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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-2021-00643

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His character of service, separation authority, reentry code, narrative reason for separation and corresponding separation code be changed.

APPLICANT'S CONTENTIONS

He was awarded 100 percent service connection by the Department of Veteran Affairs (DVA) for a mental health condition from his time in service. His mental health condition caused the infractions that led to his discharge.

In support of his request the applicant provides a DVA Appeal decision memo.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Jul 86, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFR-39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. Applicant admitted to the illegal use of drugs and he received a Letter of Reprimand and an Unfavorable Information File was established.
- b. Applicant admitted to the First Sergeant that he sniffed three tubes of glue.
- c. Applicant was placed into the base's Alcohol Treatment Center.
- d. Applicant admitted to his supervisor that he was still addicted to sniffing glue.

On 29 Jul 86, the Staff Judge Advocate found the discharge action legally sufficient.

On 31 Jul 86, the discharge authority directed the applicant be discharged for failure in drug abuse rehabilitation, with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

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On 1 Aug 86, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Drug Abuse Rehabilitation Failure” and he was credited with 2 years and 23 days of total active service.

On 16 Apr 91, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 28 Jun 91, the AFDRB concluded that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and that the applicant was provided full administrative due process.

On 10 Jun 20, a DVA Appeals Board determined the applicant was entitled to service connection for an acquired psychiatric disorder, other than PTSD, to include bipolar disorder and secondary substance abuse.

For more information, see the excerpt of the applicant’s record at Exhibit B.

POST-SERVICE INFORMATION

On 30 Mar 21, 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.

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?

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On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (P&R USD) 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 30 Mar 21, 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.

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.

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 records. After reviewing all available records, the applicant clearly had substance dependency issues identified as inhaling glue and excessive alcohol use causing his misconduct during service. He was command referred to Social Actions for alcohol rehabilitation following his alcohol related incident and Article 15 and was later referred to a drug rehabilitation program, inpatient detoxification program, and finally to the Alcohol Rehabilitation Center program on base. Despite

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efforts by his leadership and the Air Force to provide to him the necessary support and treatment, he was not amenable to these intervention efforts. The applicant continued to inhale glue while enrolled in the alcohol/drug rehabilitation treatment program despite the negative consequences to his military career. He was unable to adhere to the rules of the program of maintaining abstinence from all mood altering substances and subsequently was deemed as failing drug rehabilitation treatment. Multiple forms of documentation and his psychiatric evaluation report identified he admitted to having a lengthy history of substance abuse of inhaling glue, smoking marijuana, and drinking alcohol excessively prior to service. These substance abuse and dependency issues are considered to have existed prior to service (EPTS). There was no evidence the applicant's EPTS conditions were aggravated by his military duties. It is to note the applicant was diagnosed with a personality disorder and his identified behaviors are consistent to personality disorder traits. Personality disorders and traits and substance abuse dependency issues are considered to be unsuited for military service. His VA records revealed he began to receive mental health treatment from the VA on 10 Jul 97, 11 years post discharge, for anxiety, depression, and bipolar disorder. There was no evidence he experienced any of these conditions or symptoms during service. The available objective military file found his substance dependency issues causing his drug rehabilitation failure were the basis of his discharge and the psychological advisor finds no error or injustice identified with his discharge from service.

Liberal consideration is applied to the applicant's request based on his contention of a mental health condition of alcohol and drug dependency. The following are answers to the four questions from 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 his DVA service-connected mental health condition caused his infraction leading to his discharge. The applicant did not specify his mental health condition or submit any records to support his contention.

2. Did the condition exist or experience occur during military service?
Since the applicant did not specify his mental health condition, it could not be determined with certainty his mental health condition occurred in military service. His post service DVA treatment records revealed he had received mental health treatment for anxiety, depression, and bipolar disorder. There were no records or evidence he experienced any of these conditions during service. The applicant's military records found he had alcohol and drug dependency issues during service.

3. Does the condition or experience excuse or mitigate the discharge?
Since the applicant did not specify his mental health condition, it could not be determined his condition or experience may excuse or mitigate his discharge. The applicant had alcohol and drug dependency issues during service that were found to be EPTS and not aggravated by his military service. His EPTS conditions led to his rehabilitation treatment failure resulting with his discharge. Therefore, his EPTS conditions or experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweighs the discharge?
Since there is no evidence his EPTS conditions or experience excuse or mitigate his discharge, they also do 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 4 Feb 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION



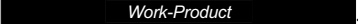
1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there was no evidence he experienced any of these conditions or symptoms during service. 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 a criminal history report, 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/her current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-00643 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 12 Nov 20.
- 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 30 Mar 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Oct 21.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Feb 22.

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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.

3/14/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

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