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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-2021-01613

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

She witnessed her father being murdered when she was six years old and believes her mother or her uncle murdered him. She joined the military to get away from her abusive mother. She was stationed in the same state where her family members resided and the Air Force allowed her mother on base to visit when she did not want her to. She was afraid for her safety. She is trying to get a lower insurance rate with the *Work-Product* but cannot unless her DD Form 214, *Certificate of Release from Discharge or Active Duty*, is changed to reflect honorable. She does not need educational assistance as she has a master's degree in Law and is pursuing her second master's in Criminal Justice.

In support of her request for clemency, the applicant provides copies of numerous post service certificates of achievement, graduation certificate, degrees, dean's List/honor roll certificates and various others documents associated with her request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 9 Apr 87, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airman*, paragraph 5-47b for conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. Article 15 for violation of Article 86, Absence without Leave, UCMJ, *Uniform Code of Military Justice*, dated 11 Mar 87.
- b. Article 15 for violation of Article 86, UCMJ, dated 6 Apr 87.
- c. Article 15 for violation of Article 86, UCMJ, dated 8 Apr 87.

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

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On 3 Mar 87, following a mental health evaluation, requested by the applicant's commander, a clinical psychologist found no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels.

On 13 Apr 87, the staff judge advocate concurred with the commander's recommendation that the applicant should be separated with a general discharge, without probation and rehabilitation.

In an undated letter, the discharge authority approved the discharge recommendation under the provision of AFR 39-10, Para 5-47b, for Misconduct-Pattern of Conduct Prejudicial to Good Order and Discipline, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 22 Apr 87, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct-Pattern of Conduct Prejudicial to Good Order and Discipline." She was credited with 7 months, and 22 days of total active service.

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

POST-SERVICE INFORMATION

On 21 Jun 21, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 16 Jul 21 and provided an FBI report. According to the report, the applicant was arrested on 6 Oct 94 for Grand Theft Property.

The applicant's complete response is at Exhibit D.

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.

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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?

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 21 Jun 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 completed a review of all available records and finds insufficient evidence to support the applicant's request from a mental health perspective. A review of her records found she was declared absent without official leave (AWOL), twice and did not report to duty causing her to receive three Article 15s during her very brief time in service of seven months. These are very serious behavioral and misconduct issues in a short period of time. The applicant contends she was fearful for her safety from her mother's visit to base where she was stationed but did not clearly explain how this fear caused her behaviors, misconduct, and eventual discharge. There were no records of her making any complaints or reports to her leadership, mental health evaluator, or medical providers about any safety concerns or fear she had pertaining to her mother. When the applicant was AWOL the first time, her first sergeant had spoken to her mother and her mother had relayed that the applicant appeared to be very depressed

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and made suicidal remarks about being forced back to the military necessitating a command directed evaluation (CDE). The applicant later informed her commander she had relationship issues with her mother for some time, had not lived with her mother for three years, and had enlisted into Air Force albeit impulsively, after engaging in a fight with her mother. She admitted to being in the Air Force for the wrong reasons. The exact reason for this first AWOL was not documented, but there were also no records reporting she was AWOL because of her problems with her mother or wanting to escape from her mother for safety reasons. The information retrieved from her mother and the applicant appeared to suggest she did not want to be in the military or she was not a good fit for the military. This impression was reflected during her CDE as well in which she had expressed wanting to get discharged from the Air Force. The reason for her second AWOL was also not reported in her records. Her explanation for her third Article 15 for failing to report to duty had no nexus to her problems with her mother or safety concerns. It was reported her sister did not think the road was safe for her to drive as the reason she did not report to work. Finally, her reason for being 5 ½ hours late to work was reportedly due to her being in out of town again talking to her aunt about her problems. Once she returned to work and disclosed to her supervisor of her sleep issues and headaches, her supervisor helped her by scheduling an appointment with her medical provider and chaplain to provide her the help she needed. Again, there were no records at the snapshot in time of service to substantiate the reasons for her tardiness and absence from duty were caused by her fear of her mother as she implied.

The applicant contends she joined the military to get away from her mother, which indicated her relationship and family problems had occurred prior to her service or existed prior to service (EPTS). Her military records also corroborated her condition and issues were EPTS as evidenced by her CDE finding there was “*evidence of long-standing personality difficulties*” that had interfered with her military duties, and her stress related headaches began in 1980, several years before her entry into the Air Force. Her trauma of witnessing her father’s death at the age of six causing her to have nightmares during service was also EPTS. There was no evidence her military duties caused any of her stressors and difficulties experienced during service, and no evidence her EPTS condition and issues were aggravated by her military service causing her behavioral and misconduct issues. Her pre-existing condition and issues influencing her behaviors made her incompatible with military service, and these pre-existing issues may explain and cause her behaviors but do not excuse them. This is especially in light of the serious nature of her misconduct that could not be overlooked. Despite having some personal difficulties, the applicant was not found to have any serious or severe mental health issues that may impact her functioning. Moreover, she was found to have no intellectual or cognitive deficits that may impair judgment and decision making skills per her CDE results. Thus, her documented misconduct and resulting character of service appeared to be appropriate, and the psychological advisor finds no error or injustice with her 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.

The complete advisory opinion is at Exhibit E.

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 F), 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, giving the applicant's problems were found to be EPTS and not aggravated by service the Board is satisfied that the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.
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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-01613 in Executive Session on 27 Apr 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 23 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 21 Jun 21.
- Exhibit D: FBI Report, dated 16 Jul 21.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Jan 22.
- Exhibit F: 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

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF