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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-2021-01878

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) by the Department of Veteran Affairs (DVA) on 5 Oct 16. He has always had a hard time concentrating on studying and testing and feels it's the reason he failed his end of course tests. He has since learned different methods to help him overcome and do better. He was not aware a process existed to upgrade his discharge until recently.

In support of his request, the applicant provides medical documentation.

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 15 May 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were failure to progress in on-the-job-training (OJT) and financial responsibility.

On 17 May 91, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 17 May 91, the discharge authority directed the applicant be discharged for Failure to Progress in OJT and Irresponsibility in the Management of Personal Finances, with a General Service characterization. Probation and rehabilitation was considered, but not offered.

On 24 May 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsatisfactory Performance" and he was credited with one year, eight months, and five days of active service for the period.

On 20 Feb 93, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

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On 19 May 94, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 27 Jul 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 20 Aug 21, and provided several Standard Form (SF) 50s, *Notification of Personnel Actions*, that show proof of employment in which background checks are part of the hiring process. The applicant did not provide a personal statement, character statements, certificates, commendations, letters from his employers, or evidence of community service.

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

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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 19 Jul 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

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.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a discharge upgrade to Honorable. The applicant contends he was diagnosed with ADHD by the DVA and reported he always had a hard time concentrating on studying and testing and felt this condition was the reason he failed his end of course testing. There was no evidence the applicant was diagnosed with ADHD during service, but it is possible he experienced symptoms of this condition as ADHD symptoms are typically present as early as the age of 12, according to the current Diagnostic Statistical Manual of Mental Disorder, 5th Edition. Although it is possible his condition of ADHD may explain his test failures, this condition does not excuse or mitigate his behaviors. His military records indicated after his first end of course exam failure, he was given

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two hours of supervised study each duty day for over three weeks to prepare for his exam, but he was not amenable to this intervention and subsequently failed his second end of course exam. His leadership provided him remedial services to help pass his exam, and this approach is consistent to accommodations provided by other academic or employment institutions to individuals with ADHD. ADHD is considered to be a disqualifying and unsuited condition for military service, making his condition incompatible with the military environment.

The applicant's CDC test failures were not the only reason he was discharged from service. He demonstrated having repeated financial irresponsibility issues cumulating to delinquency of debt in the amount of more than \$1,300. His leadership helped him establish a financial payment plan with his creditors, which he agreed to. He was unwilling to comply with the plan causing him to be delinquent again on his payments resulting with an LOR. The applicant did not explain or address any of his financial problems for this application. The applicant received a General (Under Honorable Conditions) discharge for his unsatisfactory performance, and his discharge characterization was determined by discretion of his commander given the totality of his service record. The Psychological Advisor finds no error or injustice with his discharge especially considering his leadership continuously provided assistance to him to ameliorate his problems and he was unreceptive to those efforts.

The Board may choose to apply liberal consideration to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in 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?
The applicant contends his difficulties with concentrating and studying for his exam resulting in his test failures were caused by ADHD, a condition that was diagnosed decades post service by the DVA.
2. Did the condition exist or experience occur during military service?
There is no evidence he was diagnosed with ADHD during military service. It is however, possible he may have experienced symptoms of ADHD during service as these symptoms are typically detected as early as the age of 12.
3. Does the condition or experience excuse or mitigate the discharge?
Although the applicant's ADHD diagnosed decades post service may have explained his difficulties with concentrating, studying, and passing his exam, this condition does not excuse or mitigate his discharge. In addition to his exam failures, the applicant was also discharged for having repeated financial irresponsibility and issues, and he did not address these issues. There was no evidence his condition of ADHD caused his repeated financial problems, and the applicant was given assistance and opportunities by his leadership in which he was unresponsive to their efforts. Therefore, his condition and/or experience does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since there is no evidence his mental health condition and/or experience may excuse or mitigate his discharge, they also do not outweigh his discharge.

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 14 Jul 22 for comment (Exhibit F), and the applicant replied on 15 Jul 22. In his response, the applicant contends his DD Form

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214 states nothing about financial irresponsibility; however financial irregularities are linked to ADHD. In further support of his request, he provides the Diagnostic Statistical Manual of Mental Disorder, 5th Edition and several reference articles on financial irregularities linked with ADHD.

The applicant’s complete response is at Exhibit G.

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. Liberal consideration was applied to the applicant’s request due to the contention of a mental health condition; however, even though it is possible his condition of ADHD may explain his test failures, it does not excuse or mitigate his behaviors and misconduct resulting with his discharge and does not excuse, mitigate, or outweigh his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant’s records. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his/her current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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-2021-01878 in Executive Session on 8 Aug 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 9 Dec 20 and 20 Aug 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.

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

Exhibit D: Applicant's Response, w/atchs, dated 20 Aug 21.

Exhibit E: Advisory Opinion, AFBCMR Psychological Advisor, dated 19 Jan 22.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Jul 22.

Exhibit G: Applicant's Response, w/atchs, dated 15 Jul 22.

Exhibit H: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 19 Jul 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.

5/12/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

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