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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01221

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

While he was stationed at Work-Pro... Air Force Base (AFB), a non-commissioned officer (NCO) looked at him straight in the eyes and told him he felt only white people should be in the military and he was going to do everything he could to get him out. Not too long after this, the NCO filed a report with the commanding officer claiming he was speeding and fishtailing all over the road; however, the report was fabricated. Due to this report, he was restricted to base for 30 days. During base restriction, while at the NCO club on base, some of his fellow airmen had been drinking and hanging out with a couple of civilians. As the club was closing, his fellow airmen were wanting to continue drinking off base at the civilian's apartment. Since they were intoxicated, he transported them to and from the apartment off base. While he was at the apartment, he took a nap while waiting to take the airmen home. The following day, everyone who went to the apartment was required to take a urinalysis. Apparently, while he was asleep, everyone else had smoked marijuana. Although everyone else tested positive, he did not. However, because he was associating with them, this was strike three for him and he was discharged. He does not feel this was appropriate.

The reason he is asking for an upgrade now is because he was told by another veteran while incarcerated that he needed to file a claim for discrimination. This veteran also claimed to have worked for the Department of Veterans Affairs (DVA) and said the laws had changed since 9/11. Since his discharge, he was under the assumption his discharge would remain the same. Due to the NCO's actions, he has suffered from anxiety and depression and never knew there might be some help for his issues.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

AFBCMR Docket Number BC-2024-01221

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

On 3 Dec 93, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-47b for misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 22 Jul 93, a Record of Individual Counseling (RIC) was issued for failure to go at the time prescribed on 22 Jul 93.
- b. On 28 Jul 93, an RIC was issued for failure to report to a scheduled medical appointment on 27 Jul 93.
- c. On 28 Jul 93, a Memorandum for Record (MFR) was written after he informed the first sergeant he had missed his car payments for the previous two months.
- d. On 11 Aug 93, an MFR was written after supervision was informed he had bounced several checks, and the creditors were calling on 11 Aug 93.
- e. On 18 Aug 93, an RIC was issued for losing his restricted area badge, an accountable item, twice during the month of August and failed to report it on or about 5 Aug 93 and on or about 17 Aug 93.
- f. On 25 Aug 93, a Letter of Reprimand (LOR) was issued for sleeping on duty in his bus, on the flightline, in the way of an aircraft, causing it to not be parked properly on 23 Aug 93.
- g. On 9 Sep 93, an LOR was issued for financial irresponsibility and a faddish haircut on or about 2 Sep 93.
- h. On 14 Sep 93, an MFR was written for continuing to write bad checks. He was sent to financial counseling again on 14 Sep 93.
- i. On 20 Sep 93, an LOR was issued for writing a dishonored check to a local establishment on 25 Aug 93.
- j. On an unknown date, an MFR was written by the first sergeant after the applicant was seen drinking beer at the enlisted club on at least three occasions at the age of 19, under the legal drinking age of 21 years old on 31 Aug 93.
- k. On 29 Oct 93, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for operating a vehicle in a reckless manner, by exceeding 80 miles per hour (mph) in a 55 mph zone and swerving in and out of lanes to pass cars, causing his vehicle to fish tail on or about 10 Oct

93. The applicant received a forfeiture of \$407.00 of pay per month, for two months, suspended and restriction to base for 60 days.

1. On 24 Nov 93, an AF Form 3070 indicates the applicant received NJP, Article 15 for wrongful use of marijuana on or about 26 Sep 93. The applicant received a reduction to the grade of airman basic (E-1).

On 15 Dec 93, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Dec 93, the discharge authority directed the applicant be discharged for conduct prejudicial to good order and discipline, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 20 Dec 93, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with eight months, two days of total active service.

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

POST-SERVICE INFORMATION

On 4 Mar 25, the Board staff sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); 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 4 Mar 25, the Board staff provided the applicant with 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 AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to his records from a mental health perspective. The applicant's available

and objective military records do not corroborate any of the applicant's contentions. There is numerous inconsistencies in reporting by the applicant between his statements submitted at the time of service versus his testimony for this petition. His discharge paperwork reported he used marijuana on or about 26 Sep 93 and recklessly operated a vehicle on or about 10 Oct 93. From the timeline of events, his marijuana usage occurred before his reckless driving, which contradicts his contention his alleged reckless driving occurred before his alleged marijuana use. In his response to his Article 15 about his marijuana usage, he did not state he took a nap during the off-base party, but identified it was one of the airmen/friends who had passed out on the couch after he had smoked marijuana and was intoxicated. This is another inconsistent report. He also reported witnessing a woman pull a bag of marijuana out of a drawer in the kitchen, recognized it was marijuana because his parents were police officers, and saw the two airmen/friends and a woman passing around a joint around the table. He claimed he was standing there and pulled out a cigarette to smoke. He now claims in his petition, while he was asleep, everyone else smoked marijuana. These are contradictory accounts. He was consistent in his reporting his urinalysis was negative for drugs. In his response to his Article 15 for reckless driving, he admitted he "may have practiced some really stupid judgement" and was apologetic for the situation. His statement indicated he admitted to reckless driving, which contradicts his contention an NCO fabricated a report about his reckless driving. The applicant was discharged from service for marijuana use and reckless driving, but he was also discharged for continuous financial irresponsible behavior, failing to report to duty, losing his restricted area badge, sleeping on duty, and underage drinking. He did not address any of these remaining acts of misconduct which also resulted in his discharge.

The applicant reported he suffered from anxiety and depression from the NCO's actions. There is no evidence or records to support this claim. There are records confirming he briefly sought mental health treatment from 21 Jul 93 to 27 Aug 93 during service, attending a total of six sessions of individual and group therapy for work and personal stressors, and having suicidal ideation due to difficulties adapting to the military. He was given a diagnosis of adjustment disorder with mixed emotional features with depression and anger, and with treatment, his stressors were improved, his mood was stable, and his adjustment disorder was being resolved. When he received a separation physical examination from his primary care manager (PCM) on 2 Dec 93, his psychiatric evaluation was assessed to be "normal", and he denied having any mental health issues, including any depression or excessive worry (anxiety) and nervous trouble of any sort (anxiety). His anxiety and depressed mood during service were in reaction to his difficulties adapting to the military, his job, and personal issues identified as financial problems. Once he was able to adapt to his stressful situation, his mental health condition was resolved. His anxiety and depressed mood were not caused by his poor relationship with an NCO as claimed.

There is no evidence the applicant's mental health condition had a direct impact or was a contributing factor to any of his misconduct, resulting in his discharge from service. There is no evidence he had a mental health condition, including anxiety and depression, impairing his judgment at the time of any of his misconduct. He did provide a response to one of his RICs for being late to work and explained he and his girlfriend had broken up the night before and he was up talking to his best friend who was trying to help him so he would not come to work "being quite so depressed." His depressed mood and emotional distress at this time were in response to his

relationship stressors. There is no evidence he developed actual depression from this stressor and no evidence his depression was a clinical disorder. Having relationship problems is not a mental disorder. He was late to work because he was sad over the demise of his relationship and not because of his mental health condition. He did not mention his relationship issue was a problem or stressor to his mental health provider. His service treatment records reported he failed to show up to his scheduled appointment at the mental health clinic (MHC) on 27 Jul 93 because he forgot about the appointment. His forgetfulness was not caused by having a mental health condition or cognitive impairment issues. Forgetting an appointment is not an uncommon phenomenon. The applicant repeatedly denied using marijuana during service and in his petition. If his statement is true, then it is not possible his mental health condition caused him to use marijuana because this event did not occur according to him. There is no evidence he had anxiety or depression which caused his remaining misconduct of financial irresponsibility, losing his restricted area badge and failing to report it, sleeping on duty, and underage drinking.

Liberal consideration is applied to the applicant's request for an upgrade of his discharge due to his contention of having a mental health condition. It is reminded, liberal consideration does not mandate an upgrade or a change to the record per policy guidance. The following are responses 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 contended he was discriminated against by an NCO who was going to do everything to get him out of the military including making a false report he engaged in reckless driving. After making this fabricated report, he was at an off-base party where two airmen and others smoked marijuana. He claimed he fell asleep on the couch waiting for them to be ready to leave and when he was asleep, they apparently smoked marijuana. He reported his urinalysis test was negative. He alleged, due to the action from the NCO, he suffered from anxiety and depression for the remainder of his life and had received treatment for these issues.

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

There are records showing the applicant briefly sought mental health treatment from 21 Jul 93 to 27 Aug 93 during service. He attended a total of six sessions of individual and group therapy for work and personal stressors (financial) and having suicidal ideation due to difficulties adapting to the military. He was given a diagnosis of adjustment disorder with mixed emotional features with depression and anger. With treatment, his stressors were improved, his mood was stable, and his adjustment disorder was resolving. He received a separation physical examination from his PCM on 2 Dec 93, and his psychiatric evaluation was assessed to be "normal." He denied having any mental health issues, including depression or excessive worry (anxiety) and nervous trouble of any sort (anxiety) during this examination. The applicant's anxiety and depressed mood during service were in reaction to his difficulties adapting to the military, personal/financial problems, and his job. There is no evidence or records his anxiety and depressed mood were caused by his poor relationship with an NCO as claimed. There are no records confirming he was diagnosed with anxiety or depression in his lifetime. He submitted no records for review.

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

There is no evidence the applicant's mental health condition had a direct impact or was a contributing factor to any of his misconduct resulting in his discharge from service. There is no evidence he had a mental health condition including anxiety and depression, impairing his judgment at the time of any of his misconduct. His contention for this petition and the statements he submitted at the time of service were inconsistent. He was emotionally distressed over the breakup with his girlfriend but no evidence his depressed mood from this situational stressor had developed into a mental health condition, causing any of his misconduct. He denied using marijuana, so it is not possible his mental health condition caused his misconduct. He also admitted to reckless driving during service and forgetting his appointment at the MHC, and there is no evidence his mental health condition caused any of these behaviors. He provided no explanation for his remaining misconduct of financial irresponsibility, losing his restricted area badge and failing to report it, sleeping on duty, and underage drinking. There is no evidence he had a mental health condition at the time of any of these acts of misconduct. Therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's 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 19 Mar 25 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. Section 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board applied liberal consideration; however, it is not sufficient to grant the applicant's request. The applicant's explanations for his misconduct were not attributed to any mental health condition. Furthermore, the applicant denied using marijuana, therefore his mental health condition could not excuse or mitigate the drug use. Finally, the Board noted the inconsistencies between the applicant's responses during service and the statement made on this application. Accordingly, the Board finds

his contended mental health condition does not excuse or mitigate his discharge. Additionally, the applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, it was unduly harsh, or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on clemency and fundamental fairness; however, given the evidence presented, and in the absence of a criminal history report and other evidence showing the applicant made a successful post-service transition, the Board finds no basis to do so. The evidence he provides lacks references that demonstrate his character, remorse for his actions, or service to the community. The Board noted the applicant's contention of racism by an NCO, however, other than his own statement, he has provided insufficient evidence to sustain he was the victim of any racism, discrimination or that he was treated disparately. The applicant retains the right to request reconsideration of this decision. Should the applicant provide additional evidence, such as a criminal history background check, a personal statement, character statements, and/or testimonials from community leaders/members describing how his efforts in the community have impacted others, the Board would be willing to reconsider his request based on clemency. Therefore, the Board recommends against correcting the applicant's records.

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-2024-01221 in Executive Session on 26 Jun 25:

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 16 Mar 24.
- 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 4 Mar 25.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Mar 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Mar 25.

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.

AFBCMR Docket Number BC-2024-01221

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7/18/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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