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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01888

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was dealing with physical and mental issues that occurred while in-service. He was first told he would be discharged for failing a block exam, then told it was for behavior reasons. His discharge was exaggerated due to military cutbacks/budget. He was treated suspiciously due to his background and religious beliefs, and he was watched and followed everywhere, causing his depression and anxiety. The injustice should be corrected due to current issues the armed forces are dealing with regarding race and other issues. He loves his country and became a citizen while serving. He was not treated fairly, and a medical discharge would be more fitting in his situation.

In support of his request, the applicant provides post-service medical records.

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 2 Aug 13, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On or about 7 Mar 13, he failed to report to his appointed place of duty at the prescribed time. For this misconduct, he received an LOC.
- b. On or about 22 May 13, he failed his monthly room inspection. For this misconduct, he received a letter of counseling (LOC).
- c. On or about 20 May 13, he committed multiple disciplinary infractions. He failed to refrain from talking during a Progress Check. He also failed to shave prior to reporting to duty and provided an outdated shaving waiver to his instructor. Finally, he was found sleeping in the classroom. For this misconduct, he received an LOR.

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On or about 31 May 13, he failed to report to his appointed place of duty at the prescribed time. For this misconduct, he received a letter of reprimand (LOR).

On 16 Aug 13, the Staff Judge Advocate found the discharge action legally sufficient.

On 28 Aug 13, the discharge authority directed the applicant be discharged for a pattern of minor disciplinary infractions, with an under honorable conditions (general) service characterization. Probation and rehabilitation was considered, but not offered.

On 29 Aug 13, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 8 months and 19 days of total active service.

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

POST-SERVICE INFORMATION

On 25 Jun 21, 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.

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?

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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 25 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.

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 AFBCMR Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for a medical discharge. The applicant made many claims he was suffering with anxiety and depression throughout his time in service. In accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation* receiving a mental health diagnosis does not mandate a medical evaluation board (MEB) and does not mandate a medical retirement. There is no evidence he established mental health care until the applicant presented to an off-base facility for inpatient psychiatric treatment after failing his block

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exam. Upon discharge from the inpatient facility the applicant did receive outpatient mental health care on base. His course of treatment at the mental health clinic was routine; when he came to the mental health clinic for his post-hospitalization initial visit, he was not world-wide qualified due to his pending administrative separation, as noted by the mental health provider. However, the provider also stated “he appears psychologically fit for full duty but would not be deployable until medications are stable for 90 days. It is anticipated he will make a full remission of his symptoms.” The applicant’s initial diagnosis was Major Depression, single episode, moderate and the same provider updated the applicant’s diagnosis on his final visit to Major Depression, single episode in remission. The applicant reported to the mental health provider he was doing well, and any reported symptoms were manageable. There is no evidence the applicant’s mental health condition(s) had progressed to the level of unfitting during his time in service. There is no evidence a MEB (for a mental health condition) was initiated or was being considered for the applicant prior to his discharge. For the applicant’s awareness, the military’s Disability Evaluation System, can by law under Title 10, United States Code (U.S.C), only offer compensation for those service incurred diseases or injuries which specifically render a member unfit for continued active service and were the cause for career termination; and then only to the degree of impairment present at the “snapshot in time” of separation from service and not based on post-service progression of disease or injury. In contrast, the Department of Veteran’s Affairs (DVA), operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus to military service, without regard to its impact on a member’s fitness to serve, the narrative reason for release for service, or the length of time that has transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the time of separation, there is no evidence the applicant’s mental health conditions had progressed to the level of unfitting. There is no evidence a MEB (for a mental health condition) was initiated or was being considered for the applicant prior to his discharge. This Psychological Advisor acknowledges the significant decompensation in the applicant’s mental health and psychosocial status as documented in the applicant’s post-discharge DVA treatment notes. However, at the “snapshot in time” of the applicant’s service, there is no evidence to suggest his mental health had decompensated to an unfitting mental health condition. Based on the available records, it seems more likely than not the applicant’s condition developed post-service.

The following responses are based on information provided in the recorded to the four pertinent questions in the policy:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends the mental conditions produced or substantially contributed to the minor infractions that led to his administrative separation.
2. Did the condition exist or experience occur during military service?
There is evidence the applicant received mental health treatment in service; however, there is no evidence the applicant’s condition rose to the level of an unfitting mental health condition during his time in service.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant was recommended for discharge due to misconduct. There is no evidence the applicant had any unfitting mental health conditions during his time in service and therefore does not excuse or mitigate the discharge.
4. Does the condition or experience outweigh the discharge?
The applicant was discharged due to misconduct. There were no errors identified with his discharge processing and thus, does not outweigh the applicant’s original discharge.

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The complete advisory opinion is at Exhibit D.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor finds insufficient evidence to support the applicant's requests for the desired changes to his records. In light of the potential absence of medical treatment records, there was no documentation the applicant had any potentially unfitting physical condition that would be referred to a MEB. He was conservatively treated for the physical listings, and none were found to be at a severity to interfere with his ability to reasonably perform his military duties in accordance to his rank, grade, office or rating. For awareness sake, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinions to the applicant on 29 Aug 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Therefore, the Board concurs with the rationale and/or recommendation of the AFRBA Psychological Advisor and AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. 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.
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 the 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-2021-01888 in Executive Session on 23 Feb 22 and 22 Mar 23:

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 3 Mar 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 25 Jun 21.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 11 Aug 21.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 28 Feb 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 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.

8/28/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF