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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-02265

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His reentry (RE) code be changed from "2B," which denotes "Separated with a general or under-other-than-honorable-conditions discharge" to a 1 series which would allow reenlistment.
3. His narrative reason for separation be changed from "Pattern of Misconduct" to "Secretarial Authority" or if denied, be changed to "Minor Disciplinary Infractions."

APPLICANT'S CONTENTIONS

His discharge was harsh and unjust. His overall character of service outweighs the minor infractions. Liberal consideration should be applied as he was diagnosed with Post-Traumatic Stress Disorder (PTSD) from the austere simulated combat conditions and had experienced severe anxiety and sleep issues due to the nature of the Survival, Evasion, Resistance, and Escape (SERE) job environment that had exacerbated his physical, mental, and emotional stressors. In 2019, he was given a 100 percent disability rating from the Department of Veterans Affairs (DVA). On 17 Nov 00, he received a Letter of Reprimand (LOR) for four issues which was unfair and did not rise to the level of an LOR. His sleeping on duty was "typical at the time" and other instructors did the same but he was the only one who received paperwork. He fell behind on his Army and Air Force Exchange Service (AAFES) payments because of legal bills to fight for custody of his son and his driving under the influence (DUI). He was dismissed from Basic Parachuting School for failing his physical training requirement and he accidentally washed a pen with his uniform. Pertaining to his DUI, he recognizes the mistake of driving under the influence and does not take this lightly. His alcohol level was just above the legal limit. This is not to excuse the behavior, but to explain that he was not highly intoxicated at the time. Additionally, there was no aggravating circumstances; no accidents or injury. The judge recognized these mitigating factors and reduced the offense from driving under the influence to negligent driving.

He has been gainfully employed since his discharge in positions that continue to serve his country. He also spends a significant amount of his personal time involved in the community. In support of his request for clemency, the applicant provides his resume, DVA Disability Rating, and a National Criminal Background Check.

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

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The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 23 Feb 01, 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:

- a. On 19 Nov 99, a Letter of Reprimand (LOR) was issued for failure to go and failure to obey a lawful order.
- b. On 20 Oct 99, a Letter of Counseling (LOC) was issued for failure to maintain his government quarters.
- c. On 26 Jul 99, a LOR was issued for inappropriately berating an officer.
- d. On 17 Nov 00, a LOR was issued for failure to maintain his uniform, failure to meet physical fitness standards during Basic Parachuting School, failure to make a financial payment, and sleeping on duty. Because of these infractions, an unfavorable information file (UIF) was established.
- e. On 7 Feb 01, a LOR was issued for DUI.

On 19 Mar 01, the applicant's request for a conditional waiver of an administrative discharge board was accepted.

On 5 Mar 01, 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 30 Mar 01, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Pattern of Misconduct" and he was credited with six years, one month, and eight days of total active service.

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

POST-SERVICE INFORMATION

On 15 Sep 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). The applicant replied on 2 Oct 20 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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 (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

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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 15 Sep 20, the Board staff provided the applicant a copy of the clemency 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 the desired changes to his record. There is no evidence in his military records he had developed PTSD, experienced PTSD or similar conditions/symptoms, was diagnosed with PTSD, and/or received treatment for PTSD caused from his SERE training during military service. The applicant was not diagnosed with PTSD until 18 years post discharge from his Compensation & Pension (C&P) examination and this examination report discussed the symptoms he had endorsed at the time of the evaluation. There was no information reported of when he actually began to experience PTSD symptoms or when the residual effects of his traumatic experiences from his SERE training had occurred. Due to this large time span from his discharge to the C&P examination and no evidence of a PTSD diagnosis or condition had existed during service, it is possible and more likely than not, he had a delayed onset of PTSD causing him to meet diagnostic criteria for PTSD several years post discharge. The objective evidence in his records via personal statements from the applicant at the snapshot in time of service found he denied being late to pyrotechnics lab, he had ink on his uniform from the dryer, and failed his PT test due to issues with the grader. None of these explanations were related or had anything to do with his mental health condition. There was however, a statement from the applicant explaining he had multiple personal stressors in his life pertaining to his son, son's mother, fiancé, and family health issues that caused him to have significant stress, appetite and sleep issues, and were probably the cause of his poor performance. There were no reports or discussion it was his SERE training that caused his mental and emotional distress. Furthermore, his personal statement was undated and the applicant also did not clarify when his stressors began and how long he had appetite and sleep issues. Thus, it is difficult to determine whether these stressors occurred prior to, during, or after his reported misconduct and disciplinary actions or if there was any nexus to his misconduct. He reported his personal stressors caused him to fail jump school, but his jump school failure was not one of the reasons for his discharge. There was no nexus or evidence his emotional distress from his personal stressors caused his misconduct leading to his discharge from service.

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The applicant's legal counsel provided an analysis of the applicant's misconduct and discharge process. The explanation provided did not discuss how the applicant's PTSD or other mental health condition caused any of these behaviors or misconduct and in fact, appeared to have denied or minimized the severity of his reported misconduct. Having a mental health condition or issue during service does not automatically require or result with an upgrade to honorable, but rather, demonstration and explanation of how his mental health condition affected or influenced his behaviors causing his discharge is imperative and necessary. Therefore, this psychological advisor finds the applicant's and legal counsel's contentions and explanations were not compelling or sufficient enough to support their requests. There was no evidence of any error or injustice with his discharge from service.

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 and his legal counsel contend the applicant suffered from PTSD caused by his SERE training experiences that may have affected his behaviors in service.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant was diagnosed with PTSD or experienced PTSD symptoms during military service. There are no service treatment records available or submitted by the applicant for review to determine if he actually had PTSD or similar conditions during military service. There was evidence he had appetite and sleep issues during service that were caused by his personal stressors and not from SERE training.

3. Does the condition or experience excuse or mitigate the discharge?
Since there is no evidence he had PTSD during service and no compelling explanation or evidence of how his mental health condition caused his behaviors, his condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweighs the discharge?
Since there is no evidence his mental health condition or experience excuses or mitigates his discharge, his condition or experience also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit E.

AFPC/DP2SSR recommends denying the applicant's request for a discharge upgrade finding no error or injustice. The commander provided ample documentation to the Base Discharge Authority (BDA) to support separation and character of service. The BDA determined that the negative aspects of the applicant's behavior outweighed any positive aspects of the applicant's military career. Our office did see an error with the Separation Program Designator (SPD) code and corresponding narrative reason for separation. Both should reflect "Misconduct, Minor Disciplinary Infractions." Once the board has made a decision on the applicant's request, the case can be returned to AFPC so that our DD Form 214 office can make the corrections as necessary.

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The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 Mar 22 for comment (Exhibit G), 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 and recommendation of the offices of primary responsibility and finds a preponderance of the evidence does not substantiate the applicant's contentions. In the interest of justice and fundamental fairness, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. Furthermore, the Board notes the applicant's contention that he suffers from PTSD caused by his SERE training experiences that affected his behaviors in service; however, the Board does not find the evidence presented sufficient to conclude that his mental health condition excuses, mitigates, or outweighs his original discharge. Therefore, the Board is satisfied that the application of liberal consideration does not warrant relief. Accordingly, the Board recommends against correcting the applicant's records.
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-2020-02265 in Executive Session on 25 May 22:

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 23 May 20.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 15 Sep 20.
- Exhibit D: FBI Report, dated, 2 Oct 20.
- Exhibit E: Advisory Opinion, AFBCMR Psychological Advisor, dated 21 Sep 21.
- Exhibit F: Advisory Opinion, AFPC/DP2STM, dated 7 Mar 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Mar 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.

3/16/2023

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Board Operations Manager, AFBCMR
Signed by: USAF