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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-00226

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His narrative reason for separation of misconduct be changed to honorable.

APPLICANT'S CONTENTIONS

He did his duty with honor and distinction and helped save lives. He is a cold war era veteran of 1991. He did his job and performed to his utmost ability and was discharged without cause within nine months of his end of term separation (ETS).

In support of his request for a discharge upgrade, the applicant provides personal statements, post service certificates of achievement, a Department of Veterans Affairs (DVA) rating decision, 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 first class (E-3).

On 19 Jan 95, 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 actions. The specific reasons for the action were:

- a. On 17 Feb 93, a Letter of Counseling (LOC) was issued for being disrespectful to a non-commissioned officer (NCO) on 12 Feb 93.
- b. On 16 Mar 93, a LOC was issued for failing to follow infection control guidelines while disinfecting dental instruments on 16 Mar 93.

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- c. On 25 Aug 93, a LOC was issued for demonstrating irresponsible conduct by conspiring in jest to assault an officer, failing to perform assigned duties, and for misusing government telephones by making prank calls on or about 20 Aug 93.
- d. On 29 Oct 93, a LOC was issued for failing to report to work as scheduled and failing to notify his unit on 28 Oct 93.
- e. On 13 Dec 93, a LOC was issued for failing to inform his unit of a scheduled appointment, and since he did not inform anyone, his whereabouts were unknown.
- f. On 21 Jan 94, a Letter of Reprimand (LOR) was issued for taking lunch during a period of time which he should have been assisting his dental officer in treating patients on 12 Jan 94. Additionally, he was disrespectful to an NCO during a feedback session on 13 Jan 94.
- g. On 4 Mar 94, a LOR was issued for leaving his duty section without authorization and was disrespectful to his dental suite chief.
- h. On 24 Mar 94, a Memorandum for Record (MFR) indicated he parked his vehicle in a loading zone and as a result, received a traffic citation by security police 12 Mar 94.
- i. On 10 Apr 94, a MFR indicated he was speeding in the housing area and as a result, received a citation and a thirty-day suspension of base driving privileges on 10 Apr 94.
- j. On 30 Jun 94, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for drinking and gambling while underage at the casino on 20 May 94. He received thirty days of correctional custody.
- k. On 30 Sep 94, a LOC was issued for failing to be available while on call, which delayed patient care on 29 Sep 94.
- l. On 13 Dec 94, a LOR was issued for leaving his place of duty without authorization.

On 1 Feb 95, the Staff Judge Advocate found the discharge action legally sufficient.

On 7 Feb 95, the discharge authority directed the applicant be discharged for minor disciplinary actions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 13 Feb 95, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 3 years, 2 months, and 26 days of total active service.

On 2 May 95, according to the Air Force Discharge Review Board (AFDRB) brief, the applicant submitted a request to the AFDRB for an upgrade to his discharge.

On 29 Feb 96, 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 Board noted the applicant's long list of misconduct, poor enlisted performance reports, and comments from several members in his chain of command. The Board also considered the applicant's contention he was arbitrarily discriminated against; however, the Board did not find evidence of this allegation.

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

POST-SERVICE INFORMATION

On 18 Feb 20, 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). On 8 Nov 23, the applicant responded with additional information, a personal statement, various post service certificates and a DVA disability rating.

On 25 Mar 24, the Board sent the applicant an additional 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 (Exhibit E). The applicant replied on 7 May 24 and 11 Sep 24, providing personal statements. Subsequently, on 13 Sep 24, the applicant provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant's complete responses are at Exhibit D, F, J, and K.

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 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 9 Sep 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of the available records finds there is evidence the applicant had anxiety and depression during service. However, his service treatment records indicated these conditions or symptoms were primarily in response to his disciplinary actions caused by his misconduct, i.e. correctional custody, work stress, and financial problems. During his separation physical examination, he endorsed having frequent trouble sleeping, depression or excessive worry, and nervous trouble of any sort (anxiety). His Primary Care Manager (PCM) clarified his nervous trouble began in Oct 94 and his insomnia and depression/excessive worry began in Dec 94. His first documented misconduct occurred on 25 Aug 93, and more than half of his misconduct (10 documented acts of misconduct) occurred before Oct 94 when his anxiety began. Based on this timeline of events, his anxiety and/or depression did not cause his misconduct occurring before Oct 94. He did receive a mental health evaluation on 23 June 94 for having vague suicidal ideation and being unable to contract for his safety. He was in correctional custody at the time when he made a self-referral to mental health. It is noted he did warn his commander in his response to his Article 15 action for going to the casino while underage that correctional custody and the disposition of his case would affect him financially and emotionally. The results of the mental health evaluation found he had interpersonal problems, specifically, he felt he was being singled out and mistreated by others, had difficulties trusting others, and would misinterpret situations and remarks made by others. He tended to blame others for his problems and had an inability to take responsibility for his actions or behaviors. He was given a diagnosis of adjustment disorder with mixed emotional features on Axis I and personality disorder, not otherwise specified (NOS) with paranoid and schizoid features on Axis II. His personality disorder was assessed to be the primary condition causing his difficulties and misconduct problems and this condition was so severe his ability to function effectively in a military environment was significantly impaired. He was recommended for administrative separation for having an unsuiting mental health condition (personality disorder). It appeared his commander did not concur with this recommendation as he remained in the service for several more months after this recommendation and he was not discharged from service for having an unsuiting condition. It is at his commander's discretion to accept or deny the recommendation and his commander is not required to accept it. As stated, the applicant's anxiety and depression were the results of the consequences of his misconduct and there is no evidence or record his anxiety and depression caused any of his misconduct. The applicant had submitted several responses to his disciplinary actions at the time of service. He had explained the comment he made about assaulting an officer in the Air Force was a "joke", he apologized for his misbehaviors of being disrespectful to an NCO, denied being disrespectful to an NCO on a different occasion and explained he spoke frankly about his reasons for going to lunch a few minutes early. He thought there would be no problem in getting his field jacket liner and was told there was no problem in coverage, he did not know he had to make frequent beeper checks. He thought one beeper check a day was sufficient when he was on call, and he went to the casino to eat at the buffet with a friend and admitted to playing the slot machine but denied drinking alcohol at the casino. His commander had responded to his article 15 appeal and denied his request because the applicant stated he was aware of the age for gambling restriction, and he was briefed on this topic a couple of times in the past. These explanations and his commander's report do not demonstrate his behaviors were caused by his mental health condition including having anxiety and depression but rather, these

behaviors are consistent with traits of a personality disorder. His unsuited personality disorder may explain and may have caused his maladaptive behaviors and misconduct, but this unsuited condition does not excuse or mitigate his misconduct and subsequent discharge. He made poor decisions and some of his behaviors were intentional. He knew the difference between right and wrong and to adhere to the right and refrain from the wrong. His poor decision-making skills were not caused by having anxiety or depression but by his personality traits. There are records the applicant sought medication management treatment services for anxiety, depression, and sleep problems from the DVA several years after his discharge from the military. These were similar conditions and symptoms he had during service, but his DVA treatment records indicated these conditions were caused by his post-service stressors. His first encounter with his primary care provider (PCP) for medication management treatment on 8 Sep 03 reported he had a history of depression for three years (or the year 2000), which was after his military service. Another treatment note dated 5 Dec 05 from his PCP vaguely reported he had possible depression due to PTSD and had occasional episodes of depression due to his past military service. There are no records he was ever diagnosed with PTSD by his providers at the DVA, no evidence or records he had any traumatic experiences during service, and the time frame of when his occasional episodes of depression were not identified. It is possible he had these occasional episodes of depression during and/or after service. He had anxiety and/or panic attacks after he was terminated from his post-service employment and when he was informed, he may have cancer. These experiences were not related to or caused by his military service. He was diagnosed with anxiety disorder, generalized anxiety disorder (GAD), and depressive disorder NOS by his providers at the DVA and there is no evidence he met the diagnostic criteria for any of these conditions during service. He informed his PCM during service he believed he had an anxiety disorder but no records to confirm his reports. These conditions or diagnoses were developed after his military service and were triggered and caused by his post-service stressors. The applicant's Compensation and Pension (C&P) examination reported he had a diagnosis of GAD and had symptoms of depressed mood, anxiety, and chronic sleep impairment. The C&P examiner opined based on his history, his current presentation and symptoms of anxiety disorder were directly related to the condition he was treated for while in the service. This was the reason for his service connection. The C&P examiner's opinion is supported by his service treatment records but service connection does not suggest causation or mitigation of his discharge. Receiving service connection merely suggests the condition or experience had occurred during service or was related to his military service in some form and not necessarily the cause of his discharge. The applicant did have anxiety and depression and sought treatment during service as reported, but again, these conditions did not cause his discharge but were the results of his misconduct and occupational problems. After an exhaustive review of the available records, the Psychological Advisor finds there is no identifiable error or injustice with the applicant's discharge from a mental health perspective. There is insufficient evidence to support his request for an upgrade of his discharge based on his mental health condition.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's contention due to having a mental health condition. It is reminded liberal consideration does not mandate an upgrade per policy guidance. The following are responses to the four questions from the Kurta Memorandum from the available records for review:

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

The applicant contended he was subjected to constant harassment, scrutiny, criticism, and unjust treatment and experienced anxiety and depression. He did not elaborate on these conditions. He admitted he was underage at the casino but denied drinking alcohol. He believed he was wrongfully discharged and claimed there was a reduction in force.

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

There is evidence the applicant had anxiety and depression during service, but these conditions or symptoms were primarily in response to his disciplinary actions and occupational problems as consequences of his misconduct. He received a mental health evaluation after he expressed vague suicidal ideation and was unable to contract for safety while he was in correctional custody. He was diagnosed with adjustment disorder with mixed emotional features and personality disorder NOS with paranoid and schizoid features from this evaluation. His personality disorder was assessed to be his primary condition causing his difficulties and misconduct problems and this condition was so severe his ability to function effectively in a military environment was significantly impaired. He was recommended for administrative separation for having an unsuiting mental health condition by the mental health provider which was declined by his commander. He sought medication management treatment from the DVA for anxiety, depression, and sleep problems several years after his discharge from the military. He was diagnosed with anxiety disorder, GAD, and depressive disorder NOS by his DVA providers and there is no evidence he met the diagnostic criteria for any of these conditions during service. These conditions or diagnoses were developed after his military service and were triggered and caused by his post-service stressors.

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

There is no evidence or records the applicant's anxiety or depression caused his misconduct leading to his discharge from service. His personality disorder or traits were his primary condition and caused his maladaptive behavioral problems and misconduct. While his personality disorder may have caused his misconduct problems, this condition does not excuse or mitigate his discharge. This is an unsuiting mental health condition for military service.

4. Does the condition or experience outweigh the discharge?

Since the applicant's 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 G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Sep 24 for comment (Exhibit I), and the applicant replied on 7 Oct 24. In his response, the applicant contends the statements made against him are nothing but 99 percent fabricated lies, half-truths, misinformation and fake news. He is requesting some support through liberal consideration. He was having difficulty with staff sergeant [Work-Pro...] who constantly wanted to ride him through harassment, scrutiny, criticism,

disparate arbitrary discrimination, falsifying write ups, and other misconduct. The Air Force was going through reduction in force at the time and the chief master sergeant wanted him off the team.

The applicant's complete response is at Exhibit L.

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 finds the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Additionally, 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 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's anxiety or depression caused his misconduct leading to his discharge from service. His personality disorder or traits were his primary condition and caused his maladaptive behavioral problems and misconduct. While his personality disorder may have caused his misconduct, this condition does not excuse or mitigate his discharge. This is an unsuiting mental health condition for military service. Since the applicant's mental health condition does not excuse or mitigate his discharge, his mental health condition also does not outweigh his original discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board 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; however, the evidence he provides lacks references that demonstrate his character, post-service rehabilitation, service to the community, or any degree of remorse pertaining to his in-service conduct. The Board 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. Lastly, the Board acknowledges the applicant's contention he was discriminated against through harassment, scrutiny, and criticism; however, other than his own assertions, the evidence presented is insufficient to support this claim. 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 a personal statement, character statements, 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-2020-00226 in Executive Session on 19 Feb 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 27 Oct 19.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 18 Feb 20.
- Exhibit D: Applicant's Response, w/atchs, dated 8 Nov 23.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 25 Mar 24.
- Exhibit F: Applicant's Response, dated 7 May 24.
- Exhibit G: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Sep 24.
- Exhibit H: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 9 Sep 24.
- Exhibit I: Notification of Advisory, dated 9 Sep 24.
- Exhibit J: Applicant's Response, dated 11 Sep 24.
- Exhibit K: FBI Report, dated 13 Sep 24.
- Exhibit L: Advisory Response, dated 7 Oct 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.

2/25/2025

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Board Operations Manager, AFBCMR
 Signed by: USAF

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