separation/uncharacterized service characterization when separation is initiated in the first 180 days of continuous active service.

On 6 Dec 12, the Board considered and denied the applicant's request to change his narrative reason for separation of "Defective Enlistment Agreement" and his separation code, "KDS," finding the applicant had provided insufficient evidence of an error or injustice to justify relief. Furthermore, the Board adopted the AFPC/DPSOS rationale the applicant was a guaranteed enlistee who was unable to perform his duties in flying status and therefore, entitled to exercise his right to separate from the Air Force. Per the applicant's request, he was discharged in accordance with a defective enlistment agreement.

On 15 Jan 20, the Board considered and partially granted his request by changing his narrative reason for separation to "Secretarial Authority" and corresponding separation program designator (SPD) to "JFF" because there was insufficient evidence showing the applicant knew or had been diagnosed with asthma prior to his enlistment. The Board found insufficient evidence of an error or injustice to support changing his uncharacterized discharge to honorable.

For an accounting of the applicant's past requests and the rationale of the earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit L.

On 12 Jan 23, through counsel, the applicant requested reconsideration of his request for an upgrade of his discharge to honorable. He now asserts to use the Kurta and Wilkie memorandum's mental health upgrade to aver his reason for discharge was because of his

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of his mental condition. He did not receive a mental health evaluation when he was discharged in 2003 for asthma. He was diagnosed with depressive and anxiety disorders, and it was determined service-connected by the Department of Veterans Affairs (DVA) with a 70 percent disability rating and related to his service-connected asthma. His discharge and narrative reason for separation were issued incorrectly; therefore, he is entitled to an honorable discharge.

In support of his reconsideration request, the applicant submitted copies of the following as new evidence: (1) Mental Health evaluation, dated 9 Jan 15; and 2) DVA Rating Decision, dated 30 Dec 16.

The applicant's complete submission is at Exhibit M.

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1336.01, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*. The Department of Defense (DoD) authorizes six characterizations of service for military service members to receive on discharge: (1) Honorable; (2) Under Honorable Conditions (General); (3) Under Other than Honorable Conditions; (4) Bad Conduct; (5) Dishonorable, and (6) Uncharacterized.

DoDI 1332.14, *Enlisted Administrative Separations*. A separation will be described as an entry-level separation if separation processing is initiated while an enlisted service member is in entry level status (180 days continuous active duty) except when: (1) Characterization under other than honorable is authorized under the reason for separation and is warranted by the circumstances or (2) The Secretary concerned on a case by case basis determined the characterization of service as honorable is warranted. The characterization is authorized due to reason of selected changes in service obligation, convenience of the government, disability, secretarial plenary authority or an approved reason established by the Military Department.

Entry level separations, which are accompanied by an uncharacterized discharge, are given to individuals who separate prior to completing 180 days of military service or when discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Rather, an uncharacterized discharge is the absence of a characterization of service, as the individual being discharged does not have sufficient time in service in order to fairly characterize the individual's service.

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental

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health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memorandum.

On 1 Feb 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit P).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for an upgrade to his discharge. There is no evidence the applicant had any mental health conditions during service or that his mental health condition was a mitigating factor to his discharge. There was no evidence he received any mental health evaluations, treatment, or mental disorder diagnosis during service. The applicant was discharged because it was discovered he had a disqualifying medical condition of asthma. He opted to not receive a waiver and was discharged because of this reason.

A review of his post-service DVA treatment records revealed he had experienced anxiety and depression as a result of his discharge but did not precede his discharge. He was disappointed he could not make a career out of being in the military and struggled maintaining steady employment after service. His post-service employment problems caused him to have financial problems which caused additional stressors in his life and exacerbated his anxiety and depressive symptoms. He developed anxiety and depression after he was discharged from service. The applicant was provided with service connection for his mental health conditions of Depressive Disorder not otherwise specified (NOS) and Anxiety Disorder NOS from the DVA. There is no evidence he had or experienced any of these conditions during service. Service connection from the DVA does not equate to causation or mitigation of his discharge. The DVA may provide service connection to conditions that may have had a nexus to his military service and not necessarily the cause of discharge. In the applicant's case, he most likely received service connection because he reported feeling anxious and depressed because of his discharge from military service. Lastly, the applicant was discharged under entry level separation (ELS) and was furnished with an uncharacterized character of service because he served less than 180 days of continuous active military service.

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This characterization is consistent and in accordance with AFI 36-3208, the regulation he was discharged under, and to current regulation of DAFI 36-3211. Therefore, there is no error or injustice with his character of service discharge and so his request for an honorable discharge could not be supported.

Liberal consideration is applied to the applicant's request. The following are responses to the four questions from the Kurta memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant is requesting an upgrade to honorable and submitted a DVA Rating Decision letter dated 30 Dec 16 reporting he was granted service connection for Depressive Disorder NOS and Anxiety Disorder NOS with an evaluation of 70 percent effective 25 April 2012, about nine years after discharge. He did not discuss how his mental health condition caused or affected his ELS discharge.

2. Did the condition exist or experience occur during military service? There is no evidence the applicant's conditions of Depressive Disorder NOS and Anxiety Disorder NOS had existed or was experienced during his brief military service. There is no evidence he received any mental health evaluation, treatment, or mental disorder diagnosis during service. He began receiving mental health treatment from the DVA for anxiety and depression in 2012, about nine years post discharge, caused by being disappointed from being discharged from the military and from post service stressors. He was granted service connection for Depressive Disorder NOS and Anxiety Disorder NOS in 2016 that was retroactively effective in 2012, several years after service.

3. Does the condition or experience excuse or mitigate the discharge? There is no evidence the applicant's mental health condition to include Depressive Disorder NOS and Anxiety Disorder NOS had a direct impact or was a mitigating factor to his discharge from service. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Apr 23 for comment (Exhibit O) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board notes the AFRBA Psychological Advisor's rationale and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's entry level separation with an uncharacterized character of service was appropriately determined in accordance with DoD policy as the applicant did not complete 180 days of active service. Liberal consideration was applied to the applicant's request based on his service-connected mental health condition and the Board finds his condition does not excuse or mitigate

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his discharge nor warrant a change to the discharge characterization. Therefore, the Board recommends against correcting the applicant’s records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board’s understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2012-02538-3 in Executive Session on 25 Oct 23:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit L: Record of Proceedings, w/ Exhibits A-K, dated 15 Jan 20.
- Exhibit M: Application, DD Form 149, w/atchs, dated 11 Jan 23.
- Exhibit M: Documentary evidence, including relevant excerpts from official records.
- Exhibit N: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Apr 23.
- Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Apr 23.
- Exhibit P: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 19 Apr 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

3/25/2024

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Board Operations Manager, AFBCMR

Signed by: Work-Product