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

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2014-00855-2

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his Under Other Than Honorable Conditions (UOTHC) discharge.

RESUME OF THE CASE

The applicant is a former Air Force senior airman (E-4).

On 16 Dec 14, the Board considered and denied his request to upgrade his UOTHC discharge; stating insufficient relevant evidence had been presented to demonstrate the existence of an error or injustice. Additionally, in the interest of justice, the Board considered upgrading the characterization of the applicant's discharge based on clemency; however, after considering his overall record of service, the infractions which led to his administrative separation and the lack of post-service information they were not persuaded that an upgrade was warranted.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit D.

On 25 May 20, the applicant requested reconsideration of his request (Exhibit E). He again contends that the laws pertaining to marijuana use have been relaxed and he should not continue to suffer from his discharge characterization. However, on 8 Oct 20, his application was deemed non-viable and he was sent a memo (Exhibit F) explaining that in evaluating whether or not his post-service contributions warrant an upgrade of discharge based on clemency, it is vital that he provide supporting documentation. He was also given the Information Bulletin and Office of the Under Secretary of Defense Guidance memorandum regarding clemency determinations. His case was then closed. The applicant never responded to the request for post-service information.

On 16 Jun 21, the applicant submitted additional information to the Board (Exhibit G). He now contends to be suffering from post-traumatic stress disorder (PTSD) as a result of a Traumatic Brain Injury (TBI) while in the military. In support of his reconsideration request, the applicant submitted the following new evidence: (1) a personal statement and (2) Secretary/Under Secretary of Defense clarifying guidance regarding PTSD and TBI.

APPLICABLE AUTHORITY/GUIDANCE

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

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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 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 the supplemental guidance, paragraphs 6 and 7.

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

Under Honorable Conditions (General). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the

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conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence his mental health condition caused his misconduct and eventual discharge. However, the Psychological Advisor finds an injustice had existed to support upgrading his discharge to General (Under Honorable Conditions) based on liberal consideration guidance from the expanded Wilkie memo. A review of all albeit limited records finds there was no evidence in his objective military records to substantiate any of his claims. He did not clarify “insane” in his petition and there were no records reporting he had sustained a TBI or developed PTSD during his time in service. Contrary to his contention, PTSD did exist at the time of his discharge and became an official diagnosis in 1980. The description he provided of his experience does not appear to be consistent to the clinical presentation of PTSD. He was also never diagnosed or treated for any of these conditions, TBI or PTSD, by the Department of Veterans Affairs (DVA). His DVA records showed he did not seek mental health treatment until over 30 years post discharge and his emotional distress was caused by post-service stressors with no association to his military service. His DVA records also reported he had no prior mental health history when he first received mental health treatment in 2019, which would support the notion that he did not have any mental health issues at the snapshot in time in service. Therefore, there was no evidence his mental health condition caused his misconduct resulting with his discharge.

The applicant however, made a reasonable argument for liberal consideration to support receiving relief for his discharge. He was discharged from service for marijuana use and was furnished with an UOTHC character of service discharge. Specific information regarding how often he used marijuana was not provided and only an estimated time period of a few weeks of use was identified. Additionally, there was no evidence he had manufactured, handled, or sold drugs. The reported brief period of drug use in conjunction with the absence of the latter activities would suggest the severity of his misconduct was relatively minor and his UOTHC character of service may be considered as too harsh in comparison to present time’s standards. The Wilkie memo stated support for relief on the basis of equity, injustice or clemency could be considered due to the relative severity of some misconduct could change over time and thereby changing the relative weight of the misconduct as mitigating evidence. The policy also referenced the changing laws regarding marijuana use as mentioned by the applicant. In present time, misconduct involving marijuana use typically would result in a General (Under Honorable Conditions) character of service discharge due to changing views of this substance. As such, an injustice with his UOTHC character of service was demonstrated due to these reasons. There was no evidence his mental health condition caused his drug use and so an Honorable discharge would not be appropriate for his situation.

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

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he sustained a TBI and developed PTSD during his time in service that may lead to his discharge.
2. Did the condition exist or experience occur during military service?
There is no evidence his condition of TBI or PTSD existed during military service. He was also never diagnosed with any of these conditions during service or post-service by the DVA.
3. Does the condition or experience excuse or mitigate the discharge?
Although there was no evidence his mental health condition caused his misconduct and discharge, the severity of his misconduct has changed over time and the time lapse since misconduct would mitigate his discharge per the expanded liberal consideration guidance from the Wilkie memo.
4. Does the condition or experience outweigh the discharge?
Since his mental health condition does not excuse or mitigate his discharge, his condition would not outweigh his discharge. However, since the severity of his misconduct and time since misconduct would mitigate his discharge, his experience would outweigh his discharge to support providing relief to the applicant to upgrade his discharge to General (Under Honorable Conditions).

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Aug 22 for comment (Exhibit I) 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 is unconvinced the evidence presented demonstrates an error or injustice. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. While the Board notes the comments of the AFRBA Psychological Advisor supporting upgrading the discharge to a General Under Honorable Conditions based on liberal consideration guidance from the expanded Wilkie memo, the Board believes a preponderance of the evidence fails to substantiate the applicant's contentions. The applicant's chain of command at the time of discharge was in the best position to decide the applicant's characterization. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

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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-2014-00855-2 in Executive Session on 24 Mar 22 and 22 Mar 23:

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

All members voted to correct the record. The panel considered the following:

- Exhibit D: Record of Proceedings, w/ Exhibits A-C, 16 Dec 14.
- Exhibit E: Application, DD Form 149, dated 25 May 20.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request), dated 5 Dec 20.
- Exhibit G: Applicant Submitted Additional Information, 16 Jun 21.
- Exhibit H: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Mar 22.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 22.
- Exhibit J: Letter, SAF/MRBC, w/atchs (Clemency and Liberal Consideration Guidance), 29 Aug 22.

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.

3/29/2023

Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF