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

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### ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2018-02264-2

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

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### APPLICANT'S REQUEST

The Board reconsider his request to upgrade his under other than honorable conditions (UOTHC) discharge to honorable, or in the alternative, to general (under honorable conditions).

### RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1) who was discharged with an UOTHC discharge for misconduct - drug abuse.

On 4 Jun 19, the Board considered and denied his request for a discharge upgrade; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board noted the AFRBA Mental Health Advisor's recommendation to grant the applicant's request based on liberal consideration stating the applicant clearly had a significant Traumatic Brain Injury (TBI) on 25 Mar 89 due to a motor vehicle accident with frontal lobe area injury and had residuals that more likely than not negatively impacted his behavior, memory, concentration, and executive functioning during his service. However, based on the circumstances in this case, the Board did not believe relief was warranted under liberal consideration. In this respect, the Board opined the applicant's post-injury misconduct did not mitigate the pre-injury misconduct, which was the basis for the characterization of discharge. In the interest of justice, the Board considered upgrading the characterization of the applicant's discharge based on clemency; however, after considering the infractions which led to his separation and the lack of post-service documentation, the Board was not persuaded an upgrade on this basis was warranted.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit F.

On 15 Nov 21, the applicant requested reconsideration of his request for a discharge upgrade. He again contends, through counsel, liberal consideration should be applied to his case. The Board previously granted liberal consideration [sic]; however, did not receive evidence nor review the achievements which resulted in the award of the good conduct medal. If not for the TBI, Post-Traumatic Stress Disorder (PTSD), and neurological issues, the result of an accident, the applicant would not have engaged in the behavior leading to the discharge. His behavior prior to his accident

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Controlled by: SAF/MRB

CUI Categories: Work-Product

Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

did not warrant an UOTHC discharge. Misconduct related to post-traumatic stress and youthful incretions is why the Hagel, Carson, Kurta, and Wilkie Memos were developed, disseminated, and implemented. Since the last Board convened, additional guidance was disseminated which afford more leniency and provides specific areas for focus, specifically related to the age of the individual at the time of infractions, notable achievement over the course of the service, the type of actual misconduct that occurred, and the duration of the intended discipline. These new policies increase the likelihood the applicant may have been medically separated as a result of his TBI rather than discharged with an UOTHC characterization.

The applicant has character references which include the very leadership that set forth the discipline and discharge and acknowledges he was not deserving of this impact, which the four DoD memos speak to for granting the upgrade sought. Meritorious service is a consideration for requests for discharge upgrades. During his time in the Air Force, he was consistently sent to training courses, because his leadership saw his potential and aptitude for his military job. Moreover, during his time in service, he willingly took his time to draft and submit a recommendation in hopes of improving Air Force processes and saving resources. He received accolades and acknowledgment for this recommendation. This recommendation demonstrates meritorious service on the part of the applicant. The previous Board was furnished letters of reference and character statements and information which showed he had been a coach for youth sports, maintained a steady job, sought higher-level education, and raised a family. Additionally, he has no further incidents of misconduct and has demonstrated his remorse.

In support of his reconsideration request, the applicant submitted the following new evidence: 1) his Department of Veterans Affairs (DVA) disability rating letter; 2) a character reference from his military leadership; and 3) copies of his military kudos.

The applicant's complete submission is at Exhibit G.

## **POST-SERVICE INFORMATION**

On 22 Feb 22, the Board sent the applicant a standard request for additional post-service information; however, he has not replied. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did provide post-service information with his original application, he did not include an FBI background check or other criminal history data.

## **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 (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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 22 Feb 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

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.

**Under Other than Honorable Conditions.** 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 airmen. 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 Air Force.
- 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 assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
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 the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Mental Health advisory opinion dated 17 Dec 18, from the original case and finds a preponderance of evidence substantiates the applicant's contentions. The Board applied liberal consideration to the applicant's request due to the contention of a mental health condition. Specifically, the Board notes the applicant clearly had a significant Traumatic Brain Injury (TBI) on 25 March 1989 due to a motor vehicle accident (MVA) with frontal lobe area injury and had residuals that more likely than not negatively impacted his behavior, memory, concentration, and executive functioning during his service. Therefore, the Board finds the applicant's post-TBI behaviors and infractions may have contributed to the applicant's post-injury misconduct. Therefore, the Board recommends correcting the applicant's records as indicated below.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 8 November 1990, he was discharged with service characterized as general (under honorable conditions), a separation code of "JFF," and narrative reason for separation of Secretarial Authority.

## **CERTIFICATION**

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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-2018-02264-2 in Executive Session on 25 Jan 23:

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

All members voted to correct the record. The panel considered the following:

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 4 Jun 19.  
Exhibit G: Application, DD Form 149, w/atchs, dated 15 Nov 21.  
Exhibit H: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 22 Feb 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.12.9.

1/17/2024

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Board Operations Manager, AFBCMR

Signed by:

*Work-Product*

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