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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2018-01384

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He is requesting a medical discharge because of service-connected disabilities with symptoms from active duty following multiple articles of discipline for falling asleep or failure to report to duty on time during his time at *Work-Product* Air Base. He was made out to be a disrespectful, low self-esteem, horrible person when he repeatedly asked for help due to his depressed state and the inability to sleep with periods where he could not stay awake. He requested to be placed on the night shift to be more useful to his unit but was denied. All of his medical records indicate he has been suffering from multiple service-connected disabilities when he decided at 18 years old to fight for his country. He did not expect to have any issues with his performance, as his performance reports show from his time at *Work-Product*. He witnessed many wingmen take their own lives and he did not mentally accept the suicides. His mental health deteriorated after his discharge due to his service and post-service experiences and he compensated with alcohol and drugs. He was homeless for a time and sought help with the American Legion.

In support of his request, the applicant submitted copies of documents pertaining to his discharge and medical documents supporting his claim. He also submitted a SF 50, *Notification of Personnel Action* dated 10 Jun 18, which showed he was employed by the U.S. Army Installation Management Command at *Work-Product* as a security guard.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 10 Feb 11, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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- a. On 27 Jul 10, a Letter of Counseling (LOC) was issued for failure to report for duty.
- b. On 28 Jul 10, a Letter of Reprimand (LOR) was issued for failure to report for duty.
- c. On 9 Aug 10, a LOR was issued for failure to report for duty.
- d. On 27 Oct 10, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to report for duty. He received a reduction in grade to airman first class (E-3) with a new date of rank (DOR) of 27 Oct 10, and seven days of extra duty, suspended until 26 Apr 11.
- e. On 20 Jan 11, AF Form 3070, indicates the applicant received NJP, Article 15 for sleeping on duty. He received a reduction in grade to airman (E-2) with a new DOR of 20 Jan 11.

On 1 Mar 10, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 21 Mar 11, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 3 years, 9 months, and 16 days of total active service.

On 15 Aug 13, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 10 Jan 14, 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.

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

POST-SERVICE INFORMATION

On 13 May 22, 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. The Federal Bureau of Investigation (FBI) Identity History Summary Check 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.

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 Post-Traumatic Stress Disorder (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 (USD P&R) issued supplemental guidance 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 the supplemental guidance, paragraphs 6 and 7.

On 13 May 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for a medical retirement for his mental health condition. He did not have any unfitting mental health conditions to include any sleep disorders during his time in service that would meet criteria to be referred to the Medical Evaluation Board (MEB) for a possible medical discharge or retirement. However, the Board may choose to upgrade his character of service to honorable based on liberal consideration due to adequate information being found to demonstrate a nexus had reasonably existed between his sleep issues and misconduct leading to his discharge from service.

The advisory is only limited to his mental health condition. The Psychological Advisor recommends the Board to obtain/review a medical advisory to address his physical condition. There were records supporting he received brief psychotherapy treatment services for sleep issues and learned coping skills to manage his work stressors and emotional distress; however, there was no evidence his mental health condition had elevated to potentially unfitting. He never received any mental disorder diagnosis from his mental health provider, but received conditions that may be a focus of clinical attention of Occupational Problem and Phase of Life or Life Circumstance Problem that are not disorders and not unfitting conditions. It is acknowledged his Primary Care Manager (PCM) had given him a diagnosis of Sleep Disorders, Organic but after receiving his sleep study test results that was found to be normal, he did not receive any diagnosis but a note stating "feared medical condition not demonstrated" indicating his sleep disorder had been ruled out. Receiving mental health treatment or a diagnosis does not automatically make a condition unfitting and more markers are required to make this determination. He was never placed on a duty limiting profile for his mental health condition, he was never deemed not worldwide qualified (WWQ) due to his mental health condition, and no reports from his leadership his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. He was temporarily suspended from the Personnel Reliability Program (PRP) duties due to his sleep issues and his PRP status was reinstated after he was evaluated by his mental health provider. His PCM had reported during his sleep study results appointment, his sleep had improved and possibly was the reason his mental health treatment was terminated due to his problems being improved or resolved. The applicant reported feeling

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depressed and had reported traumatic experiences to his Department of Veterans Affairs (DVA) provider and in this petition. While it is possible he had these experiences during service, there were no reports in his objective military or service treatment records he had depression or experienced trauma. His PCM stated he was seeing mental health for emotional distress but going well. He denied during his separation physical he had any depression or mental health issues, and his mood was euthymic. There was no evidence his depression and traumatic experiences affected his functioning during service. It appeared he may have had a delayed onset of PTSD, which is not unusual, post-service as he did not meet diagnostic criteria for this condition several years post-discharge. His depression also appeared to have developed and was aggravated by his post-service stressors. There was no evidence these conditions had existed or was unfitting leading to early career termination during service.

For awareness, the applicant has received service-connected disability pay from the DVA for various conditions. The military Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the “snapshot” time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service-incurred, without regard to and independent of its demonstrated or proven impact upon a service member’s retainability, fitness to serve, or the length of time since date of discharge. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

Although the applicant did not have any unfitting mental health conditions required for a desired medical retirement, there was evidence in his objective military and service treatment records reporting he had sleep problems during service. The applicant contends his sleep issues caused his disciplinary actions of falling asleep on post and failure to report to duty on time, and this explanation is very plausible. In one of his responses to his Article 15 relating to him being found sleeping while on post, he reported having sleep difficulties and had provided a possible solution to his leadership on multiple occasions to move him to the night shift in order to be a better mission asset. He had also received medical and mental health treatment for sleep issues during service. Even though his Sleep Disorder diagnosis was eventually ruled out from his sleep study results by his PCM, he still had sleep problems that required him to receive treatment and was problematic to him and his functioning. His sleep issues were reported to be improving but sleep problems may recur. His sleep issues possibly caused most of his misconduct of sleeping on post and failure to report and the Psychological Advisor opines there is sufficient evidence to reasonably conclude his sleep issues more likely than not, had a direct impact to behaviors and misconduct resulting with his discharge. Again, his sleep issues were never unfitting for a medical discharge but was impactful enough to have caused his minor disciplinary infractions, the reason for his discharge from service. The Board may consider upgrading his discharge to honorable based on liberal consideration due to his sleep issues having most likely caused most of his misconduct. This decision is at the Board’s discretion.

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Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

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

The applicant contends he has received service-connected disabilities (sleep disorders and conditions) from active duty following multiple LOCs, LORs, and two Article 15s for falling asleep or failure to report to duty on time during his time at Incirlik Air Base, Turkey. He also reported feeling depressed and had traumatic experiences during service. He is requesting a medical retirement.

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

There is evidence the applicant had sleep issues during service. He received brief mental health treatment for his sleep issues and developed strategies to cope with work stressors and emotional distress during service. There is no evidence the applicant experienced depression or PTSD/traumatic experiences during service. He was given various forms of anxiety to include PTSD and depressive disorders several years post-service by the DVA from his experiences in the military and post-service stressors. He received a sleep study also during service and the results of the sleep study were normal. He was initially given a diagnosis of Sleep Disorder, Organic from his PCM but no longer met diagnostic criteria for this condition following his sleep study results, ruling out this disorder. He was given diagnoses of obstructive sleep apnea (OSA) and narcolepsy without cataplexy by his DVA medical provider post-service.

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

There is no evidence the applicant had any unfitting mental health conditions to include any sleep disorders, depression, or PTSD that would meet criteria for a referral to the MEB for a medical discharge or retirement. His request for a medical retirement could not be supported due to this factor. There was however, evidence the applicant had sleep issues necessitating him to receive mental health treatment, to obtain a sleep study, and he informed his commander of this problem during service. The applicant contends his sleep issues caused his disciplinary actions of falling sleeping on post and failure to report to duty on time, and there is sufficient evidence to support this assertion as most of his misconduct could conceivably be caused by his sleep issues. His mental health condition/sleep issues would excuse and mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition/sleep issues were found to have excused and mitigated his discharge, his condition/sleep issues would also outweigh his original discharge to support upgrading his character of service from general to honorable.

The complete advisory opinion is at Exhibit D.

The AFBCMR Medical Advisor recommends denying the application. From a medical (non-psychological) perspective, there were no medical conditions that could have been or would have been considered unfitting for continued military service during his time on active duty nor any medical condition that would have mitigated his various charged infractions. A post-service DVA

evaluation and impairment rating is not synonymous or equivalent to the military's disability evaluation at the time of service discharge. Specifically, his noted sleep disorder was diagnosed, despite having two normal sleep studies, well after his time in service. There were no significant medical conditions present during service whereby the Medical Advisor would consider a plausible nexus to the components of his NJP. The evidence that his sleep concerns during service were highly associated with his stated, work and family stressors as indicated early on in seeing mental health personnel. The burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit was assessed to not support his requested outcome. The Medical Advisor opines that no medical error or medically applied injustice occurred in the processing of this applicant's service separation.

The advisory is limited to address only non-mental health conditions; and advises the Board to refer to the professional psychology advisory for any mental health concerns. The applicant's disciplinary issues began in the summer of 2010, approximately nine months prior to service separation and the applicant's initial visits to any health clinic was to mental health in early Oct 10 (approximately six months prior to separation). Although the applicant initially sought out mental health to address his sleep concerns, at the same time he endorsed having significant stressors from family and work to include a pending Article 15. It was not until late Oct 10 when his sleep (medical) issues were addressed by his PCM and not mental health. Within two months, (and after a normal sleep study) the applicant reported improved sleep and denied symptoms such as apneas, daytime somnolence, and/or fatigue. Additionally, these much-improved symptoms, and the fact that things were going good, not feeling tired, and taking no medications up to one month prior to separation, lent a very low degree of probative value to equate that the disciplinary charges that began in mid-2010 would be directly, or remotely indirectly related to the much later diagnosed sleep conditions by the DVA after separation. This degree of probative value is significantly supported when coupled with the additional evidence that the second sleep study performed 17 months after separation additionally did not meet criteria for a diagnosis of a sleep disorder liken to OSA.

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 13 Oct 22 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 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 limitation 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 of the AFBCMR Medical Advisor and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. He did not have any unfitting medical or mental health conditions during his time in service that would meet criteria to be referred to the MEB for a possible medical discharge or retirement. Receiving medical/mental health treatment or a diagnosis does not automatically make a condition unfitting and more markers are required to make this determination. The Board finds no evidence the applicant experienced depression or PTSD/traumatic experiences during service; they appear to have developed and were aggravated by his post-service stressors nor did they find his sleep issues met the criteria for a diagnosis of an obstructive sleep apnea (OSA) while in the service. Furthermore, the Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. The military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries, which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision and the Board encourages the applicant to apply for an upgrade to his discharge based on liberal consideration. The Board would consider upgrading his character of service to honorable due to evidence demonstrating a nexus had reasonably existed between his sleep issues and misconduct leading to his discharge from service.

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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2018-01384 in Executive Session on 21 Dec 22:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	Panel Member

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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 3 Apr 18 and 12 Apr 22.
- 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 13 May 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Sep 22.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 8 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Oct 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

4/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF