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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01027

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He suffered from an undiagnosed mental health condition of Bipolar II which is the underlying reason his narrative reason for separation on his DD Form 214, *Certificate of Release or Discharge from Active Duty* reflects "Unsuitable-Apathy, Defective Attitudes-Board Waiver." The narrative reason for separation on his DD Form 214 has been a painful reminder of a difficult period in his life and he wants an upgrade to honorable to accurately reflect that it was due to the mental health condition for which he is now receiving treatment from the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 Jun 80, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFM 39-12, chapter 2, section A, paragraph 2-4c, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, for Unsuitability- Apathetic and Defective Attitude. The specific reasons for the action were frequent involvement of a discreditable nature with military authorities.

Between 5 Oct 79 and 5 May 80, the applicant's records reflects two Article 15s for disorderly in station. He also received six Letters of Counseling (LOCs) for failures to go, disorderly in station, financial irresponsibility, numerous driver violations, failure to obey a direct order, and poor attitude. On 9 May 80, the applicant was reduced to the grade of airman basic (E-1).

On 5 Jun 80, the applicant acknowledged receipt of the letter of notification and of his rights. The applicant also waived his rights to a hearing before an administrative discharge board hearing. The

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applicant stated that he fully understood if the recommendation for discharge was approved, the discharge authority would also determine the type of discharge to be issued.

On 6 Jun 80, the staff judge advocate found the discharge action legally sufficient.

On 6 Jun 80, the discharge authority directed the applicant be discharged for Unsuitability-Apathetic and Defective Attitude, with a general (under honorable conditions) service characterization.

On 6 Jun 80, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Unsuitable- Apathy, Defective Attitudes-Board Waiver.” He was credited with 1 year, 4 months, and 13 days of total active service.

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

POST-SERVICE INFORMATION

On 29 Mar 22, 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:

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- 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?

Liberal consideration is not required for cases involving pre-existing conditions which are determined not to have been aggravated by military service.

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 the supplemental guidance, paragraphs 6 and 7.

On 29 Mar 22, 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor has reviewed all available records and finds insufficient evidence to support the applicant's request for an upgrade to his discharge. There were no mental health conditions of anxiety, depression, bipolar, etc. documented in his available records. His service treatment records revealed he received rehabilitation treatment services for alcohol abuse issues. There was evidence the applicant was command referred for an evaluation and received psychometric testing but the results of these evaluations were not available for review. However, based on the reason for his discharge, the applicant had an unsuiting mental health condition specified as apathy and defective attitude. The applicant's military personnel records reflected a

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pattern of disorderly in station infractions, counseling on numerous occasions for his poor attitude and lack of discipline. He was observed by his commander to be “*very easy to make angry*” indicating he had explosive anger issues that were also identified post service by his DVA providers. His poor attitudes and behaviors resulting in at least 11 documented misconduct infractions in a short period of time led to his discharge from service. Although the actual evaluation confirming his unsuiting mental health condition was not available, his military personnel records were consistent and sufficient enough to demonstrate he had an unsuiting condition of apathy and defective attitude.

The Psychological Advisor finds no evidence the applicant experienced any significant or noticeable labile mood with cyclical periods of expansive to depressed mood that would be indicative of bipolar symptoms or a disorder during service. He was first detected to have atypical bipolar disorder in September 1998, 18 years post discharge. He was formally diagnosed with bipolar II disorder in September 2008, 28 years post discharge. Too much time has lapse from his discharge until the detection of his symptoms to be able to confidently conclude his symptoms began or were experienced in service. It is very possible and more likely than not from his records, he may have developed the onset of symptoms of a bipolar disorder post service, and the severity of his symptoms and decompensation of his functioning were exacerbated and aggravated by his post service stressors. His objective military records found no observations or reports of symptoms that would resemble or closely aligned to a bipolar disorder. An individual may have more than one mental health condition and he was identified to have intermittent explosive disorder post service corroborated by psychological testing. He displayed traits of this condition in addition to apathy during service and these conditions/traits were and are considered to be unsuiting for continued military service.

His anger, behavioral, and mental health issues were found to have been existed prior to service (EPTS) and there was no evidence his prior service issues or conditions were aggravated by his military service. The applicant’s post service treatment records reported he had a traumatic childhood experience of abuse, was institutionalized/hospitalized several times as a child, and attended a Boys’ School for “discipline” for a year during early adolescent. This information indicated he had anger and behavioral issues prior to service that he had carried throughout his lifetime to include his time in the service. It is to note the applicant did not report his significant mental health history during his enlistment process and if he did, he would be required to receive a waiver to enlist, which was highly unlikely given his substantial mental health history and elevated risk. Thus, his documented misconduct and resulting character of service appeared to be appropriate, and the Psychological Advisor finds no error or injustice with his discharge.

Liberal consideration is not required to be applied to the applicant’s petition as her mental health concerns and problems were found to be EPTS and not aggravated by service according to the policy’s guidance. Should the Board elect to apply liberal consideration to his petition, 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?

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The applicant contends he had undiagnosed bipolar II disorder that he believed was the underlying condition of his apathy and defective attitude causing his discharge.

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

There is no evidence the applicant had displayed or experienced symptoms of bipolar II disorder during service. He was never given this diagnosis during service and was not formally diagnosed with bipolar II disorder by his VA psychiatrist until Sep 08, 28 years post discharge. He was discharged for having an unsuiting mental health condition characterized by apathy and defective attitude, and traits of this condition were supported by his multiple disciplinary infractions for poor attitude and behaviors in his military records. He was also given a diagnosis of alcohol abuse and received treatment for this condition during service. There was no evidence he experienced any anxiety, depression, mood fluctuations during service that were observed several years post service.

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

Since there is no evidence he had bipolar II disorder or similar conditions during service, his condition does not excuse or mitigate his discharge. He was appropriately discharged for having an unsuiting mental health condition that was also observed and detected by his post service providers.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence he had bipolar II disorder or similar conditions that would excuse or mitigate his discharge, his 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 16 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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. Finally, the Board is satisfied that the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.

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-2021-01027 in Executive Session on 25 May 22:


-  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 19 Dec 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 29 Mar 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Nov 21.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Feb 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

3/16/2023


Board Operations Manager, AFBCMR
Signed by: USAF