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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-2017-03847

Work-Product

COUNSEL: Work-Product

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his general (under honorable conditions) discharge to an honorable discharge, with a Narrative Reason for Separation of Secretarial Authority and corresponding Separation Code and Reentry Code.

RESUME OF THE CASE

The applicant is a former Air Force airman first class (E-3).

On 19 Sep 18, the Board considered and denied his request to upgrade his general (under honorable conditions) discharge to an honorable discharge, with a Narrative Reason for Separation of Reduction in Forces, and his official military records be corrected to reflect his new legal name, finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board considered upgrading his discharge based on clemency but found no basis to do so. The Board also found there was no evidence to substantiate the applicant's contentions regarding his name change and concurred with the offices of primary responsibility recommendations to deny that request.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Air Force Board for Correction of Military Records Letter and Record of Proceedings at Exhibit J.

On 20 Feb 24, the applicant requested reconsideration of his request to upgrade his general (under honorable conditions) discharge to an honorable discharge, with a Narrative Reason for Separation of Secretarial Authority and corresponding Separation Code and Reentry Code. He again contends while serving, he did make minor mistakes such as forgetting to shave once before formation and not doing his best job cleaning up around the squadron area. The applicant takes full responsibility for his actions. He was having marital problems and mental health problems which affected all aspects of his life. The applicant believes his misconduct was tied to his mental health issues. He was trying to get mental health help while in the Air Force but was not able to resolve his issues prior to being separated. Despite his personal and mental health struggles, the applicant continued to try his best at work. He enjoyed serving in the Air Force and believes, despite his admitted mistakes, he served admirably.

In a separate statement, the applicant addressed the individual reasons his commander provided for his recommendation the applicant be discharged from the Air Force. He also provided details regarding his marital problems and resulting appointments with Family Advocacy, mental health

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

issues with a diagnosis of depression, and examinations through the Department of Veterans Affairs (DVA). Regarding his post-service conduct, the applicant stated he sought employment, starting as unskilled labor and worked his way up to owning his own computer consulting company which he sold in 2014. He has numerous professional certificates in information technology and earned ratings as a Divemaster and Master Scuba Diver. The applicant further contended he volunteered feeding the homeless and coaching. He has no arrests or convictions. The applicant is a husband and stepfather, married to his spouse for over 28 years. He believes his post-service behavior and accomplishments demonstrate his true character.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) copies of his disciplinary action history and discharge recommendation; (2) excerpts from his Family Advocacy records; (3) excerpts from his mental health records; (4) copies of his DVA Rating Decisions; (5) statement from his spouse; (6) excerpts from his post-service work history; (7) copies of professional and personal certifications; (8) a copy of a background check; (9) letters of support; and (10) family photos.

The applicant's complete submission is at Exhibit K.

STATEMENT OF FACTS

On 7 Jan 93, according to Standard Form (SF) 600, *Chronological Record of Medical Care*, provided by the applicant, he was seen at the Mental Health Clinic for depression and was prescribed Zoloft.

On 2 Feb 93, according to SF 600, provided by the applicant, he was diagnosed with depression, resolving, and was prescribed Zoloft.

On 2 Mar 93, according to DMAFB Form 0-76, *Report of Mental Health Evaluation*, the applicant "is mentally responsible for his/her behavior and possesses sufficient mental capacity to understand and cooperate as a respondent in any administrative proceeding which might involve him/her."

On 30 Apr 93, the applicant was furnished a general (under honorable conditions) discharge, with Narrative Reason for Separation of "Misconduct – Conduct Prejudicial to Good Order and Discipline," a Separation Code of JKM [Misconduct - Other], and a Reentry Code of 2B [Separated with a general or under other than honorable conditions discharge].

On 30 Nov 93, according to DVA Rating Decision, provided by the applicant, he was denied service-connection for depression.

On 13 Jul 17, according to DVA entitlements letter, provided by the applicant, his unspecified depressive disorder with anxiety was assigned a 50 percent rating, effective 22 Feb 17.

On 8 Dec 20, according to DVA Rating Decision, provided by the applicant, his evaluation of major depressive disorder with panic disorder, and alcohol use disorder, which was currently 70 percent disabling, was increased to 100 percent, effective 17 Aug 20.

For more information, see the excerpt of the applicant's record at Exhibit L and the advisories at Exhibits O and R.

POST-SERVICE INFORMATION

On 11 Jul 24, 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 replied on 12 Jul 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant's complete response is at Exhibit N.

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 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 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 11 Jul 24, 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds there is insufficient evidence to support the applicant's request for an upgrade of his discharge or to add disability to his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

Despite the applicant's misconduct, there is no evidence he was not fit for duty. Being diagnosed with a mental health condition does not automatically render a condition as unfitting. More information is required to determine unfitness, such as being placed on a permanent Duty Limiting Code profile for a mental health condition, being deemed not worldwide qualified due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating. These designations were absent from his records.

Additionally, the applicant was promoted two times to the rank of airman first class in his one-year, five-month military service. There is insufficient evidence to support the applicant's mental health condition had an impact on his ability to perform the duties of his office, grade, rank, and rating. It should also be noted the examiner who completed his Mental Health Evaluation near discharge concluded the applicant had no medical disorder warranting medical action. His physical profile is S-1 (indicating fitness for duty from a psychological perspective), and he was medically qualified for worldwide duty with no duty or assignment limitations.

It should be noted the military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (10 USC), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards, as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

While it is noted the applicant was diagnosed with major depression and dysthymia while in service, his Mental Health Evaluation noted (2 Mar 93) it was his personality traits (passive-aggressive and immature traits) that were the primary factors underlying his misconduct. It is also noted his depressive symptoms were resolving at the time. The applicant evidenced in his rebuttal to his disciplinary actions his behaviors were not the result of a mental health condition but rather a passive-aggressive and immature response to his dereliction of duties, military customs, and disrespect/poor attitude. The examiner who completed his Mental Health Evaluation near discharge concluded the applicant was mentally responsible for his behavior.

Therefore, this Psychological Advisor concludes his misconduct is not mitigated by his mental health conditions but rather by a willful, conscious, and sustained disregard for military procedures, rules, and customs.

The applicant check-marked Sexual Assault/Harassment on his application. There is no evidence to suggest the applicant was sexually assaulted or sexually harassed while in the military. He denied Military Sexual Trauma (MST) on an encounter on 17 Dec 18. Instead, the applicant seems to suggest his disciplinary actions for misconduct demonstrate harassment. There is no evidence from his service records his disciplinary actions or separation from the military indicate harassment.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge, and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. 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 indicated Other Mental Health Conditions and Sexual Assault/Harassment on his application.

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

The applicant was diagnosed with major depression, resolving; dysthymia, resolving; and passive-aggressive and immature traits after a mental health evaluation. He was service-connected for major depression.

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

While it is noted the applicant was diagnosed with major depression and dysthymia while in service, his Mental Health Evaluation noted (2 Mar 93) it was his personality traits (passive-aggressive and immature traits) that were the primary factors underlying his misconduct. It is also noted his depressive symptoms were resolving at the time. The applicant evidenced in his rebuttal to his disciplinary actions his behaviors were not the result of a mental health condition but rather a passive-aggressive and immature response to his dereliction of duties, military customs, and disrespect/poor attitude. Therefore, this Psychological Advisor concludes the applicant's misconduct is not mitigated by his mental health conditions but rather by a willful, conscious, and sustained disregard for military procedures, rules, and customs. The applicant check-marked Sexual Assault/Harassment on his application. There is no evidence to suggest the applicant was sexually assaulted or sexually harassed while in the military. He denied MST on an encounter on 17 Dec 18. Instead, the applicant seems to suggest his disciplinary actions for misconduct demonstrate harassment. There is no evidence from the applicant's service records his disciplinary actions or separation from the military indicate harassment.

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 O.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Sep 24 for comment (Exhibit P), and the applicant replied on 25 Oct 24. In his response, the applicant contended due to the statements made in the advisory opinion, he is concerned the advisor did not have his current application on hand while reviewing his case. The applicant did not ask for disability to be added to his DD Form 214, and he did not check the box for Sexual Assault/Harassment on the DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, as stated in the advisory opinion. The applicant did check the box for Other Mental Health.

Because the advisor did not have the applicant's current application on-hand, he believes they missed medical records in his application showing suicidal thoughts and medication for depressive symptoms during his period of service. The applicant believes this information would have led the advisor to see the severity of his mental health condition, thus altering their opinion. His medical records showed the applicant expressed suicidal thoughts on 7 Jan 93 and was taking Zoloft. The advisory states his depressive symptoms were resolving. The advisory failed to note the applicant's suicidal thoughts and medication. The applicant believes his symptoms were improving, not resolving, due to the medication and counseling he was receiving at that time. The applicant would also like to highlight his diagnosis of dysthymia, which is defined as a depressed mood for at least two years. The applicant believes the advisor glossed over the seriousness and long-term nature of his diagnosis of dysthymia. The applicant had periods where he could not get out of bed, was vomiting blood because of anxiety, had violent self-harm resulting in wounds that required tending to, tonic paralysis that had shown to be life-threatening if he was unattended, and episodes of hiding in the closet crying hysterically for no reason and with no warning. The applicant spent months with his suicide flag on because suicidal intent was constant, eventually resulting in the applicant trying to kill himself twice. Due to the missing records, the applicant believes the advisor failed to properly express the seriousness of his mental health struggle, both in service and out of service.

The applicant's third concern is when discussing if he was fit for duty, the advisor did not discuss his suicidal ideations. In fact, the advisor stated there was no evidence the applicant was not fit for duty. Again, the applicant believes the advisor did not have a copy of his current application which showed he had suicidal ideations, and they would be evidence he was not fit for duty. Finally, there was a typographical error in the advisory regarding a date and these errors in the report make the applicant question the advisor's attention to detail.

The applicant's complete response is at Exhibit Q.

AMENDED AIR FORCE EVALUATION

In an amended advisory opinion, the AFRBA Psychological Advisor finds there is insufficient evidence to support the applicant's request for an upgrade of his discharge.

The applicant is petitioning the Board (20 Feb 24) to change the characterization of service from under honorable conditions (general) to honorable. He additionally requests his Narrative Reason for Separation be changed to Secretarial Authority and his Reentry Code and Separation Code be

appropriately adjusted. He check-marked Other Mental Health on his application. The applicant had previously submitted an *Application for Correction of Military Record* (received 10 Feb 21) that requested disability be added to his DD Form 214. Additionally, he had check-marked Sexual Assault/Harassment. He is no longer asking for a medical disability retirement and did not check-mark Sexual Assault/Harassment on his most recent application.

While it is noted the applicant was diagnosed with major depression and dysthymia while in service, his Mental Health Evaluation (2 Mar 93) noted it was his personality traits of passive-aggressive and immature traits that were the primary factors underlying his misconduct. It is also noted the applicant's depressive symptoms were resolving at the time. While his misconduct may have been considered minor infractions of military policy, in aggregate, it demonstrates a passive-aggressive and immature response style to the duties, military customs, and disrespect/poor attitude toward military policy and procedure. The examiner who completed his Mental Health Evaluation near his discharge date concluded the applicant was mentally responsible for his behavior. This additionally indicates the examiner's professional conclusion at the time of the applicant's discharge did not believe the applicant's misconduct was the result of his mental health condition. This Psychological Advisor concludes the applicant's misconduct is not mitigated by any mental health condition. His misconduct appears to have no nexus with a mental health condition. It was rather a willful, conscious, and sustained disregard for military procedures, rules, and customs.

While the subsequent worsening of the applicant's mental health condition post-service is unfortunate, it is not pertinent to whether his misconduct while he was in the military would be mitigated by his mental health condition. The applicant was denied any service-connection for mental health in 1993, several months after his discharge. He was later awarded a 50 percent rating for mental health, followed by a 70 percent rating, and finally, a 100 percent service-connection for mental health. While this demonstrates a worsening of the applicant's mental health symptoms post-service, it does not excuse or mitigate his misconduct from a psychological perspective while in service.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. 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 check-marked Other Mental Health on his application.

2. Did the condition exist, or experience occur, during military service?
The applicant was diagnosed with major depression, resolving; dysthymia, resolving; and passive-aggressive and immature traits after a mental health evaluation.

3. Does the condition or experience excuse or mitigate the discharge?
While it is noted the applicant was diagnosed with major depression and dysthymia while in service, his Mental Health Evaluation (2 Mar 93) noted it was his personality traits of passive-aggressive and immature traits that were the primary factors underlying his misconduct. It is also noted the applicant's depressive symptoms were resolving at the time. While his misconduct may have been considered minor infractions of military policy, in aggregate, it demonstrates a passive-aggressive and immature response style to the duties, military customs, and disrespect/poor attitude toward military policy and procedure. The examiner who completed his Mental Health Evaluation near his discharge date concluded the applicant was mentally responsible for his

behavior. This additionally indicates the examiner's professional conclusion at the time of the applicant's discharge did not believe the applicant's misconduct was the result of his mental health condition. This Psychological Advisor concludes the applicant's misconduct is not mitigated by any mental health condition. His misconduct appears to have no nexus with a mental health condition. It was rather a willful, conscious, and sustained disregard for military procedures, rules, and customs.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate the discharge, the applicant's condition also does not outweigh the original discharge.

The complete amended advisory opinion is at Exhibit R.

APPLICANT'S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent a copy of the amended advisory opinion to the applicant on 27 Nov 24 for comment (Exhibit S) 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 injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. In particular, the applicant provided evidence of his continued pursuit of training to acquire skills and attainment of employment in the field of information technology, as well as a copy of a background check, a copy of his post-service work history, and character references from peers and employers. In accordance with paragraph 7 of the Wilkie Memorandum, the Board considered the applicant's candor and remorse, as well as the severity of the misconduct, length of time since discharge, and evidence of rehabilitation. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 30 Apr 93, he was discharged with service characterized as honorable, a narrative reason for separation of Secretarial Authority, with corresponding separation code of JFF, and a reentry code of 1J.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2017-03847 in Executive Session on 18 Dec 24:

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, Panel Chair

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Panel Member

Panel Member

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

AFBCMR Docket Number BC-2017-03847

- Exhibit J: Record of Proceedings, w/ Exhibits A-I, dated 8 Oct 18.
Exhibit K: Application, DD Form 149, w/atchs, dated 20 Feb 24.
Exhibit L: Documentary evidence, including relevant excerpts from official records.
Exhibit M: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 11 Jul 24.
Exhibit N: FBI Report, dated, 12 Jul 24.
Exhibit O: Advisory Opinion, AFRBA Psychological Advisor, dated 2 Aug 24.
Exhibit P: Notification of Advisory, SAF/MRBC to Counsel, dated 27 Sep 24.
Exhibit Q: Applicant's Response, w/atchs, dated 25 Oct 24.
Exhibit R: Amended Advisory Opinion, AFRBA Psychological Advisor, dated 26 Nov 24.
Exhibit S: Notification of Advisory, SAF/MRBC to Counsel, dated 27 Nov 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.

2/5/2025

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Board Operations Manager, AFBCMR
Signed by: USAF