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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01588

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

Before his discharge, he suffered injuries during an international terrorist attack of the La Belle discotheque and received a Purple Heart. After the bombing he developed discipline and behavior problems that he now knows was caused by his posttraumatic stress disorder (PTSD) due to the bombing. His PTSD was later diagnosed and service-connected by the Department of Veterans Affairs (DVA) with 70 percent disability.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 May 86, according to Special Order **Work-Product** the applicant was awarded the Purple Heart for wounds incurred as a direct result of an act of hostile force on 5 Apr 86.

On 23 Feb 87, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Separation upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency, and Hardship*. The specific reasons for the action were:

- a. On 17 Jun 86, he reported late for work. As a result, he was counseled by his supervisor.
- b. On 15 Aug 86, he reported late for work. As a result, he received a Letter of Admonishment (LOA).
- c. On 22 Aug 86, he was disrespectful in language toward a noncommissioned officer (NCO). As a result, he received nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ), a suspended reduction to airman first class (E-3) until 21 Feb 87 and forfeiture of \$192.00. His appeal was denied by the base commander.

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d. On 2 Sep 86, he took an unauthorized extended lunch break and was late for a scheduled briefing. As a result, he was counseled by his supervisor.

e. On 22 Sep 86, his duty performance was continuously substandard. As a result, he was counseled by the Chief of Military Personnel.

f. On 24 Dec 86, he was disrespectful in language toward an NCO. As a result, he received nonjudicial punishment under Article 15, UCMJ, his suspended reduction punishment was vacated, and he was reduced further in grade to airman (E-2). His appeal was denied by the base commander.

On 10 Mar 87, the applicant provided a rebuttal to the discharge action and indicated the bombing attack in 1986 caused major psychological and emotional problems.

On an unknown date, the Staff Judge Advocate found the discharge action legally sufficient.

On an unknown date, the discharge authority directed the applicant be discharged for misconduct – pattern of minor disciplinary infractions, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 30 Mar 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 3 years, 10 months, and 26 days 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 13 Oct 21, the Board sent the applicant a request for post-service information for consideration of his request under fundamental fairness, 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?

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 13 Oct 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor extensively reviewed the applicant's available records and finds sufficient evidence to support his request for an upgrade of his discharge to honorable based on liberal consideration. Should the Board concur with the finding, it is also recommended his narrative reason for separation be changed to "Secretarial Authority" to be consistent with an honorable discharge.

All of the applicant's documented misconduct and poor performance had occurred after the bombing incident, which would substantiate his past report and current contention. Almost all of his misconduct or reason for discharge could be attributed to his condition of PTSD caused by his traumatic experience. He was late to work multiple times, had disrespected an NCO twice, and was counseled on his continuous substandard duty performance. Symptoms of PTSD may include but are not limited to having sleep difficulties, alterations of mood, anger and irritability, and poor

concentration and memory to name a few. There was evidence from his physical separation he endorsed having frequent sleep difficulties, which could explain and cause his failures to report to work due to oversleeping as explained. He also reported forgetting about his scheduled briefing and supposedly had attitude or irritability problems directed at his NCO. All of these experiences and variables are consistent to symptoms of PTSD, which he was given a confirmed diagnosis of PTSD by the DVA many years post discharge. These symptoms appeared to have caused a deterioration of his duty performance and multiple misconduct infractions in a relatively short period of time. His reaction and change of behaviors following his traumatic experience are rather common occurrences. It appeared the applicant was unaware he was suffering from PTSD during service as it may take time for symptoms to become clear or meet diagnostic criteria, but there was ample evidence in his records demonstrating he had experienced PTSD symptoms as discussed following his traumatic experience and his mental health condition had a direct impact to his misconduct and discharge.

The following are answers to the four questions from the Kurta memorandum/liberal consideration 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 he was injured from a terrorist attack at the La Belle discotheque in 1986 and developed PTSD from this traumatic experience causing his misconduct and discharge.

2. Did the condition exist or experience occur during military service? There is evidence the applicant was awarded a Purple Heart for wounds as a direct result of hostile force on 5 Apr 86. He reported in his appeal to his involuntary discharge action he had developed psychological and emotional problems following this traumatic event and reported having sleep difficulties during his separation physical examination during military service. His service treatment records were not available for review, but there was evidence he experienced PTSD symptoms following his traumatic experience. He received a confirmed PTSD diagnosis based on this experience from the DVA several years post discharge.

3. Does the condition or experience excuse or mitigate the discharge? There is evidence the applicant's mental health condition had a direct impact to his misconduct and discharge due to noticeable changes to his behaviors following his traumatic experience and symptoms expressed that were consistent to PTSD causing his behaviors. As such, his mental health condition and experience would excuse and mitigate his discharge.

4. Does the condition or experience outweigh the discharge? Since his mental health condition resulting from his traumatic experience was found to have caused, excused, and mitigated his discharge, his condition would also outweigh his 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 23 May 22 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

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 the victim of an error or injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on liberal consideration. In particular, the Board agrees with the AFRBA Psychological Advisor and finds there is sufficient evidence the applicant's PTSD incurred by the bombing attack excuses and mitigates the misconduct that led to his discharge. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 30 Mar 87, he was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-01588 in Executive Session on 27 Jul 22:

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Panel Chair
s, Panel Member
Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 9 Feb 21.
- 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 13 Oct 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 31 Mar 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 May 22.

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.

5/12/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

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