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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-03055

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He did not exhibit any such pattern of Minor Disciplinary Infractions as stated on his DD Form 214, *Certificate of Release or Discharge from Active Duty*. His records will show no such pattern existed. He witnessed and reported an action to which he felt was an injustice and he was forced out of the military. He has never been convicted or even accused of committing a crime. He has been a model citizen his entire life. He is an ordained minister and as he is getting older, he realizes the commitment he made when he first entered the military. He has watched numerous veterans pass away recently and with all the media attention placed on whistle-blowers, he decided to try to right the wrong that was done against him. He has no excuse for waiting so long but has taught his kids to stand up for what is right and prays the Board can review his records and fix this grave injustice that has hung over his head for years.

In support of his request for clemency, the applicant provides a personal statement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 1 Jul 87, the applicant's commander recommended the applicant be discharged from the Air Force for Misconduct, under the provisions of AFR 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship*, paragraph 5-46. The specific reason for the action was on 5 Jun 87, the applicant was administered punishment under Article 15 of the UCMJ for violation of Article 86, Failure to Go. He received a reduction in grade, forfeiture of pay. On 30 Jan 87, the applicant was previously placed on a control roster for four months for substandard performance.

On 17 Jul 87, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On DD 29 Jul 87, the discharge authority directed the applicant be discharged for Misconduct, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

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On 10 Aug 87, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern of Minor Disciplinary Infractions" and he was credited with 1 year, 2 months, and 26 days of total active service.

On 1 Dec 87, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 28 Feb 89, 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.

POST-SERVICE INFORMATION

On 13 Jan 21, 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 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 14 Dec 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. However, the applicant did not provide character statements, certificates, commendations, and letters from his employers, and evidence of community service.

The applicant's complete response is at Exhibit A.

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 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 25 Sep 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

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 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 applicant's available records finds his objective military records do not support his contentions or request. Contrary to the applicant's contention that he had no misconduct, there was ample evidence in his objective military records reflecting he had engaged in a pattern of misconduct during service that led to his discharge. He had received an Article 15, three Letters of Reprimands (LORs), and a Letter of Counseling and was placed on the Control Roster for various misconduct infractions such as failing to go on numerous occasions, engaging in behaviors incompatible with duties as a security policeman, being disrespectful to a senior non-commissioned officer, driving improperly, and having substandard performance. He did not acknowledge or address any of these misconduct infractions in his BCMR application. His response to his discharge action submitted at the time of service revealed he acknowledged having problems in his personal life that had been "straightened out" and would not interfere with his duties. In terms of the applicant's mental health condition, he designated post-traumatic stress disorder (PTSD) on his application and ambiguously stated he had been suffering from PTSD for years which had negatively affected his life. His contention or testimony was too vague and not compelling or sufficient to demonstrate his mental health condition had impacted his functioning and discharge. The applicant's service treatment records were also not available for review nor did the applicant submit them for consideration;

however, the available records presented no evidence he had a mental health condition to include PTSD during service. There was no evidence his mental health condition or PTSD caused his numerous misconduct and behavioral issues and no evidence he was in emotional distress or had a mental health condition at the time of any of his misconduct. Moreover, there was no evidence submitted to confirm he was diagnosed with PTSD by a duly qualified mental health professional during or after service. The burden of proof is placed on the applicant to submit records or evidence to support his contention and request. The Psychological Advisor also finds there was no identifiable error or injustice with the applicant's discharge to support his request for an upgrade of his character of service from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his designation of a mental health condition on his application to the BCMR. The following are responses to the four questions from the Kurta Memorandum from the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended he suffered from PTSD for years that had negatively affected his life. No other information was provided about this condition such as the cause and onset of the condition. He did not discuss how his condition of PTSD may excuse or mitigate his discharge.
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records were not available or submitted by the applicant for review. From the available records, there is no evidence or records his mental health condition of PTSD had existed or occurred during his military service.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant provided no explanation for how his PTSD or mental health condition may excuse or mitigate his discharge. There was no evidence his mental health condition caused his numerous misconduct infractions and subsequent discharge from service. Thus, his mental health condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since there was no evidence his mental health condition may 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 AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Sep 23 for comment (Exhibit E) 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 AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's available service records demonstrate he engaged in a pattern of misconduct leading to his discharge. He received an Article 15, three LORs, an LOC, and was placed on the Control Roster for multiple infractions. There was no evidence his mental health condition or PTSD caused his misconduct. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there was no evidence his mental health condition may excuse or mitigate his discharge, and 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, and in the absence of post-service information, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2020-03055 in Executive Session on 20 Dec 23:

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 3 Jun 20 and 14 Dec 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Consideration Guidance), dated 13 Jan 21.
- Exhibit D: Advisory Opinion, Advisory, AFRBA Psychological Advisor, dated 25 Sep 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Sep 23.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request, Clemency and Liberal Consideration Guidance), dated 25 Sep 23.

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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.

1/11/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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