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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01978

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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

He was discharged due to his misconduct. However, his misconduct was a direct result of mental health issues he had during service. He was receiving treatment for his mental health issues, and he was not getting rest and was always late for formation. The medication left him feeling lethargic and unable to focus and he tried to explain his situation to his supervisors but to no avail. He now has service connection disability identified as Major Depressive Disorder (MDD) (also claimed as attention-deficit/hyperactivity disorder (ADHD), depression, and insomnia) at 50 percent by the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 3 Mar 95, the applicant's commander recommended the applicant be discharged from the Air Force for misconduct, under the provisions of AFDPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. 21 Jun 93, Failure to Go, Letter of Reprimand (LOR)
- b. 18 Aug 93, Failure to Go, Article 15
- c. 10 Sep 93, Larceny and wrongful appropriation of government property, LOR/ Unfavorable Information File (UIF)
- d. 27 Sep 94, Failure to Go, LOR/UIF/Control Roster
- e. 19 Jan 95, Failure to Go, Article 15

On 20 Mar 95, the Acting Staff Judge Advocate found the discharge action legally sufficient.

On 22 Mar 95, the discharge authority directed the applicant be discharged for Misconduct, with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

AFBCMR Docket Number BC-2021-01978

Work-Product

Work-Product

On 22 Mar 95, DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years and 9 months of total active service.

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

POST-SERVICE INFORMATION

On 21 Oct 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?

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 20 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.

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

AFPC/DP2SSR recommends denying the application. The commander provided the Base Discharge Authority (BDA) ample documentation to support discharge and the character of service. The BDA determined that the negative aspects of the applicant's conduct clearly outweighed any positive aspects of the applicant's brief military career. Based on review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit D.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds sufficient evidence existed to corroborate the applicant's request for an upgrade of his discharge to Honorable based on liberal consideration. At the snapshot in time of service, the applicant conveyed through multiple responses to his disciplinary actions of sleep disorder/issues he had and was actively receiving mental health counseling to assist with coping with his stress and resolving his sleep issues. His separation physical reported he endorsed having sleep issues and depression or excessive worry and his medical provider

reported he had the latter issues since 1993. This would align with the time frame of his first misconduct for “failure to go.” His depression or excessive worry were reported to be secondary to his separation from the military and sleep problems and was treated with Zoloft, an anti-depressant medication. Most of the applicant’s misconduct were for “failure to go” caused by sleep issues although one of his “failure to go” infractions were attributed to not being aware of a mandatory meeting and concerns for his mother’s health. His sleep or mental health issues could not be attributed to his misconduct of having unauthorized government property in his dormitory room because he had explained the items were to be discarded and he wanted to make good use of them. Nevertheless, his more serious disciplinary actions were related to his sleep issues. The applicant was also consistent with his reports as he informed his DVA providers he had sleep issues during service causing his misconduct and discharge and reiterated the same information in this application. Thus, the Psychological Advisor finds sufficient evidence in his records to demonstrate his mental health condition, specifically sleep issues, had a direct impact to his misconduct resulting with his discharge. It is acknowledged the applicant was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and bipolar II disorder over 10 years post discharge. There was no evidence these conditions impacted his functioning during service. He may possibly experience inattentive symptoms, but there was no evidence he experienced any bipolar symptoms during service affecting his behaviors. In conclusion, liberal consideration is applied to the applicant’s petition to support his request for an upgrade of his discharge to Honorable. The following are answers to the four questions from the Kurta memorandum 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 had mental health issues identified primarily as sleep disorder/issues during service causing his misconduct and discharge.

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

There is evidence in his military records he had received mental health counseling for sleep problems and depression/excessive worry since 1993 and was prescribed Zoloft for his symptoms during military service.

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

The applicant’s mental health condition of sleep issues was found to have caused most of his documented misconduct resulting with his more serious disciplinary actions such as an Article 15. His mental health condition would excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition would excuse or mitigate his discharge, his condition would also outweigh his discharge.

Should the Board agree with this finding, a change to his narrative reason to “Secretarial Authority” is recommended to be consistent with an honorable discharge.

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 2 May 22 for comment (Exhibit F), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

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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 recommend relief based on liberal consideration. In particular, the Board agrees with the rational of the AFRBA Psychological Advisor and finds there is sufficient evidence the applicant's mental health condition of sleep issues 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 the APPLICANT be corrected to show on 22 Mar 95, 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-2021-01978 in Executive Session on 24 Aug 22:

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Panel Chair

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 15 Apr 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 20 Oct 21.
- Exhibit D: Advisory Opinion, AFPC/DP2SSR1, dated 22 Feb 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Apr 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 2 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.

9/18/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2021-01978

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