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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-2021-02122

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was 17 at the time of his enlistment. He came from a troubled background but sought a way out with limited knowledge and did the best he could to endure both the military and his individual culture. The military placed both mental and physical strains on him that were above and beyond his capabilities. A number of Post-Traumatic Stress Disorder (PTSD) incidents caused his family and service life to falter and some were due to higher ranking individuals who had personal issues with himself and others. His misconduct was petty in nature and was from not knowing and never being told differently or from facing new hardships under a power structure with a vacuum that allowed no ability to defend himself. He has become a very productive member of society and was able to move on and change his life in enormous ways since leaving the military.

In support of his request, the applicant provides a copy of his resume and his Department of Veterans Affairs (DVA) disability rating.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 18 May 90, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 39-10, *Administrative Separation of Airmen*, paragraph 5-46 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 18 Oct 88, a Letter of Reprimand (LOR) was issued for needing a haircut.
- b. On 10 Apr 89, a LOR was issued for wearing sunglasses indoors.

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- c. On 26 Sep 89, a Letter of Counseling (LOC) was issued for failing to maintain standards in the housing area.
- d. On 26 Sep 89, a LOR was issued for wearing sunglasses indoors.
- e. On 31 Oct 89, a LOC was issued for speeding.
- f. On 2 Nov 89, a LOR was issued for failure to go.
- g. On 26 Mar 90, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for a domestic violence incident. He received a reduction in grade to airman (E-2) and forfeiture of \$189.00 pay for two months, suspended until 27 Apr 90.
- h. On 29 Mar 90, a LOR was issued for not wearing a seatbelt while operating a motor vehicle.
- i. On 26 Apr 88, AF Form 3070, indicates the applicant received NJP, Article 15 for receiving stolen property. He received punishment of forfeiture of \$75.00 pay for 2 months and was remanded to correctional custody for 30 days. The portion of his punishment which called for correctional custody in excess of 15 days was remitted.

On 8 Jun 90, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 11 Jun 90, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 22 Jun 90, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Pattern of Minor Disciplinary Infractions)" and he was credited with 2 years, 8 months, and 17 days of total active service.

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

POST-SERVICE INFORMATION

On 28 Dec 21, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. On 20 Feb 22, the applicant did reply to the request for post-service information by providing an updated copy of his resume, a personal statement, and several book reviews; however, his response did not include an FBI background check or other criminal history data.

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 the supplemental guidance, paragraphs 6 and 7.

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On 28 Dec 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 for the desired changes to his record. The applicant was vague with his contentions and did not clarify his mental strains and PTSD incidents that had supposedly occurred during military service. He also did not clearly explain how his mental health condition affected his behaviors and misconduct resulting with his eventual discharge. A review of the objective military records finds no evidence a nexus had existed between his mental health condition and misconduct. The applicant had provided some personal statements to his behaviors and misconduct at the snapshot in time of service but none of his statements discussed having any mental health issues or emotional distress that may cause his behaviors. His explanations for his behaviors also do not suggest they were caused by a mental health condition. He had marital problems but it appeared his marital problems were derived from his personality traits and learned behaviors from childhood per his Family Advocacy Program (FAP) evaluation notes. He received a Command Directed Examination (CDE) to include personality testing during service and although the full evaluation report was not in his records, his service treatment records found he did not receive any mental disorder diagnosis. This information would indicate he did not have any mental health conditions or issues. There were no records or documentation he had experienced any traumatic experiences or was diagnosed with PTSD during service. He was noted to have narcissistic, immaturity and impulsive traits, but these traits never elevated to a full blown personality disorder, did not impact his overall functioning, and was never considered to be unsuited for continued military service. The applicant received mental health treatment years and decades post-service and his DVA treatment records reported he had anxiety and depression caused by his post-service stressors of relationship, occupational, and personal/existential stressors and not caused by his military service. His DVA treatment records also did not discuss how his mental health condition caused his misconduct and discharge. He was reported to currently being treated for depression, anxiety, and PTSD by his community mental health provider, but the rationale or triggering traumatic experiences for his PTSD diagnosis was not reported in his records.

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Liberal consideration is applied 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 the military placed both mental and physical strains on him that were above and beyond his capabilities and a number of PTSD incidents caused his family and service life to falter.
2. Did the condition exist or experience occur during military service?
There was no evidence the applicant was diagnosed with PTSD or any other mental disorders during service. There was also no documented or reported traumatic experiences he endured during military service. He has been treated for PTSD and has received a service-connected rating for PTSD by the DVA post-service but no rationale was provided for how he met diagnostic criteria for his condition.
3. Does the condition or experience excuse or mitigate the discharge?
There was no evidence the applicant had any mental health condition to include PTSD and/or traumatic experiences affecting his behaviors and overall functioning during service and so his condition and/or experiences do not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since his mental health condition and/or traumatic experiences do not excuse or mitigate his discharge, his condition and experience also do not outweigh his original 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 5 Jul 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health

condition; however, since there is no evidence his mental health condition or traumatic experiences he claimed led to his diagnosis of PTSD had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience 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 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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-02122 in Executive Session on 21 Sep 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 21 May 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 28 Dec 21.
- Exhibit D: Applicant's Response, w/atchs, dated 20 Feb 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Jun 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Jul 22.

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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.

5/22/2023



Board Operations Manager, AFBCMR
Signed by: USAF