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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00137

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

She suffered from Post-Traumatic Stress Disorder (PTSD), physical abuse and trauma, depression, and abuse of authority. She was not aware of any other options to appeal, or to advocate for herself. She did not understand she would lose certain rights, such as the Montgomery GI Bill. She continues to suffer from PTSD, anxiety, and depression, and recently understood she has complex PTSD (C-PTSD), as well. She has been an outstanding contributing member to society since her discharge and deserves an honorable discharge.

In support of her request, the applicant provides copies of messages to her therapist mentioning C-PTSD.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 28 Aug 02, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failing to maintain sufficient funds for payment, check in the amount of \$510.00, falsely writing and signing a certain writing from an apartment complex saying she was up to date as of 6 Jun 02, and willfully using her shop's standby cell phone to make a personal call rather than for official business as it was her duty to do so. She received a reduction in grade to airman (E-2) with a new date of rank of 9 Sep 02.

On 17 Oct 02, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct" and she was credited with two years, two months, and nine days of total active service.

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

POST-SERVICE INFORMATION

On 8 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 (FBI); however, she 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 8 Apr 24, the 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.

AIR FORCE EVALUATION

The Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of her discharge. The applicant's objective military records consisting of her official discharge paperwork and service treatment records are unavailable or submitted by the applicant for review. However, her available records revealed she received at least one Article 15 for writing a check for her rent with insufficient funds, she intentionally wrote a letter to an apartment falsely stating she was up to date presumably with her rent or bills, and wrongfully used the shop's standby cell phone for personal phone calls. There was no explanation provided for any of these misconducts at the time of service and from the nature of these misconducts, it does not appear they were caused by her mental health condition, especially since she wrote a letter with intentions to deceive indicating she planned and was aware of her actions. Her misconduct documented in her Article 15 is not typical behavior or commonly seen in individuals with PTSD or C-PTSD. There are no records she received any mental health treatment, evaluation, or mental disorder diagnosis during service and thus, there are no records she had PTSD, depression, or a similar condition during service. She claimed she experienced trauma and was physically abused by her section commander causing her to develop PTSD or C-PTSD; however, there are no records to substantiate any of her claims. She received medication management treatment services for panic attacks about six years after her discharge and alleged her panic attacks began in 2002. There are no records she had any panic attacks during service. It appeared she was diagnosed with C-PTSD years or decades after her military service but again, no records or evidence she had this condition during service. The applicant's discharge paperwork is not available for review so the actual reason for her discharge is unknown at this time. It is possible she may have other misconducts

not available in her military records that caused her discharge. Due to the missing discharge paperwork and service treatment records, it could not be determined whether her mental health condition had a direct impact or was a contributing factor to her discharge or may cause, excuse, mitigate, and outweigh her discharge. The burden of proof is placed on the applicant to submit the necessary documents to support her request and contentions. Her contentions could not be substantiated as well without these records and are not compelling or sufficient enough to support her request. As a result, the presumption of regularity is applied and there is no evidence of any error or injustice with her discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to her contention of having a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. 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 contends she suffered from PTSD/trauma, physical abuse, depression, and abuse of authority by her section commander.

2. Did the condition exist or experience occur during military service?
There is no evidence or records the applicant's mental health condition of PTSD/C-PTSD, depression, or any other mental health condition had existed or occurred during military service. Her service treatment records were unavailable for review. She was treated for panic attacks about six years after discharge which she claimed began in 2002 and no evidence she had panic attacks during service. She was diagnosed with PTSD/C-PTSD several years or decades after her military discharge. There is no evidence to corroborate her contentions that she was traumatized and abused by her section commander.

3. Does the condition or experience actually excuse or mitigate the discharge?
The applicant's discharge paperwork and service treatment records are not available for review. Without these records, it could not be determined whether her mental health condition had a direct impact or was a contributing factor to her discharge. The presumption of regularity is applied, and her mental health condition or experience does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?
Since the applicant's condition or experience does not excuse or mitigate her discharge, her condition or experience also does not outweigh her 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 2 Jul 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 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. Applying the presumption of regularity, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed as outlined in her NJP. Additionally, the Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate a mental health condition in service caused her misconduct, thus her condition does not mitigate or excuse her discharge. The burden of proof is placed on the applicant to submit evidence to support her claim. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Except for the applicant's submission stating she is an outstanding contributing member of society, she submitted no evidence of her post-service activities. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting her current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to fundamental fairness.

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-2024-00137 in Executive Session on 20 Nov 24:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

Exhibit A: DD Form 149, atchs, dated 29 Dec 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF MRBC, (Post-Service Request and Liberal Consideration Guidance), dated 8 Apr 24.

Exhibit D: Advisory, AFRBA Psychological Advisor, dated 6 Jun 24.

Exhibit E Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jul 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.

12/10/2024

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Board Operations Manager, AFBCMR
Signed by: USAF