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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01905

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

He has a Post Traumatic Stress Disorder (PTSD) service-connected diagnosis and feels his case should be considered based on the Hagel, Kurta, and Wilkie memoranda. He had a single incident connected to PTSD and had an otherwise stellar record. His PTSD diagnosis stemmed from Survival, Evasion, Resistance, and Escape (SERE) school and his two deployments supporting Operation IRAQI FREEDOM (OIF) and Operation ENDURING FREEDOM (OEF). He takes responsibility for his actions and is deeply ashamed of his discharge status, but he feels his undiagnosed PTSD significantly contributed to this single mistake. He never had an arrest or failed drug test before or after this incident and he does not believe his current discharge status reflects the service he provided to his country.

In support of his request for a discharge upgrade, the applicant provides a personal statement, Department of Veterans Affairs (DVA) documentation, 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 senior airman (E-4).

On 8 Mar 05, the DD Form 458, *Charge Sheet*, indicates the applicant was charged with violating the Uniform Code of Military Justice (UCMJ), Article 112a. Specifically, he used cocaine, between on or about 10 Dec 04 and on or about 17 Dec 04.

On 14 Mar 05, a memorandum from the Area Defense Counsel (ADC) indicates the applicant requested to be discharged from the Air Force according to Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Chapter 4, in lieu of trial by court-martial.

AFBCMR Docket Number BC-2024-01905

Work-Product

Work-Product

On 23 Mar 05, the legal review indicates the applicant's commander recommended the request for discharge be approved and the Chief of Military Justice found this request to be legally sufficient.

On 4 Apr 05, the discharge authority directed the applicant be discharged in lieu of court-martial, with a UOTHC service characterization.

On 20 Apr 05, the applicant received a UOTHC discharge. His narrative reason for separation is "Triable by Court-Martial" and he was credited with 3 years, 4 months, and 16 days of total active service.

On 7 Jun 07, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 22 Apr 08, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. The misconduct was a significant departure from the conduct expected of all military members and therefore found the characterization to be appropriate.

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

POST-SERVICE INFORMATION

On 28 May 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (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 replied on 30 May 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a character statement, a summary of work experience, community contributions and a college transcript.

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 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 28 May 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. While the applicant is service-connected for a mental health condition, there is no indication he had a mental health condition while he was serving or at the time of discharge. The applicant was evaluated at discharge and was cleared for separation, indicating he did not have any medical or psychological condition which would prevent him from discharge. Additionally, he was evaluated by a substance abuse rehabilitation provider after his cocaine usage on 13 Jan 05. He was determined not to have any mental health diagnosis or depression, and his mental status exam (MSE) was normal.

The applicant was not diagnosed with major depressive disorder (MDD) and stressor related disorder until 31 Oct 23 at his compensation and pension (C&P) examination, eighteen years after his military service. The C&P examiner determined his recent separation, and divorce caused his significant increase in symptoms. The examiner further determined the primary reason for his current diagnosis and the cause of his original distress was the shame associated with his discharge due to testing positive on a drug screening. Therefore, the etiology of his mental health symptoms appears to have occurred after his use of cocaine, when he was discovered to have used cocaine and was being disciplined for his drug usage. Finally, the examiner noted his symptoms have progressively worsened over time, again indicating the applicant did not have a mental health condition at the time of his discharge and his symptoms worsened over the years, and eventually met the diagnostic and statistical manual (DSM) criteria for a mental health diagnosis. It should be noted the DVA, is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the

disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

The Psychological Advisor concludes the applicant did not have any mental health condition at the time of his misconduct. Therefore, there are no mental health mitigating factors for the applicant's drug usage (cocaine). It is interesting to note the applicant himself does not give a mental health reason for his drug usage (i.e. managing mental health symptoms). He reasoned he did not intend to use cocaine. It was given to him, and he took it thinking it was medication for his headache. He noted on his statement in support of claim dated 24 May 24, "A female in this group said she had something that would get rid of my headache. She offered what I thought was BC/goodies headache powder, but in fact, was cocaine."

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition would mitigate his misconduct of drug usage. 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: 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 contends he has service-connected PTSD.

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

There is insufficient evidence to support the applicant had PTSD or any other mental health condition while in the military or at discharge. From available records, the applicant's condition worsened over the years since discharge and is currently service-connected for a mental health condition which was diagnosed nineteen years after his military service.

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

The Psychological Advisor concludes the applicant did not have any mental health condition at the time of his misconduct. Therefore, there are no mental health mitigating factors for the applicant's drug usage (cocaine).

4. Does the condition or experience outweigh the discharge?

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

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 23 Sep 24 for comment (Exhibit F) 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 and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board noted the applicant did not indicate his mental health condition was a contributing factor for the use of cocaine and reasoned that the use was unintentional. He explained he was offered what he thought was pain relief powder for his headache from a civilian, but it in fact was cocaine. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there is no evidence of a mental health condition during his military service or at the time of discharge that would excuse or mitigate the applicant's misconduct. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, it 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 fundamental fairness. The Board also considered the applicant's post service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition; however, given the evidence presented, the Board determined relief is not warranted. Although the applicant submitted evidence to show he apparently made a successful transition to civilian life, his evidence does not provide his impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. 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 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 activities, this Board would be willing to review the materials for possible reconsideration of his request based on 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-2024-01905 in Executive Session on 5 Mar 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 24 May 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 28 May 24.

Exhibit D: Applicant's Response, dated 30 May 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Sep 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Sep 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.

3/13/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-01905

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