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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-2015-04560-2

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his under other than honorable conditions (UOTHC) discharge to general (under honorable conditions) or honorable.

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1) who was discharged on 20 Aug 69 for absent without leave (AWOL) for a few months (special court-martial conviction).

On 23 Feb 17, the Board considered and denied his request for a discharge upgrade; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. Based on the evidence presented, the Board found the applicant's discharge was consistent with the substantive requirements of the discharge regulation in effect at the time and within the commander's discretionary authority. The Board noted AFLOA/JAJM's comments the applicant's DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, reflects he received an UOTHC discharge characterization; however, per his court-martial sentence, his DD Form 214 should reflect he received a bad conduct discharge. Without further information, it would appear the applicant's DD Form 214 reflects he received a more favorable characterization than that which applicant was entitled to. Since it is not under the Board's charter to issue a recommendation that would cause detriment to the applicant, the Board believed the characterization reflected on his DD Form 214 was a matter best addressed by the appropriate Air Force Personnel Center (AFPC) officials who are charged with processing the action. The Board noted the AFBCMR Medical Consultant's recommendation to consider upgrading the applicant's discharge to general (under honorable conditions); however, they were not persuaded the failures and delays regarding the applicant's medical assessment influenced the misconduct that ultimately led to his UOTHC discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, due to the limited evidence the applicant submitted concerning his post-service activities, it was insufficient for the Board to determine his accomplishments since leaving the service were sufficiently meritorious to warrant a recommendation for relief based on clemency.

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 K.

AFBCMR Docket Number BC-2015-04560-2

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 25 Jul 23, the applicant requested reconsideration of his request for a discharge upgrade. He again contends his medical records show his frequent visits to the clinic for his back injury. He became addicted to pain medication, and he was labeled as a malingerer. He went AWOL to seek treatment for his back pain. With the help of family and friends, he was able to kick the pill habit however, his back continued to get worse.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) Department of Veterans Affairs (DVA) Claim Form; and (2) additional medical records.

The applicant's complete submission is at Exhibit L.

POST-SERVICE INFORMATION

On 14 Nov 23, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit M). The applicant did not reply to this request; however, he did provide post-service evidence in his original case. The FBI report provided, dated 27 Jun 16 indicates the applicant has had no arrests since discharge. The applicant also provided employment drug and alcohol testing forms, **Work-Product** Municipal Court letter, State Department of Education Criminal History Review, three-character reference letters, his resume, a personal statement, and medical records in his original case.

The applicant's complete response is at Exhibit I.

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 petition regarding discharge upgrade requests by veterans claiming Post-Traumatic Stress Disorder (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 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 issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 14 Nov 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit M).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the 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.

General (Under Honorable Conditions). 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 member's military record.

Under Other than Honorable Conditions. This characterization is used 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 conduct expected of members. 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 DAF.
- 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 abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct and finds no error or injustice with the applicant's discharge. The applicant did not have any mental health conditions at the time of his misconduct and the Psychological Advisor concludes there are no mental health factors that excuse or mitigate his misconduct (AWOL).

While a medical health record dated 26 Jan 68 noted the applicant was under considerable psychological tension due to his brother being killed in Vietnam, there is insufficient evidence to suggest the applicant was suffering from any mental health condition during his time in service or at discharge. He was determined to be fit for duty on several occasions and his Separation Examination did not find any mental health symptoms or conditions. In the previous case, the Medical Consultant's advisory, dated 10 Jan 17, gave notice to the 25 Jan 68, entry disclosing an observation the applicant was "under considerable psychological tension" due to the death of his brother in Vietnam. Whether this resulted in a significant mood disturbance contributing to the applicant's eventual use/overuse of prescribed (and possibly some non-prescribed medications), and if this would prompt an extended AWOL, is beyond the expertise of this reviewer and would be based upon speculation or conjecture. While the Medical Consultant speculated the applicant may have suffered from a mood disturbance as a result of the death of his brother, there is insufficient evidence to support this conclusion. The applicant was not found to have any mental health condition during several encounters, including his discharge separation evaluation which evaluated him for discharge.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

A medical health record dated 26 Jan 68 noted the applicant was under considerable psychological tension due to his brother being killed in Viet Nam.

2. Did the condition exist or experience occur during military service?

There is insufficient evidence the applicant had any mental health condition during his service or at discharge.

3. Does the condition or experience excuse or mitigate the discharge?

There is insufficient evidence to suggest that the applicant was suffering from any mental health condition during his time in service or at discharge. He was determined to be fit for duty on several occasions and his Separation Examination did not find any mental health symptoms or conditions. As the applicant did not have any mental health condition at the time of his misconduct, the Psychological Advisor concludes there are no mental health factors that excuse or mitigate his misconduct (AWOL).

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the 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 24 Apr 24 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 concludes the applicant is the victim of an error or injustice. Although the Board finds no reason to grant the applicant's request for a discharge upgrade under liberal consideration, nor do they find an error or injustice occurred during the discharge process finding the discharge was consistent with the substantive requirements of the discharge regulation, was within the commander's discretion, and was not unduly harsh or disproportionate to the offenses committed; they do recommend granting the applicant's request under fundamental fairness. The Board contemplated the many principles included in the Wilke Memo to determine whether to grant relief based on an injustice or fundamental fairness. Due to the length of time since his discharge coupled with his 30 years as a government employee, his post-service record revealing no criminal history, and his work as a school bus driver and help with outreach programs, the Board finds these reasons warrant a discharge upgrade to honorable. Therefore, the Board recommends the applicant's records be corrected as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 20 August 1969, he was discharged with service characterized as honorable

and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2015-04560-2 in Executive Session on 23 May 24 and 30 May 24:

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 K: Record of Proceedings, w/ Exhibits A-J, dated 23 Feb 17.
- Exhibit L: Application, DD Form 149, w/atchs, dated 25 Jul 23.
- Exhibit M: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 14 Nov 23.
- Exhibit N: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Apr 24.
- Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Apr 24.

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.

6/10/2024

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Board Operations Manager, AFBCMR
Signed by: USAF