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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02482

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His service in the Air Force was honorable despite the one mistake. He struggled with depression and anxiety while in service which led to his substance use disorder.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 3 Mar 98, the convening authority published General Court-Martial Order (GCMO) Number Wo... The Order stated the applicant pled guilty to one charge and three specifications of use and distribution of anabolic steroids and use of crystal methamphetamine (Article 112a). The applicant was sentenced to confinement for two years, forfeiture of all pay and allowances, reduction to the grade of airman basic (E-1), and discharge with a BCD. The sentence was affirmed on 12 Mar 99 as evidenced by GCMO Number Work-...

On 18 Mar 99, the applicant received a BCD. His narrative reason for separation is "Court-Martial (Other)" and he was credited with 4 years, 11 months, and 14 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 Feb 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

AFBCMR Docket Number BC-2024-02482

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This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 Feb 25, 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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition. A review of the available records finds no evidence or records the applicant's mental health condition had a direct impact or was a contributing factor to his misconduct, resulting in his discharge from service. There is no evidence or records to corroborate any of the applicant's contentions. His limited military records revealed he was convicted at a general court-martial for wrongful use of anabolic steroids on divers

occasions from on or about 19 May 97 to on or about 7 Jul 97, wrongful use of crystal methamphetamine on or about 1 Aug 97, and wrongful distribution of anabolic steroids on divers occasions from on or about 19 May 97 to on or about 27 May 97. The applicant claimed it was one mistake but his court-martial records clearly stated he used drugs on more than one occasion, he used more than one type of drug, and he distributed drugs on more than one occasion. This information does not indicate it was one mistake or a one-time use or occurrence. His service treatment records are unavailable for review and he also did not submit any medical records for review, therefore, there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis, including depression or anxiety during service or in his lifetime. He did not discuss the cause of his depression or anxiety and how it was related to his military duty and service in his petition. There is no evidence he used drugs to cope with his depression and anxiety as claimed or he was in emotional distress or had a mental health condition, impairing his judgment at any time of his misconduct. His convicted offenses of the use and distribution of drugs are serious offenses and could not be excused or mitigated even if he had a mental health condition. Furthermore, his misconduct of distribution of a drug is a premeditated behavior requiring thought and planning and is not excused or mitigated by his mental health condition. There is no evidence his mental health condition caused him to distribute drugs.

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 record per policy guidance. The following are answers to the four questions from the Kurta Memo from the available records for review:

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

The applicant marked "other mental health" on his application to the AFBCMR and contended he struggled with depression and anxiety while in service, which led to his substance use disorder. He did not identify the triggers or causes for his depression and anxiety, did not discuss when he was diagnosed with any of these conditions or with a substance use disorder and submitted no medical records for review.

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

The applicant's service treatment record is unavailable for review and the applicant also did not submit any medical records for review; therefore, there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis including depression or anxiety during service or in his lifetime. There is no evidence his mental health condition of depression or anxiety had existed or occurred during his military service.

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

There is no evidence or records the applicant's mental health condition including depression or anxiety was a contributing factor or had a direct impact on his general court-martial conviction and BCD for drug use and distribution. There is no evidence he used drugs to cope with his depression or anxiety as claimed, or he was in emotional distress or had a mental health condition, impairing his judgment at the time of his misconduct. His convicted offenses of the use and distribution of drugs are serious offenses and could not be excused or mitigated even if he had a

mental health condition. Furthermore, his misconduct of distribution of a drug is a premeditated behavior requiring thought and planning and is not excused or mitigated by his mental health condition. For these reasons, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his 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 25 Mar 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 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 to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. There is no evidence or records the applicant was suffering from a mental health condition at the time of his misconduct, during service or in his lifetime. Furthermore, drug distribution is premeditated and is not excused or mitigated by a mental health condition. Additionally, the Board finds no evidence the sentence of the military court was improper or it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offenses committed, and the applicant's post-service conduct. However, the Board finds no basis for clemency in the case. The applicant retains the right to request reconsideration of this decision, which could be in the form of an FBI criminal history report, a personal statement, character statements, and/or testimonials from community leaders/members describing how his efforts in the community have impacted others. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown that 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 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 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, dated 26 Jun 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration + Clemency), dated 5 Feb 25.

Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 25 Mar 25.

Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 25 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.

8/13/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-02482