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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03131

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to a medical discharge.

APPLICANT'S CONTENTIONS

The two offenses for which he received an UOTHC discharge were due directly to Type I Bipolar Disorder, which emerged during service (diagnosed then as Major Depression with Psychotic Features). During this same time frame, he was also diagnosed with, and treated for, Testicular Cancer, a discovery which undoubtedly added another layer of severity to his medical situation. He was proud to have served his country as an Air Force officer, and absolutely would not have violated the Uniform Code of Military Justice (UCMJ), by using an illegal drug nor being absent without leave (AWOL), had he been making reasonable, sane decisions at the time (i.e., not been mentally ill).

In support of his clemency request, the applicant provides a personal statement, two letters from his physicians, and two character reference letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force reserve first lieutenant (O-2).

On 15 Sep 95, according to DD Form 458, *Charge Sheet*, the applicant's commander charged him with Violation of the UCMJ. The specific reasons for the action were:

- a. On or about 9 May 95 to 9 Jun 95, the applicant wrongfully used marijuana, violating Article 112a.
- b. On or about 7 Jun 95, without authority, the applicant absented himself from his organization remained so absent until on or about 8 Jun 95, violating Article 86.

On 2 Oct 95, the applicant requested Resignation in Lieu of (RILO) Trial by Court-Martial.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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

On 15 Nov 95, the applicant's commander recommended approval of the applicant's RILO Trial by Court-Martial.

On 24 Nov 95, the Staff Judge Advocate found the RILO Trial by Court-Martial legally sufficient.

On 11 Dec 95, according to AF Form 356, *Findings and Recommended Disposition of USAF Informal Physical Evaluation Board (IPEB)*, the applicant was found unfit for "Major depressive disorder, single episode, severe, melancholic, with mood-congruent psychotic features. Severe impairment of social and industrial adaptability" and recommended Temporary Retirement with a disability rating of 70 percent.

On 8 Jan 96, according to AF Form 1180, *Action on PEB Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB.

On 7 Feb 96, the Acting Secretary of the Air Force accepted the applicant's RILO Trial by Court-Martial and directed the applicant be discharged UOTHC.

On 15 Apr 96, the dual action discharge authority directed the applicant be discharged in accordance with AFI 36-3207, *Separating Commissioned Officers*.

On 10 May 96, the applicant received a UOTHC. His narrative reason for separation is "Triable by Court-Martial." He was credited with 3 years, 5 months, and 10 days of total active service.

On 27 Mar 97, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge and to change the reason for his discharge.

On 5 Jun 01, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. However, the AFDRB directed the applicant's narrative reason for separation be changed to "Secretary Authority" and corresponding separation code "JFF."

For more information, see the excerpt of the applicant's record at Exhibit B.

POST-SERVICE INFORMATION

On 12 Apr 22, the Board sent the applicant a standard request for post-service information (Exhibit C). This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did submit post-service information with his initial application, he did not provide an FBI background check or other criminal history data.

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 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.

On 12 Apr 22, Board staff provided the applicant a copy of the liberal consideration and clemency guidance (Exhibit C).

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 finds insufficient evidence to support the applicant's request for a medical discharge. His military personnel records were quite extensive detailing his stressors and mental health issues, reason for his AWOL, and legal and occupational problems. His case was extensively reviewed by numerous individuals and from departments/directorates with mostly consistent recommendations, sans the recommendation/opinion of the Chief of Military Justice Division, to accept the applicant's request for RILO. The primary question is whether he should have received a medical discharge versus an administrative discharge. The AFRBA Psychological Advisor opines the administrative discharge he received was appropriate for several reasons. His records indicated he had behavioral and misconduct issues prior to his decision to be AWOL. Multiple records to include the narrative summary completed by a psychiatrist, who had referred him to the Medical Evaluation Board, identified his stressors began in November 1994, the time of the dissolution of his engagement. This timeline indicated his personal stressors began about one month after he received a letter of reprimand, so he was already committing the same misconduct when he was not under duress or emotional distress. In addition to this issue, he repeatedly was out sick without providing proper notification or attending sick call as required and showed up late to work on numerous occasions despite being counseled for these problems. During a command directed physical evaluation, a mass/tumor was found in one of his testicles requiring a biopsy/surgery to remove the mass. There were no reports or evidence that his previous sick days were related to this issue as there were no records he had any symptoms related to this ailment documented in his available records. Even if his sick calls were related to this issue, he was counseled numerous times about proper sick call procedures and so there was no excuse for his repeated misconduct. Next, it was clear from his records that he was experiencing a culmination of stressors at the time of his AWOL and may explain his decision to be AWOL as the applicant had contended. However, whether this behavior would be excused or mitigated by his mental health condition is a different situation. Numerous individuals and subject matter experts had opined it does not and the AFRBA Psychological Advisor concurs with their opinions. The rationale for this opinion is the applicant knew at the time of his AWOL his behavior was inappropriate and wrong as corroborated by his providers' and investigative reports. He engaged in this type of behavior before when he was not under emotional distress and was reprimanded accordingly. When the applicant decided to leave without authorization, recognizing he was under duress at the time, he was equipped with an abundance of information on the importance and requirements of receiving authorized leave. He had access to his leadership and could have called them at any time before he decided to leave especially since they were well aware and had

demonstrated sympathy to his personal and medical problems. The applicant is a highly intelligent individual and an officer in the Air Force who had been giving ample guidance and opportunities to repair his behaviors. His mental health condition was a factor to his decision but he still knew the difference between right and wrong and knew of the consequences of his AWOL when he decided to leave without authorization. Finally, complicating matters further is the applicant tested positive for marijuana following his return from AWOL as part of his lab/toxicology screening procedure when he was admitted to inpatient psychiatric hospitalization. He denied using drugs to two different medical and mental health providers. When the psychiatrist at inpatient hospitalization discussed his positive drug test, he was dishonest about his drug use and initially denied it and later admitted to using drugs when a second test was ordered. He then asked the psychiatrist to engage in deceitful practice of not reporting his drug test in his records and later informed the psychiatrist to write it in his records because he wanted to get out of the military, reflecting his manipulative behaviors. It is reminded that the applicant's marijuana concentration level was 38 times higher than the Department of Defense's cut off level. This level indicated he either used an excessive or potent amount of marijuana or used the substance on more than occasion; however, the applicant claimed it was a one-time use. There is no evidence the applicant had any variations of Bipolar Disorder during his military service. The applicant was reported to have not experienced any manic symptoms by his providers during service and no evidence he experienced any manic episodes to include the time he was AWOL or used drugs. Manic symptoms/episodes are required to meet diagnostic criteria for Bipolar I Disorder. He met diagnostic criteria for Manic Depressive Disorder (MDD) at the time of service. His MDD may have been the onset condition of his eventual Bipolar Disorder, but he did not have Bipolar Disorder at the time of service. MDD may morph into Bipolar Disorder for some individuals but a condition like Bipolar Disorder may take time and years to appear for diagnostic clarity. This appeared to be the applicant's situation as he did not meet diagnostic criteria for Bipolar Disorder until several years post discharge. Regardless of whether he had Bipolar Disorder during service, he did have an unfitting mental health condition identified as MDD but his RILO/administrative discharge outweighed his medical discharge. The AFRBA Psychological Advisor opines liberal consideration is not appropriate to be applied to the applicant's request because this policy does not apply to medical discharge requests.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Apr 23 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).
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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of the AFRBA Psychological

Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant had any variations of Bipolar Disorder during his military service. He had an unfitting mental health condition identified as MDD but his RILO/administrative discharge outweighed his medical discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information / criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03131 in Executive Session on 17 Aug 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 A: Application, DD Form 149, w/atchs, dated 30 Jul 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 12 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Apr 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 25 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.

7/2/2025

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Board Operations Manager, AFBCMR

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