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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01414

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The narrative reason for separation on his DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to reflect a mental health condition instead of "Hardship Reasons."

APPLICANT'S CONTENTIONS

His narrative reason for separation should have been for a mental health condition not a hardship. He was referred to mental health while in service and based on statements from his former superiors, it is evident "Hardship" is not accurate.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 18 May 82, the applicant requested to be separated under AFR, 39-10, *Administrative Separation of Airman*, Chapter 3, Section E, Paragraph 3-29, for hardship. The specific reasons for his request were his father was an alcoholic, disabled, financially irresponsible and mentally unstable. He was also concerned for the safety of his family members.

On 26 May 82, the discharge authority approved the applicant's request under the provisions of AFR 39-10, *Administrative Separation of Airman*, Chapter 3, Section E, paragraph 3-29.

On 28 May 82, the applicant received an honorable discharge. His narrative reason for separation is "Hardship Reasons." He was credited with four months and one day of total active service.

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

POST-SERVICE INFORMATION

On 7 Apr 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 (Exhibit C).

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

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. This guidance is not applicable to cases involving pre-existing conditions which are determined not to have been incurred or aggravated while in military service.

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 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 7 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor has reviewed all available records and finds insufficient evidence to support the applicant's request for a change to his narrative reason based on his mental health condition. There was a treatment note written by his medical provider reporting he had complaints of epigastric pain, weakness, and flushed which were episodic and short-lived. There were no follow-up visits or continuous treatment needed or required for this condition. There was no evidence his epigastric pain was later identified as anxiety or any other mental health conditions. The applicant never received a mental disorder diagnosis or mental health treatment during military service. Additionally, he was never placed on a duty limiting conditions profile for his mental health condition, never deemed not worldwide qualified due to his mental health condition, and he did not have any mental health conditions that were potentially unfitting for continued military service that would meet criteria for a referral to the Medical Evaluation Board for a medical discharge. The applicant's military records indicated he had a stressful home situation, which had existed prior to his military service, causing him to have sleep problems and poor concentration that affected his ability to function in the military. The applicant was diagnosed with persistent depressive disorder with intermittent depressive episodes and anxious distress decades post discharge by the Department of Veterans Affairs (DVA). The DVA Decision Rating letter submitted by the applicant reported his condition was related to his early childhood trauma exposure and that the dysfunction caused him to become somewhat non-functional and incapable of continuing in the Air Force. This information indicated his mental health condition existed prior to service (EPTS) and there was no evidence his military service permanently aggravated his condition. There was no evidence the applicant met diagnostic criteria for the diagnosed and service-connected condition by the DVA during service. His DVA treatment records also revealed his post service stressors also contributed to the development of this condition and did not meet diagnostic criteria for persistent depressive disorder until decades post discharge. The applicant had requested and was approved for discharge due to hardship pertaining to his family problems, which were corroborated by his various individuals at the snapshot in time of service. Thus, his current narrative reason for discharge of "hardship reasons" is appropriate and consistent based on his records. As a result, there is no error or injustice with his discharge.

Liberal consideration is not required to be applied to the applicant's petition due to his mental health condition was found to be EPTS with no evidence of service aggravation. Should the Board elect to apply liberal consideration to the applicant's request, the following are responses based on information presented in the records to the four questions in the policy:

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

The applicant contends the actual reason for his discharge was persistent depressive disorder with intermittent depressive episodes and anxious distress due to being granted service connection by the VA. He claimed he was misdiagnosed with upper gastric disorder for reported symptoms of chest pains that was probably a mental health condition.

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

There is no evidence the applicant was diagnosed with persistent depressive disorder or any other mental health conditions during service. He was diagnosed with this condition several decades post discharge by the VA and no evidence it was caused by his military duties or experience. There

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is evidence the applicant sought medical treatment during service for epigastric pain but no evidence this condition was a symptom of a mental health condition.

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

There is no evidence the applicant had any unfitting mental health conditions to include persistent depressive disorder during service for a medical discharge. His mental health condition was considered to be EPTS with no service aggravation, which was corroborated by the VA. His mental health condition does not excuse or mitigate his discharge for hardship.

4. Does the condition or experience outweigh the discharge?

There is no error or injustice identified with the applicant's discharge for hardship and no evidence he should have received a medical discharge. His mental health condition 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 and recommendation 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-2021-01414 in Executive Session on 25 May 22:

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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 8 Oct 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 7 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 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

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Board Operations Manager, AFBCMR
Signed by: USAF