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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-2021-02623

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

In May 69, he was involved in a motor vehicle accident (MVA) and suffered from a cerebral concussion. He was released from the hospital with intermittent loss of consciousness and received no follow-up treatment. Shortly after his accident with an active traumatic brain injury (TBI), he was deployed to Vietnam where his TBI had worsened, and his mental health condition developed. He believed due to the science at the time, his symptoms were categorized as a "Character and Behavior Disorder."

In support of his request, the applicant provides medical documentation and a Department of Veterans Affairs (DVA) rating decision memo.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

According to a Psychiatric Evaluation Report dated 26 Aug 70, the applicant was diagnosed with "Passive-aggressive personality, aggressive type with sociopathic features. (This is defined as a character and behavior disorder)."

On 5 Aug 70, a memo from the Senior Catholic Chaplain states the applicant is "...more trouble than he is worth to the Air Force" and "...discharge action is justifiable."

On 11 Aug 70, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFMAN) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section A. The specific reasons for the action were:

- a. On 9 Jan 70 the applicant was administered an Article 15 for being disorderly in station, and for wrongfully appropriating MACV Form 333, *Ration Card*.

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

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- b. On 9 Jun 70 the applicant was administered an Article 15 for wrongfully having in your possession a dangerous drug, secobarbital.
- c. On 12 Jun 70 the applicant was administered an Article 15 for violation of a previous Article 15.
- d. On 1 Aug 70 the applicant was diagnosed with a character and behavior disorder with a specific diagnosis, passive-aggressive personality, aggressive type with sociopathic features.

On 1 Sep 70, the discharge authority directed the applicant be discharged with a General (under honorable conditions) service characterization.

On 6 Sep 70, the applicant received a general (under honorable conditions) discharge. He was credited with 2 years and 28 days of total active service.

According to a Department of Veterans Affairs Rating Decision Memo, dated 13 Aug 12, provided by the applicant reflects he was assigned 100 percent service-connection for "Anxiety disorder not otherwise specified, major depression," effective 10 Aug 11.

POST-SERVICE INFORMATION

On 19 Jan 22, 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:

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- 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.

On 19 Jan 22, 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 AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired change to his records. A

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review of the applicant's available records corroborates he sustained a concussion/TBI from his MVA during military service. However, the issue is not whether his concussion/TBI had existed, but whether the residual effects of his concussion/TBI impacted his functioning in the military causing his discharge from service. This latter notion was not supported by his records. The applicant was evaluated following his MVA in 1969 and his neuro exam and electroencephalogram (EEG) was found to be intact and normal respectively. Due to these results, it was presumed he did not need any follow-up treatment. During his psychiatric evaluation and physical separation examination during service, he did not report having any concussion/TBI related issues such as memory or concentration problems and mood changing issues that may cause his behavioral issues and misconduct. His DVA records reported similar information. The applicant was diagnosed with a personality disorder, passive-aggressive personality, and aggressive type with sociopathic features from a psychiatric evaluation performed during service. He was discharged from service for having this unsuited personality disorder and also for receiving two Article 15s for being disorderly in station and wrongfully appropriating a ration card and for possession of a dangerous drug. There was no evidence his TBI caused him to develop personality traits or disorder or caused any behavioral changes resulting with his misconduct/Article 15 and discharge. There was also no evidence his mental health condition, i.e. anxiety, depression, PTSD, caused his two Article 15s. It is acknowledged the applicant was diagnosed with anxiety disorder NOS, MDD and PTSD post-service caused by his deployment experiences in Vietnam, but again, there was no evidence these conditions caused his misconduct. The applicant denied having any mental health issues during his separation physical and his DVA records reported he was not diagnosed with depression until 1993, 23 years post discharge and was diagnosed with PTSD in 2007, 37 years post discharge. There was no evidence to support his contention and he submitted no evidence to support his personality disorder diagnosis was made in error. A review of his DVA treatment records also found his DVA provider did not dispute his personality disorder and in fact, he was given a diagnosis of another personality disorder of dependent personality disorder from his DVA provider in 2007. This Psychological Advisor also finds there was no evidence his personality disorder diagnosis given in service was inappropriate or made in error based on the available records for review and as a result, there was no error or injustice with his discharge.

Liberal consideration is applied to the applicant's request due to his contention of a TBI and mental health condition. The following are responses based on information presented in the records to the four questions in the policy (Kurta Memorandum):

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contends he suffered from a cerebral concussion (or TBI) following a motor vehicle accident in May 1969. He believes his TBI symptoms worsen after he was deployed to Vietnam and had developed a mental health condition that was mistaken for a character and behavior disorder.
2. Did the condition exist or experience occur during military service? There is evidence the applicant sustained a cerebral concussion/TBI during military service as he was seen in the emergency room following his MVA in May 1969 according to this service treatment records. There was no evidence the applicant had any mental health conditions such as anxiety, depression, PTSD, and was never diagnosed with any anxiety or mood disorders during military service. He was diagnosed with anxiety, depression and PTSD decades post-service related to his deployment experiences in Vietnam. The applicant was diagnosed with passive-aggressive personality disorder during military service from a psychiatric evaluation.
3. Does the condition or experience excuse or mitigate the discharge? There is no evidence the applicant's TBI or mental health condition had a direct impact to his behaviors/misconduct and subsequent discharge. He received a neurology examination and the results of his neuro exam and EEG were intact and normal. There were no reported issues with memory, concentration, or mood changes he may have experienced following his MVA that may

cause his misconduct, and he denied having any mental health issues during his separation physical. His passive-aggressive personality disorder was found to be appropriate and valid, and no error was found with this diagnosis. Therefore, his mental health condition and TBI from his MVA experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition and TBI from his MVA experience do not excuse or mitigate his discharge, his mental health condition and experience also do not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Jul 22 for comment (Exhibit E) 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 TBI and mental health conditions; however, since there is no evidence his mental health condition 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 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-2021-02623 in Executive Session on 26 Oct 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 17 Jun 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 19 Jan 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Jun 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Jul 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.

6/28/2023
Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF