

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03538

XXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His official military personnel records be amended to:

- a. Restore his grade to senior airman (E-4).
- b. Upgrade his discharge from under other than honorable conditions (UOTHC) to honorable.
- c. Change his Narrative Reason for Separation from Misconduct (Serious Offense) to Secretarial Authority.
- d. Change his Reentry (RE) Code from 2B<sup>1</sup> to RE-1<sup>2</sup>.

### APPLICANT'S CONTENTIONS

On behalf of the applicant, counsel recounted details of his military personnel record regarding his initial enlistment, awards and decorations earned, enlisted performance reports, promotion history, and volunteer activities.

In 2015, the applicant was arrested and pled guilty to the respective charges of patronizing a prostitute and contributing to a minor regarding an incident in 2012. According to the applicant, he received a sentence of 4 years unsupervised probation and 40 hours of community service. He was forthcoming with his chain of command regarding his arrest and was told he would receive probation and rehabilitation. However, his new First Sergeant notified him such conduct was disgracing the uniform and what it meant to be an airman and he would be discharged with a general (under honorable conditions) discharge.

While the applicant was being processed for discharge, he was transferred to work at the gym facility where he went above and beyond in his job responsibilities under less than favorable circumstances. He was approached by members of the Office of Special Investigations at his squadron and his cellular phone was seized. On 28 Sep 15, he was issued nonjudicial punishment (NJP) for violation of Article 134, Uniform Code of Military Justice (UCMJ) for allegedly engaging in wrongful sexual intercourse with a woman not his wife. Despite his attempt to appeal the NJP because it was unsupported with evidence to establish guilt, he was awarded a reduction in grade to airman basic. The applicant was further notified by his First Sergeant he would be discharged with a UOTHC discharge instead of the previously initiated general (under honorable conditions) discharge. The applicant believes this was the result of targeting and retribution as the First Sergeant stated he had once been cheated on and he would do everything in his power to ensure the applicant felt his wrath.

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<sup>1</sup> In accordance with AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, Table 5.2. *Conditions Barring Immediate Reenlistment (RE-2 Series)*, RE code 2B reflects "Separated with a general or under-other-than-honorable-conditions (UOTHC) discharge."

<sup>2</sup> In accordance with AFI 36-2606, Table 5.1. *Applicants Eligible for Immediate Reenlistment (RE-1 Series)*, applicants with a RE-1 series RE code are eligible for reenlistment.

During this period, the applicant was also experiencing symptoms of fatigue, decreased appetite, weight loss, problems eating, decreased ability to concentrate, and sleep disturbances preventing him from falling asleep and maintaining his sleep, which he reported occurred for four to six months prior. The applicant was diagnosed with an adjustment disorder on 10 Sep 15. His symptoms continued and he reported to medical personnel for months after his diagnosis.

In this case, the applicant suffered a material error in discretion, in accordance with Department of Defense Instruction (DoDI) 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E4.2.1.A, as his chain of command, specifically his First Sergeant, initiated proceedings for a UOTHC discharge on the basis of an NJP for which he had already been punished. The initiation of discharge was purposely done to give the applicant excessive and unnecessary punishment for reasons of targeting and retribution. Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 3.14.1.3. provides guidelines for the chain of command in the Air Force to follow when initiating administrative separations regarding what kinds of behavior trigger each characterization of discharge, including honorable, general under honorable, and other than honorable. Counsel provides excerpts from the AFI as examples.

The basis for the applicant's UOTHC discharge was an NJP that lacked sufficient evidence to demonstrate his guilt in an alleged instance of adultery. Pursuant to the NJP, he had already experienced a reduction in grade to airman basic, which caused him and his family to suffer financial troubles because of the severe decrease in pay. His chain of command did not stop there but further punished the applicant by initiating separation proceedings with a UOTHC discharge instead of the general discharge he would have received had the First Sergeant not intervened. This chain of events sprouted from the alleged adultery, which is not an identified trigger for a UOTHC discharge; therefore, he should not have received such a harsh discharge, especially because he had already been punished under NJP. According to the applicant, his Area Defense Counsel (ADC) at the time had never experienced such harsh punishment regarding an adultery charge, especially one that lacked sufficient evidence. The applicant faced excessive and improper discharge because of the abuse of power by his First Sergeant, who made comments toward the applicant regarding his own previous relationship's infidelity. Lastly, according to the applicant, others in the squadron received DUIs [driving under the influence], or were involved with drugs or domestic violence, yet did not suffer administrative separation proceedings as severe. Because his chain of command initiated more excessive punishment that did not match the treatment of others or the applicant's conduct, he contends his punishment should have fitted the act.

Counsel refers to DoDI 1332.28, E4.3.1. in support of material injustice, stating relief is warranted upon review based on consideration of the applicant's service record, including but not limited to wounds received in service, quality of service such as awards, letters of commendation, and post-service conduct. Counsel again provided excerpts from the applicant's military record in support of his request for relief. The applicant's character letters also demonstrate a single mistake amidst this time in the Air Force should not define him or prejudice him with a UOTHC discharge. Per counsel, the applicant has reached 12 years with his wife and has grown his family of five. He is described as someone who has greatly matured since making an error in judgment so many years ago and sees an opportunity to learn from his mistakes and grow as a person.

Counsel presents the Kurta Memorandum<sup>3</sup> and asks the Board to consider the presence of an adjustment disorder at the time of the applicant's discharge. The original diagnosis was

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<sup>3</sup> Under Secretary of Defense for Personnel and Readiness Memorandum, Subject: Clarifying Guidance to Military Discharge Review Boards and Board for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 Aug 17

documented on 10 Sep 15, eight months prior to his discharge, exhibiting physical manifestations of depression, including fatigue, loss of appetite and concentration, and sleep disturbances. As the applicant reported, his symptoms had been occurring for four to six months before diagnosis, meaning it was likely he was suffering from adjustment disorder at the time of the alleged conduct which gave rise to his NJP and subsequent discharge. The applicant continued to exhibit physical manifestations of his adjustment disorder following his NJP and separation proceedings, the most recent follow-up occurring only four months prior to his separation from the Air Force in Jan 16 (sic)<sup>4</sup>. It is respectfully requested the Board review his discharge with leniency due to liberal consideration in whole or in part to mental health.

In support of his request for clemency, the applicant provides a personal statement, copies of his enlisted performance reports, excerpts from his medical records, and letters of support.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 28 Sep 15, according to AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru SSgt)*, the applicant was issued NJP for:

- Violation of the UCMJ, Article 134:

- [The applicant], a married man, did, at or near **Attorney-Client**, Colorado (CO), on divers occasions, between on or about 15 Aug 15 and on or about 15 Sep 15, wrongfully had sexual intercourse with [XXX], a woman not his wife, such conduct being of a nature to bring discredit upon the armed forces.

- [The applicant] did, at or near **Attorney-Client**, CO, on or about 11 Sep 15, wrongfully endeavor to influence the testimony of [XXX], as the victim in the case of *United States v. [Applicant]*, by communicating to the said [XXX] that if he got in any more trouble he would not be able to take care of his child, or words to that effect, such conduct being of a nature to bring discredit upon the armed forces.

The applicant was reprimanded and reduced to the grade of airman basic (E-1), with a new date of rank of 6 Oct 15.

On 17 Nov 15, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, paragraph 5.52.4. *Commission of a Serious Offense – Other Serious Offenses*. The specific reasons for the action were:

a. On or about 14 Aug 15, [the applicant] pled guilty to Contributing to the Delinquency of a Minor, a Class 4 felony under CO law.

b. On 14 Aug 15, [the applicant] pled guilty to Patronizing a Prostitute, a Class 1 misdemeanor under CO law. As part of his entering a plea to the charges, he and the District Attorney entered into a stipulation that the Court shall defer sentencing for a period of four years, with conditions for him to comply with, including some conditions depriving him of his unfettered liberty.

c. The charges resulted from an investigation initiated on 6 Feb 15. During the course of the investigation, Detectives of the **Attorney-Client** Police Department became aware of juvenile victims of human trafficking and who were now engaging in prostitution. [The

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<sup>4</sup> The applicant was discharged from the Air Force on 25 May 16.

applicant's] phone number was identified as one of the phone numbers that had called an advertisement for the juvenile prostitutes on "Backpage.com." One of the juvenile prostitutes identified [the applicant] as having paid them for intimate relations.

d. On or about 15 Aug 15 and on or about 15 Sep 15, [the applicant], a married man, wrongfully had sexual intercourse, with a woman, not his wife, such conduct being of a nature to bring discredit upon the armed forces. For this conduct, he received NJP, dated 28 Sep 15.

Other conduct considered, but not used as a basis for discharge include two Letters of Reprimand, one Letter of Counseling, and two verbal counselings documented in Memorandums for Record.

On 24 Mar 16, an Administrative Discharge Board convened, finding the applicant did commit the offenses detailed in the recommendation for discharge, that a punitive discharge would be authorized for the same or closely related offense(s) under the Manual for Courts-Martial, and recommended the applicant be separated with a UOTHC discharge, and probation and rehabilitation not be offered.

On 6 May 16, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 May 16, the discharge authority approved the findings and recommendations of the Administrative Discharge Board and directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.52.4. with a UOTHC service characterization. Probation and rehabilitation were denied.

On 25 May 16, the applicant received a UOTHC discharge. His narrative reason for separation is "Misconduct (Serious Offense)" and he was credited with 4 years and 10 months of total active service.

On 23 Aug 18, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge and a change to the discharge narrative reason.

On 25 Apr 19, based upon a records-only review, per the applicant's request, the AFDRB found insufficient evidence of an inequity or impropriety that would warrant a change to the applicant's discharge or change his narrative reason. The discharge received by the applicant was deemed to be appropriate and his request was not approved.

On 30 Sep 20, the applicant submitted an appeal to the AFDRB for an upgrade to his discharge and change to the discharge narrative reason.

On 16 Feb 21, the applicant appeared and testified before the AFDRB via teleconference, represented by his father, and without counsel. The AFDRB found insufficient evidence of an inequity or impropriety that would warrant a change to the applicant's discharge or change his narrative reason. The discharge received by the applicant was deemed to be appropriate and his request was not approved.

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

## **POST-SERVICE INFORMATION**

On 30 Apr 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; however, he has not replied.

## 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 30 Apr 24, Board staff provided the applicant a copy of the liberal consideration 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.

In accordance with AFI 51-202, *Nonjudicial Punishment*, dated 31 Mar 15, Chapter 3, *Procedures for Initiating and Imposing Nonjudicial Punishment*:

3.4. *Standard of Proof.* While no specific standard of proof applies to NJP proceedings, including appeals, commanders should recognize that a member is entitled to demand trial by court-martial, in which case proof beyond a reasonable doubt of each element of every offense by legal and competent evidence is a prerequisite to conviction. Whether such proof is available should be considered before initiating action under Article 15, UCMJ. If such proof is lacking, NJP action is usually not advisable.

3.17. *Permissible Punishments.* Table 3.1 and Table 3.2 set out the maximum permissible punishments, based on the grade and status of the commander and the grade of the member. If, after considering matters presented by the member, the commander determines the member committed one or more of the alleged offenses and NJP is appropriate, the commander must select at least one of the permissible punishments set out in Table 3.1 or Table 3.2. (T-0). However, if the commander determines the member should not receive any form of authorized punishment, then the commander must find that NJP is not appropriate and terminate the proceedings. (T-0).

Table 3.1. *Enlisted Punishments.*

Punishment	Imposed by Lt or Capt	Imposed by Major	Imposed by Lt Col or Above
Reduction	CMSgt -No, SMSgt - No, MSgt - No, TSgt - No, SSgt - One Grade, SrA - One Grade, A1C - One Grade, Amn - to AB	CMSgt - No, SMSgt - No, MSgt - No, TSgt - One Grade, SSgt - One Grade, SrA - to AB, A1C - to AB, Amn - to AB	CMSgt - See Note 2, SMSgt - See Note 2, MSgt - One Grade, TSgt - One Grade, SSgt - One Grade, SrA - to AB, A1C- to AB, Amn-to AB

## AIR FORCE EVALUATION

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his records based on his mental health condition.

This advisory is limited to the applicant's mental health condition. Contentions regarding an injustice with his administrative discharge action and proceedings should be addressed by personnel and/or legal subject matter experts as deemed appropriate. A review of the applicant's available military and service treatment records and the submitted records for review finds the applicant's mental health condition did not have a direct impact or was a contributing factor to his misconduct and discharge. The applicant was discharged from service for committing serious offenses of patronizing a prostitute, contributing to the delinquency of a minor for which he was convicted at a civilian court, and committing adultery. The applicant consistently admitted his wrongdoing in the former offenses but denied the latter offense. He was found to have engaged in all of the offenses listed in his Notification Memorandum for discharge by an administrative hearing board and was recommended by the board to be discharged with a UOTHC service characterization. It is confirmed by his service treatment records the applicant did seek mental health treatment for his legal and occupational stressors during service. He was initially seen on 10 Sep 15 by a mental health provider for the complaints of "Depression subsequent to pending military separation"; he had endorsed depressive symptoms of anhedonia, hopelessness, poor sleep, fatigue, poor appetite, low self-esteem, poor concentration, and motor slowing at the time. This information signified his depression or depressive symptoms were the result of, or in response to, his discharge action/legal and occupational problems. He did report experiencing depressed mood in the "last 4-6 months", but it is reminded he was under investigation by **Attorney-Client** Police Department for his involvement in juvenile prostitution starting on 6 Feb 15, which was within the time frame of the occurrence of his depressed mood. His intake evaluation on 2 Nov 15 also clearly reported, "The pt's symptoms are all derived from his current legal situation." He was given a diagnosis of Adjustment Disorder with Anxiety and Depressed Mood from both evaluations to indicate his adjustment to the situational stressors of his legal (and occupational problems) had caused him to experience anxiety and depressed mood. There is no evidence or records he had any mental health issues, including anxiety or depressed mood, prior to the advent of his legal and occupational problems or that his mental health condition caused him to engage in his convicted offenses of patronizing a prostitute and contributing to the delinquency of a minor. He did report having marital problems, but having marital problems is not a mental health condition nor did his marital problems cause him to develop a mental health condition. He actively and knowingly solicited the services of a prostitute with the intention of engaging in sexual relations, so his behaviors and misconduct were premeditated. Although he was unaware this person was underage, soliciting prostitution and having sexual relations with a minor are illegal and are serious offenses. Hypothetically, if he had a mental health condition at the time of his misconduct, his mental health condition would

not excuse or mitigate his misconduct due to the egregious nature of the offenses. His serious misconduct could not be overlooked.

The applicant had repeatedly denied he committed adultery with another First Sergeant's stepdaughter. If his assertion is true, then it is not possible his mental health condition had caused his misconduct/offense because the incident did not occur according to him. His legal counsel contended he was suffering from an adjustment disorder at the time of his alleged conduct that caused his NJP and subsequent discharge proceeding. This contention is contradictory to the applicant's contention. He received NJP/Article 15 for wrongfully having sexual intercourse with this individual while married. If the applicant said he did not commit adultery, then how did his adjustment disorder cause his misconduct and NJP? The same Article 15 also stated on or about 11 Sep 15, he wrongfully endeavored to influence the testimony of the victim/stepdaughter by communicating to her that if he got into any more trouble, he would not be able to take care of his child. This was made in an effort to prevent her from coming forward and making a statement. The applicant denied his behaviors in his response to his Article 15 action. This reported misconduct had occurred on or about 11 Sep 15, which was one day after he presented to the Mental Health clinic on 10 Sep 15 and was given a diagnosis of an adjustment disorder. It is reasonable to assume that since he was given a diagnosis of an adjustment disorder the day prior to his misconduct, his adjustment disorder may have caused his misconduct as well. This is not necessarily the case. There is evidence he was probably stressed out around the time of this misconduct, but the applicant denied trying to guilt anyone or obstructing justice. Again, if the applicant denied the misconduct had occurred, how would his adjustment disorder cause his misconduct? Based on the description of this incident recorded in his Article 15 document, it appeared the applicant's behaviors/misconduct were done in an effort to prevent her from coming forward and making a statement. If that was the case, his behaviors were deliberate and not an impulsive act or caused by a mental health condition. His adjustment disorder was present during service as there is evidence he was diagnosed with an adjustment disorder during service; however, there is no evidence his adjustment disorder caused his misconduct/serious offenses leading to his discharge from service. The presence of, or receiving, a mental disorder diagnosis and mental health treatment does not automatically imply or lead to mitigation of his discharge.

After an exhaustive review of the available and submitted records, this psychological advisor concurs with the AFDRB's previous decisions and also finds there is no identifiable error or injustice with the applicant's discharge from a mental health perspective. The applicant's legal counsel is requesting liberal consideration be applied to his petition for an upgrade of his discharge. Liberal consideration is applied to the applicant's petition due to the contention of having a mental health condition; however, this policy also states an upgrade is not mandated. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

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

The applicant's legal counsel contends the applicant was diagnosed with an adjustment disorder manifested as depression to include fatigue, loss of appetite and concentration, and sleep disturbances. He was suffering from an adjustment disorder at the time of his alleged misconduct that caused his NJP and subsequent discharge proceedings. His adjustment disorder had been present prior to and at the time of his discharge.

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

There is evidence the applicant voluntarily sought mental health treatment during service starting on 10 Sep 15 for depression subsequent to his pending separation from the military. He endorsed depressive symptoms of anhedonia, hopelessness, poor sleep, fatigue, poor appetite, low self-esteem, poor concentration, and motor slowing with the duration in the "last 4-6 months." He completed an intake evaluation on 2 Nov 15 and the provider reported his



symptoms were all derived from his current legal situation. His records indicated he developed anxiety and depressive symptoms in response to his adjustment difficulties to the situational stressors of his legal and occupational problems. He was given a diagnosis of Adjustment Disorder with Anxiety and Depressed Mood from both evaluations during service. He received brief individual psychotherapy following his intake evaluation and stopped attending sessions for unknown reasons. He was reported to have received marriage counseling through Military and Family Life Counselors and from his church for his marital problems during service as well, and counseling notes from these services are not available for review.

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

There is no evidence the applicant's mental health condition, including Adjustment Disorder with Anxiety and Depressed Mood, had a direct impact or was a contributing factor to his misconduct of serious offenses of patronizing a prostitute, contributing to the delinquency of a minor, and committing adultery. There is no evidence he had a mental health condition impairing his judgment and causing any of these acts of misconduct. His offenses, especially contributing to the delinquency of a minor, were egregious and could not be excused or mitigated by his mental health condition. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition does not excuse or mitigate his discharge, his mental health condition also does not outweigh his original discharge.

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 30 Apr 24 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 discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade 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 Title 10, United States Code § 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 the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's diagnosed Adjustment Disorder and Depressed Mood were the result of the situational stressors created by his legal and occupational problems; therefore, were not contributing factors to his serious misconduct.

The applicant's grade reduction resulted from an NJP action for violation of Article 134, UCMJ. He was provided an ADC and an opportunity to appeal and submit matters on his own behalf. The applicant voluntarily elected to accept the NJP. The proceedings and punishment imposed were in accordance with AFI 51-202.

While the applicant contended he was targeted and received excessively harsh punishment, no evidence was provided to support these contentions. The applicant was afforded due process via the Administrative Discharge Board proceedings. It appears the discharge, and corresponding Narrative Reason for Separation and Reentry Code, were consistent with the substantive requirements of the discharge regulation and were within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Liberal consideration was applied; however, due to the premeditation of the misconduct and the egregious nature of the offenses, the applicant's mental health condition does not excuse or mitigate his 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.

## **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-2023-03538 in Executive Session on 22 Aug 24:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 17 Oct 23.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 30 Apr 24.  
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Apr 24.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 30 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.

**X**

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Board Operations Manager, AFBCMR