

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01732

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

His bad conduct discharge (BCD) be upgraded to an honorable discharge, with his narrative reason for separation, separation code, and reentry code changed to reflect "Secretarial Authority" and any other relief that is equitable and just.

### **APPLICANT'S CONTENTIONS**

Per counsel, the applicant's request for relief is rooted in clemency, in addition to the principles of fairness, justice, and equity. The applicant recognized this Board cannot set aside the findings from his court-martial; however, he requests this Board review his discharge and consider his arguments in conjunction with this request for clemency.

The applicant served his country for over seven years, during which he made sacrifices like all servicemembers. Although he was discharged pursuant to a court-martial conviction, the applicant nevertheless contributed to the collective defense of our country in positive ways for multiple years prior to his transgressions. The applicant's post-service conduct is also strong evidence in support of his request for clemency. The applicant provided a declaration in support of this request for relief, which details his background, motivations for service, the facts and circumstances surrounding his misconduct, and his post-service activities.

Notwithstanding the devastating effects of his confinement and BCD have had on the applicant's life, he has worked hard to get his life back on track. The applicant has had no further criminal activity. He has been a model citizen. The applicant is a father of three sons and is determined to be a good role model. The applicant and his family are active in their community, church, school, sports, energy industry, and work together on their family farm. He is proud to be a military veteran and supports veteran efforts in his community with his son who is also an Air Force veteran. The applicant serves on the board of many community organizations, including XXXXXXXX - Board Member, Energy Initiative Lead, United Way of Northern XXXXXXXX - Secretary/Treasurer, XXXXXXXX College Foundation - Board Member, XXXXXXXX Chamber of Commerce - Board Member, XXXXXXXX Center - Board Member. Counsel draws the Boards attention to the various letters in support of clemency written on the applicant's behalf. These letters are additional evidence of the applicant's overall good character and good conduct in support of his request for relief and provide the Board with evidence he is deserving of clemency.

The applicant recognizes his actions fell short of what was expected of him as an airman and is sorry for what he did. That said, the applicant has already paid a heavy price for his misconduct. The discharge and overall punishment were severe and have continued to impact his life. The applicant is working hard to comport himself in the best possible way for himself and his family. The applicant has worked to overcome the continuing consequences his discharge has on his daily life, and he should be rewarded for his efforts in the form of clemency.

According to counsel, the applicant was suffering from Post-Traumatic Stress Disorder (PTSD) while in service and at the time of his discharge, which qualifies him for liberal consideration

pursuant to the Hagel, Wilkie, and Kurta Memorandums<sup>1</sup>. In addition to general clemency, at the time of the alleged misconduct, the applicant was suffering from behavioral health conditions. Counsel provides excerpts from the Hagel Memorandum and provided the following responses to the four questions from the Kurta Memorandum:

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

Yes. The evidence demonstrates the applicant's medical record notes reports of depression in a care noted, dated 17 Oct 85, and this is further evidenced in the applicant's declaration.

2. Did that condition exist/experience occur during military service?

Yes. The medical record and applicant's declaration confirm this condition existed during his military service; therefore, it is clear his depression is linked to his military service.

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

Yes. The evidence demonstrates the applicant's mental health condition actually excuses or mitigates his misconduct and his discharge. The evidence demonstrates the applicant was suffering from depression at the time the alleged misconduct took place. His depression set in as a result of his experiences during deployment and was exacerbated by his separation from his wife, which occurred prior to the misconduct in this case. The applicant's depression led to his development of a bond with a senior noncommissioned officer (NCO) who eventually drew the applicant into the misconduct at issue in this case. The applicant had no misconduct issues prior to the depression or prior to his relationship with this senior NCO. The depression and related symptomology created a downward spiral into the applicant's involvement with controlled substances, resulting in the court-martial discussed herein; therefore, the evidence establishes the applicant's condition actually excused and mitigated the misconduct.

4. Does that condition or experience outweigh the discharge?

Yes. The totality of the evidence demonstrates the applicant's mental health condition significantly outweighs his discharge. Here again, the evidence demonstrated the applicant was suffering from depression at the time the alleged misconduct took place. His depression led to his development of a bond with a senior NCO, who eventually drew the applicant into the misconduct at issue in this case. The applicant had no misconduct issues prior to the depression or prior to this relationship with the senior NCO. The depression and related symptomology created a downward spiral into his involvement with controlled substances resulting in the court-martial discussed herein. Because the applicant's behavioral health condition and degraded mental health were entirely caused by his military service, his behavioral health condition entirely mitigates his misconduct.

Per counsel, given these facts, the applicant's case fits squarely within the guidance issued by the Secretary of Defense and the Undersecretary of Defense, and he is therefore, entitled to both liberal consideration and the requested relief.

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<sup>1</sup> Secretary of Defense memorandum, Subject: Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder, dated 3 Sep 14 (Hagel Memorandum); Under Secretary of Defense for Personnel and Readiness (USD P&R) memorandum, Subject: Clarifying Guidance to Military Discharge Review Boards 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 (Kurta Memorandum); Under Secretary of Defense for Personnel and Readiness (USD P&R) memorandum, Subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determination, dated 25 Jul 18 (Wilkie Memorandum)

In support of his request for a discharge upgrade, the applicant provides a personal declaration, copies of miscellaneous service records, excerpts from his medical records, clemency letters, his Federal Bureau of Investigation (FBI) Identity History Summary Check, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

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

On 16 Jan 87, according to General Court-Martial Order (GCMO) Number XX, dated 27 Apr 87, the applicant was arraigned at court-martial on the following offenses:

- Charge: Article 112a, Uniform Code of Military Justice (UCMJ) (Guilty)
  - Specification 1: [The applicant] did, at **Work-Product**, North Carolina (NC), on divers occasions, between on or about 1 Jan 85 and on or about 3 Feb 86, wrongfully use some amount of marijuana, a controlled substance. (Guilty)
  - Specification 2: [The applicant] did, at **Work-Product**, NC, between on or about 1 Aug 85 and on or about 31 Aug 85, wrongfully distribute one-quarter ounce, more or less, of marijuana, a controlled substance. (Guilty)
  - Specification 3: [The applicant] did, at **Work-Product**, NC, on divers occasions, between on or about 1 Jan 86 and on or about 31 Jan 86, wrongfully use cocaine, a controlled substance. (Guilty)
  - Specification 4: [The applicant] did, at **Work-Product**, NC, on divers occasions, between on or about 1 Dec 85 and on or about 31 Jan 86, wrongfully distribute one-quarter gram, more or less, of cocaine, a controlled substance. (Guilty)

The accused pled Guilty to the Charge and Specifications thereunder. The military judge adjudged the following sentence, on 26 Feb 87: BCD, confinement for one year and a day, forfeiture of \$350.00 per month for 12 months, and reduction to the grade of airman basic (E-1). The sentence was approved and, except for the BCD, was executed.

On 27 Feb 87, according to AF Form 2098, *Duty Status Change*, the applicant's duty status changed from Present for Duty to Confinement (Military).

On 25 Nov 87, according to AF Form 2098, the applicant's duty status changed from Military Confinement to Appellate Review Leave.

On 29 Dec 87, according to GCMO Number XX, the findings of guilty as to Specification 4 of this charge is modified by deleting the words "on diverse occasions." The remaining findings of guilty and only so much of the sentence as provides for a BCD, confinement for one year and one day, forfeiture of \$270.00 per month for 12 months, and reduction to airman basic (E-1), as promulgated in GCMO Number XX, dated 27 Apr 87, has been finally affirmed. Article 71(c) having been complied with, the BCD will be executed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and that portion of the sentence so set aside will be restored. The term of confinement having been served, no place of confinement is designated. The sentence was adjudged on 26 Feb 87.

On 5 Feb 88, the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial (Other Than Desertion)" with corresponding separation code "JJD" [Court-Martial

(Other)], and reenlistment code “2M” [Serving a sentence or suspended sentence of court-martial]. He was credited with 7 years, 1 month, and 21 days of total active service. Dates of Time Lost During This Period: 26 Feb 87 through 24 Nov 87.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits E and F.

## **POST-SERVICE INFORMATION**

On 22 Jul 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide an FBI Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant provided an FBI report, dated 29 Apr 24. According to the report, the applicant has had no arrests since discharge. The applicant provided character references with his original application to the Board.

The applicant’s complete response is at Exhibit D.

## **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 Memorandum, 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 Memorandum.

On 22 Jul 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.

**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.

Title 10, United States Code § 1552 (10 USC § 1552) - *Correction of military records: claims incident thereto*

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to:

- (1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or;
- (2) action on the sentence of a court-martial for purposes of clemency.

## AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge from a psychological perspective.

Counsel contends the applicant was suffering from PTSD at the time of his discharge. There is no evidence the applicant was ever diagnosed with PTSD during his service, at discharge, or post-service. The applicant was diagnosed during his service with adjustment disorder with depressed mood. His records indicate his diagnosis was the result of marital problems. The applicant was psychiatrically hospitalized from 17 Oct 85 to 23 Oct 85. His medical records indicate his symptoms improved post-hospitalization, that he was unlikely to experience symptoms again, and he was cleared for flight status. The applicant's Separation Medical History and examination indicate no psychiatric symptoms at discharge. The applicant, in his declaration, dated 20 Apr 24, stated he was diagnosed with depression in 1985. His records, again, note the applicant was diagnosed with adjustment disorder with depressed mood, not depression. These are two separate diagnostic categories, with adjustment disorder being the result of an identifiable stressor (marital problems) in which the symptoms do not persist for more than six months (the applicant's symptoms did resolve within six months).

His adjustment disorder may explain his use of drugs (marijuana and cocaine) but it does not mitigate his misconduct of drug usage. Drug usage is not part of the sequela of symptoms associated with adjustment disorder. Further, there is evidence the applicant used drugs (marijuana) prior to his military enlistment. Even if the applicant had PTSD or depression, it would not be a mitigating factor for his misconduct of distribution of drugs (marijuana and cocaine) on several occasions. Distribution of drugs is not part of the sequela of symptoms associated with adjustment disorder, PTSD, or depression. It is rather, a willful, conscious decision, perpetrated over time, that has no nexus with the applicant's mental health diagnosis or potential claimed mental health diagnoses.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate the misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant check-marked PTSD and Other Mental Health on his application. Counsel contends he was suffering from PTSD at discharge and the applicant stated he was diagnosed with depression.

2. Did the condition exist, or experience occur, during military service?  
The applicant was diagnosed with adjustment disorder with depressed mood during service. This diagnosis appears to have resolved before military discharge. His records do not indicate any other mental health diagnosis.

3. Does the condition or experience excuse or mitigate the discharge?  
His adjustment disorder may explain his use of drugs (marijuana and cocaine) but it does not mitigate his misconduct of drug usage. Drug usage is not part of the sequela of symptoms associated with adjustment disorder. Further, there is evidence the applicant used drugs (marijuana) prior to his military enlistment. Even if the applicant had PTSD or depression, it would not be a mitigating factor for his misconduct of distribution of drugs (marijuana and cocaine) on several occasions. Distribution of drugs is not part of the sequela of symptoms associated with adjustment disorder, PTSD, or depression. It is rather, a willful, conscious decision, perpetrated over time, that has no nexus with the applicant's mental health diagnosis or potential claimed mental health diagnoses.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate the discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit E.

AF/JAJI recommends denying the application finding there is insufficient evidence to recommend relief on the basis of a legal error.

The applicant entered active duty in Mar 80 and attained the rank of sergeant prior to his court-martial in 1987. Consistent with his pleas, the applicant was convicted of four specifications in violation of Article 112a, UCMJ, for use and distribution of both cocaine and marijuana. He was sentenced to a BCD, confinement for one year and one day, forfeiture of \$350.00 per month for 12 months, and reduction to E-1.

The United States Air Force Court of Military Review issued an opinion on 27 Aug 13, granting, in part, the applicant's appeal. *United States v. [applicant]* 1987. In a per curium decision, the Air Force court held:

The wrongful distribution of cocaine specification alleges that the appellant did "on divers occasions, between on or about 1 Dec 85 and on or about 31 Jan 86, wrongfully distribute one quarter (1/4) gram, more or less, of cocaine, a controlled substance." During the course of the providence inquiry, it became evident that the parties intended to address only one wrongful distribution within the period alleged. The trial counsel informed the military judge that the government was prepared to move that the specification be amended to delete the reference to divers occasions. However, such an amendment was not effected at any time during the trial. The military judge found the appellant guilty of the specification in accordance with his plea. Neither the plea of guilty nor the finding of guilty of more than one wrongful distribution of cocaine is supported by the record. *United States v. Davenport*, 9 M.J. 364 (C.M.A. 1980). Accordingly, we modify the finding of guilty as to Specification 4 of the Charge to delete the words "on divers occasions."

To remedy the error, the Air Force Court of Military Review reduced the amount of forfeitures in the applicant's sentence from \$350.00 per month for 12 months to \$270.00 per month for 12 months. The words "on divers occasions" were struck from the findings. The remainder of the sentence was upheld. The applicant's petition for review by the United States Court of Military Appeals was subsequently denied, ending all appeals in the case.

The applicant asserts his mental health diagnoses were pivotal in his commission of the offenses. The Psychological Advisor to the Air Force Review Boards Agency reviewed the applicant's case and issued an opinion, dated 25 Nov 24, finding insufficient evidence "to support the applicant's request for an upgrade of his discharge from a psychological perspective."

There is a recent FBI Identity History Summary Check. The applicant has [no] history aside from the court-martial discussed above.

In accordance with 10 USC § 1552(f), because the applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and sentence, the Air Force Board for Correction of Military Records can only take two types of action: (1) correction of a record to reflect an action taken by reviewing authorities under the UCMJ (e.g. convening authority clemency or appellate corrections); or (2) action on the sentence of a court-martial for purposes of clemency. The applicant has provided no evidence of an error in any record of action taken by a reviewing authority of his court-martial. Therefore, the only correction for consideration is action on the applicant's court-martial sentence for the purpose of clemency.

The Board may determine clemency is warranted or appropriate in the applicant's case, or that there is a basis for relief under the equity, injustice, or clemency considerations pursuant to the Wilkie Memorandum, or the guidance for liberal consideration of mental health issues pursuant to the Kurta Memorandum. Nevertheless, the Board should consider important factors to the contrary. First, the Psychological Advisor determined there was no evidence the applicant's asserted mental health conditions were diagnosed during his military service or bore any relationship to his misconduct. Second, in accordance with paragraph 19 of the attachment to the Kurta Memorandum, "[p]remeditated misconduct is not generally excused by mental health conditions..." The applicant's offenses involve premeditated misconduct, specifically offenses related to drug use and distribution.

The complete advisory opinion is at Exhibit F.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 27 Jan 25 for comment (Exhibit G) and the applicant replied on 27 Jan 25. In his response, counsel contends the first advisory opinion provided by AF/JAJI finds insufficient evidence to recommend relief on the basis of legal error arguing there is no evidence the applicant was diagnosed with a mental health condition while in service and because his misconduct was premeditated. The advisory opinion also incorrectly states "Applicant has criminal history aside from the court-martial discussed above." Counsel believes this was a typo (it should have read "has no criminal history aside from the court-martial"), as the FBI Identity History Summary Check enclosed in the original filing clearly shows the applicant has no other criminal history. This assertion that the applicant did not suffer from a mental health condition while in service is also incorrect. As outlined in the original filing, the applicant's medical record reflects reports of depression in a care note dated 17 Oct 85. This is further evidenced in his declaration. This advisory opinion fails to address the significant evidence of growth and atonement presented by the applicant in his original filing. The applicant has indeed provided evidence and argument in support of his application for relief, all of which supports his application for relief. Nothing in the first advisory opinion adds anything to understanding this case and it amounts to nothing more than a biased opinion based on a singular conclusory statement without any factual analysis or discussion of the legal issues raised in the applicant's legal brief to this Board. This advisory opinion should; therefore, be disregarded.

The second advisory opinion, which was provided by an unnamed "Psychological Advisor," also recommends denying relief. The second advisory opinion concedes the applicant was diagnosed with anxiety disorder with depressed mood. Although it concedes "[h]is adjustment disorder may explain his use of drugs (marijuana and cocaine)," the advisory opinion asserts "it does not mitigate his misconduct of drug usage." This conclusion is flawed, as it ignores the evidence in this case regarding the connection between the misconduct and the mental health issues. As outlined in his original filing, the evidence demonstrates the applicant was suffering from depression at the time the alleged misconduct took place. His depression set in as a result of his experiences during deployment and was exacerbated by his separation from his wife, which occurred prior to the misconduct in this case. His depression led to his development of a bond with a senior NCO, who eventually drew the applicant into the misconduct at issue in this case. The applicant had no misconduct issues prior to the depression or prior to this relationship with the senior NCO. The depression and related symptomology created a downward spiral into his involvement with controlled substances resulting in the court-martial discussed herein. Therefore, the evidence establishes the applicant's condition actually excuses and mitigates the misconduct.

Counsel respectfully reminds this Board it has the responsibility to independently discuss and assess whether the applicant's arguments to this Board, including his mental health condition, mitigate the discharge. Counsel requests the Board ignore the erroneous assertions of the advisory opinions and come to its own decision on these issues. The applicant has indeed demonstrated



the result in his case constitutes both an error and an injustice and he is therefore, entitled to relief for all of the reasons outlined in the original filing and as supplemented in this response.

The applicant's complete response is at Exhibit H.

## **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 USC § 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 applicant was diagnosed with adjustment disorder with depressed mood, not depression, during service. This diagnosis appears to have resolved before military discharge. His records do not indicate any other mental health diagnosis. Furthermore, drug usage is not part of the sequela of symptoms associated with adjustment disorder. There is also evidence the applicant used drugs (marijuana) prior to his military enlistment. Even if the applicant had PTSD or depression, it would not be a mitigating factor for his misconduct of distribution of drugs (marijuana and cocaine) on several occasions. Distribution of drugs is not part of the sequela of symptoms associated with adjustment disorder, PTSD, or depression. It is rather, a willful, conscious decision, perpetrated over time, that has no nexus with the applicant's mental health diagnosis or potential claimed mental health diagnoses. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

Additionally, the Board concurs with the rationale and recommendation of AF/JAJI and finds no evidence the sentence of the military court was improper or that it exceeded the limitations set forth in the UCMJ. The only correction for consideration by the Board is action on the applicant's court-martial sentence for the purposes of clemency.

The Board considered the passage of time, the overall quality of the applicant's service, the seriousness of the offenses committed, and evidence of the applicant's post-service conduct and criminal history. However, the Board finds no basis for clemency in the case. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## **CERTIFICATION**

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01732 in Executive Session on 19 Mar 25:

, 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 Apr 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 22 Jul 24.
- Exhibit D: FBI Report, dated, 29 Apr 24.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Nov 24.
- Exhibit F: Advisory Opinion, AF/JAJI, dated 24 Jan 25.
- Exhibit G: Notification of Advisory, SAF/MRBC to Counsel, dated 27 Jan 25.
- Exhibit H: Counsel's Response, w/atchs, dated 27 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.

X

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Board Operations Manager, AFBCMR