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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01719

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COUNSEL: Work-Product

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He was 17 years old when he entered the military, first with the Marine Corps Reserve, then active duty Air Force. He was married and had a child during this time. While in the Air Force, he received an achievement medal for service in Saudi Arabia, was promoted below the zone (BTZ) for senior airman (E-4) and was identified as exceptional in his airman performance review (APR). In 1985, he started to have marital problems, and his performance started sway to and decline. He was still recommended for retention. During his second enlistment, he had a mental health evaluation and was diagnosed with adjustment disorder with atypical features and marital problems. At this time, he was only 22. Since discharge, he has had a successful life and is now retiring. He would like his service to be recognized for the honorable service it was. He does not have beliefs he should be fully upgraded to honorable but requests a general (under honorable conditions) so he can reflect honorably upon his military service.

In support of his request for a discharge upgrade, the applicant provides copies of military kudos and a mental health evaluation. He also provided mental health articles and provided the following summary. He explained studies show brain maturation can be governed by several factors such as physical, mental, economical and pomological stress. Additionally, neuron plasticity permits adolescents to learn and adapt; however, it also increases an individual's vulnerability towards making improper decisions. Furthermore, during stress, the brain switches from slow thoughtful regulation to reflexive and rapid emotional response. Although his behavior is not acceptable, it shows markers of stress related functions which includes the fight or flight response. With proper mental health treatment at the time, he may have been more successful during service.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

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On 30 Oct 85, the convening authority published Special Court-Martial Order (SPCMO) Number [REDACTED]. The Order stated the applicant pled not guilty but was found guilty of one charge and one specification of disobeying a lawful command of a superior commissioned officer (Article 90); one charge and one specification of behaving with disrespect toward a superior commissioned officer (Article 89); and one charge and one specification of disorderly (Article 134). The applicant was sentenced to confinement at hard labor for five months and a reduction to the grade of airman basic (E-1).

On 14 Jan 86, the convening authority published SPCMO Number [REDACTED]. The Order stated the applicant pled guilty to one charge and one specification of absenting himself from his organization, without authority, with the intent to remain away permanently, and remained absent in desertion until he was apprehended (Article 85). The applicant was sentenced to confinement at hard labor for five months, forfeiture of \$200.00 pay per month for four months, and a BCD. On 16 Oct 86, SPCMO Number [REDACTED] indicates the sentence was finally affirmed and the BCD was executed.

On 26 Jan 87, the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial (Desertion)" and he was credited with 3 years, 1 month, and 29 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 5 Aug 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, 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 5 Aug 24, the Board staff provided the applicant a copy of the clarifying 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 recommends denying the application, finding insufficient evidence to support the applicant's request for the desired change to his records from a mental health perspective. A review of the applicant's objective military records finds there is evidence he was diagnosed with adjustment disorder with atypical features, which was secondary to his marital problems following his command-directed evaluation from 1-4 Apr 85, during service as he contended. A mental health evaluation report dated 8 May 85 did report his reaction to his marital problems had caused him to be careless, apathetic, pessimistic, and depressed, have declined judgment, and act immaturely and impulsively without considering the consequences of his actions. However, the report also stated his marital problems were resolving, and he was qualified to bear firearms and continue with his military career. When he was reevaluated on 18 Apr 85 and 20 May 85 respectively, shortly after the report was completed, he was reported to be absent of depression and anxiety, he was in no acute distress, he was not suicidal or homicidal, he had no untoward thought patterns, and he had no current mental disorder. He was recommended to be returned to personnel reliability program (PRP) status following the re-evaluation, signifying he had no duty limitations because of his mental health condition. He was permanently decertified from PRP several months later on 20 Aug 85, but it was not due to medical or mental health reasons.

The applicant was convicted at special court-martial twice during this time in service. The first conviction was for the offenses of disobeying the lawful command of a superior commissioned officer, behaving with disrespect toward a superior commissioned officer, and being disorderly on or about 24 Aug 85. The second convicted offense was without authority and with intent to remain away permanently, he had absented himself from his organization (desertion) on 8 Oct 85 until he was apprehended on 12 Oct 85. His sentence from his second court martial conviction for desertion included a BCD. All of the applicant's convicted offenses had occurred after his initial and re-evaluation mental health assessments. From the last and most recent evaluation, he was

determined to have no mental disorders, and his adjustment disorder and marital problems have been resolved. Thus, there is no evidence he had any mental health conditions including an adjustment disorder or cognitive disorder impairing his judgment, was in emotional distress or had marital problems at the time he was a deserter, the offense which led to his discharge. There is no evidence his mental health condition or marital problems had caused him to be a deserter. His court-martial records stated he had intentions to remain away permanently, which indicated he was aware of his actions and decisions, and they were deliberate. Since he had intentions, his behaviors were not impulsive. He demonstrated poor judgment, but his poor judgment was not caused by having a mental health condition, as he knew what he was doing. Again, there is no evidence he had a mental health condition at the time he decided to be a deserter. He had no intentions of returning to the military until he was apprehended. Desertion is a serious offense, so his behavior is not excused or mitigated by his mental health condition.

**LIBERAL CONSIDERATION:** Liberal consideration is applied to the applicant's request 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 records 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 diagnosed with adjustment disorder with atypical features and marital problems during service. He claimed his response to stress made him vulnerable to making improper decisions which affected his behaviors and performance fluctuations and were most likely caused by his immature adolescent brain.

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

The applicant was command-directed to a mental health evaluation during service. From this evaluation, he was diagnosed with adjustment disorder with atypical features secondary to his marital problems, which were assessed to be mild and resolving on 4 Apr 85. He was re-evaluated on 18 Apr 85 and 20 May 85, and he reported having no depression and anxiety, was in no acute distress, was not suicidal or homicidal, had no untoward thought patterns, and did not have any current mental disorder.

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

All of the applicant's convicted offenses had occurred after his initial and re-evaluation mental health assessments. There is no evidence his mental health condition or marital problems had caused him to be a deserter, or he had a mental health condition impairing his judgment at the time he decided to desert his post, and while he was a deserter. His court-martial records stated he had intentions to remain away permanently, which indicated he was aware of his actions and decisions, and they were deliberate. Since he had intentions, his behaviors were not impulsive. He demonstrated poor judgment, but his poor judgment was not caused by having a mental health condition as he knew what he was doing. There is no evidence his mental health condition had a direct impact or was a contributing factor to his discharge and 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 EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 22 Jan 25 for comment (Exhibit E) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application is timely. 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 limitations 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. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. There is no evidence he had any mental health conditions impairing his judgment or was in emotional distress or had marital problems at the time he deserted the Air Force. Furthermore, his intent to stay away indicates his actions were not impulsive but thoughtful and deliberate. Desertion is an egregious offense and is not excused. Therefore, 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, unduly harsh, or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on clemency; 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 Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or clemency; however, the applicant did not provide sufficient evidence to show he has made a successful post-service transition. The evidence he provides lacks references that demonstrate his character and service to the community. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of a criminal history background check, a personal statement, character statements, and/or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and

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activities, this Board would be willing to review the materials for possible reconsideration of his request based on clemency.

## 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00481 in Executive Session on 18 Jul 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 22 Apr 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 5 Aug 24.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 21 Jan 25.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 22 Jan 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.

8/11/2025

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Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2024-01719**

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