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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01693

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His uncharacterized entry level separation (ELS) be upgraded to honorable or general (under honorable conditions).

APPLICANT'S CONTENTIONS

His discharge should not be uncharacterized since his behavior before, during and after his military service was honorable. He would like to access certain benefits associated with an honorable discharge.

In support of his request for a discharge upgrade, the applicant provides a personal statement, resume, and a Negative Certificate of Penal Record from the Police of Puerto Rico.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 31 May 02, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates he received an uncharacterized ELS. His narrative reason for separation is "Personality Disorder" and he was credited with three months and five days of total active service.

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

POST-SERVICE INFORMATION

On 27 Jun 21, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he 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 30 Sep 21 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

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.

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 paragraphs 6 and 7 of the Wilkie memorandum.

On 23 Jan 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

AFI 36-3208, *Administrative Separation of Airmen*, dated 10 Mar 00, describes the authorized service characterizations that were applicable at the time of the applicant's separation.

Honorable. The quality of the airman's service generally has met Department of the 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.

General (Under Honorable Conditions). 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 member's military record.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge. However, it is recommended the Board change his narrative reason for separation from "Personality Disorder" to "Condition Not A Disability" on his DD Form 214 for privacy reasons. The applicant did not address his reason for discharge or his mental health condition during service. He also did not submit any evidence or records to demonstrate there was any error or injustice with his diagnosis or reason for discharge.

The burden of proof is placed on the applicant to submit the necessary documents to support his request and to demonstrate there was an error or injustice with his discharge.

Liberal consideration is applied to the applicant's request. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

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

The applicant contended his discharge should not be uncharacterized because his behavior, not only during his time in the military, but before, during, and after service had been honorable. He made no mental health contentions and did not address his reason for discharge.

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

The applicant was discharged from service for having an unsuiting personality disorder. The specific personality disorder was not detailed in the available records.

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

The applicant's unsuiting personality disorder was the cause and reason for his ELS. There was no error identified with his personality disorder diagnosis and ELS. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his discharge.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinion to the applicant on 23 Jan 23 for comment (Exhibit H) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.

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. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, due to possible adverse negative consequences of the applicant's narrative reason for separation, the Board recognizes the potential stigma of "Personality Disorder" listed on his DD Form 214 which is sufficient to warrant a change to his records. Therefore, the Board recommends correcting the applicant's records as indicated below. However, for the remainder of the applicant's request, the evidence presented did not

demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service and the applicant only served three months and five days of active service, therefore, the type of separation and character of service are correct as indicated on his DD Form 214.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 31 May 2002, he was discharged with a separation code and corresponding narrative reason for separation of JFV (Condition Not A Disability).

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-01693 in Executive Session on 27 Sep 23:

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Panel Chair

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, Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Apr 21.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 27 Jun 21.

Exhibit D: FBI Report, dated, 30 Sep 21.

Exhibit E: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.

Exhibit F: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 23 Jan 23.

Exhibit G: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Jan 23.

Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Jan 23.

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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.

12/5/2024

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Board Operations Manager, AFBCMR

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