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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02630

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

After the death of his best friend, his Post-Traumatic Stress Disorder (PTSD/depression led him to use marijuana. Since his discharge, he has worked for several Federal government agencies and has a stellar career with the government totaling over 15 years. He realizes he made a mistake and states several states have now legalized the drug he used.

In support of his request for discharge upgrade, he provided a character reference statement, dated 20 Apr 16, and an excerpt of another members disability ratings decision with his application.

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 22 May 03, 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 1 Feb 03 and 26 Feb 03, he wrongfully used marijuana. For this misconduct, he received an Article 15 and was reduced to the grade of airman first class (E-3), with a new date of rank of 25 Apr 03.

On 10 Jun 03, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Jun 03, the discharge authority directed the applicant be discharged for drug abuse, with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

On 30 Jun 03, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 4 years, 11 months, and 2 days of total active service.

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On 23 Jun 04, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 11 Aug 04, 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 25 Feb 22, 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. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). Although the applicant did provide post-service information with his application, he did not respond to the request for a FBI background check, nor did he provide proof of employment in which background checks are part of the hiring process.

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

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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 Feb 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds the applicant's personal testimony compelling and sufficient to support his request for an upgrade of his discharge based on liberal consideration. A review of the applicant's available records and contentions find there were some inconsistent reporting from the applicant. His post-service Department of Veterans Affairs (DVA) mental health treatment records were mostly focused on his post-service stressors but nevertheless, did report on his military history. He reported in March 2016 he began to experience trauma symptoms immediately after military service and so his condition of PTSD or related symptoms for which had been service-connected by the DVA, could not have caused his misconduct of using marijuana to cope because his drug use had predated the onset of his trauma symptoms. He reported to the DVA in July 2016 he met with a mental health provider in 1999 and 2000 when he returned from Operation SOUTHERN WATCH; however, the AFDRB found there was no evidence he sought help from any base agencies such as the chaplain, life skills clinic, family support, or chain of command for his purported depression during service. He never mentioned to the DVA he became depressed caused by his best friend's death. His character witness statement did not discuss his best friend's death but did attest to witnessing the applicant render emergency aid and responding to emergency situations affecting him and causing concerns from others for his well-being and safety during his time in service. Despite these numerous inconsistencies, a consistent and significant report from the applicant was he used marijuana to cope with his depression from his best friend's death. He made this contention to the AFDRB in 2004, one year post-discharge and made the same contention for this petition to the AFBCMR 18 years later. The Psychological Advisor finds this contention compelling because it was first made near his discharge date, and it was again, consistent between his past and present petitions. The AFDRB acknowledged that it was understandable that someone experiencing personal problems has additional stress but did not find his explanation sufficient to mitigate his discharge warranting an upgrade. Since the AFDRB's decision in 2004, new policies specifically the liberal consideration (presently Kurta memorandum) policy have been enacted for cases similar

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to the applicant's experience. The applicant's testimony was found to be sufficient to explain his behaviors because it is plausible and comprehensible that he may have used marijuana to cope with his reported depression. Many people with depression use substances to cope and is not an uncommon occurrence. Additionally, this was the applicant's only misconduct listed as the reason for his discharge and there were no records that he continued to use marijuana post-service.

Liberal consideration is applied to the applicant's petition due to the applicant's 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 death of his best friend 18 years ago caused him to feel depressed and led him to use marijuana to cope. He was discharged from service for marijuana use.
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records are not available for review and so there are no objective records to substantiate his depression had existed or occurred during military service. He contended to the AFDRB in 2004, one-year post-discharge, he was depressed during service causing his marijuana use, but the AFDRB countered his assertion that there was no evidence he received any treatment for depression or reported he was depressed during service. He reported to the DVA in 2016 he had sought mental health treatment in 1999 and 2000 for trauma, depressed mood, and suicidal ideation and had received service-connection for PTSD also claimed as depression and anxiety around the same time. Again, there are no objective records to substantiate his reports. He reports for this petition his depression had existed and was experienced during service or 18 years ago.
3. Does the condition or experience excuse or mitigate the discharge?
Although there is inconsistent reporting from the applicant, the applicant was consistent with his contention for his petition to the AFDRB 18 years ago and for this current petition to the AFBCMR. His contention of using marijuana to cope with his depression is compelling and plausible as many people in similar circumstances behave in a similar fashion. He also had no other misconduct, and this was his only misconduct listed as the reason for discharge. There is no evidence he continued to use or abuse marijuana post-service indicating his use was probably experimental as he alleged to the AFDRB. Due to these reasons, his mental health condition of depression excuses and mitigates his discharge.
4. Does the condition or experience outweigh the discharge?
Since his mental health condition excuses and mitigates his discharge, his mental health condition also would outweigh his 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 18 Aug 22 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Requests for discharge upgrades on the basis of liberal consideration are timely. 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 majority concludes the applicant has presented evidence sufficient to demonstrate an injustice. While the Board majority finds no error in the original discharge process, the Board majority recommends relief based on the application of liberal consideration. In particular, the Board majority notes there is inconsistent reporting from the applicant that he received treatment for depression or reported he was depressed during service; however, the applicant has been consistent with his contention to the AFDRB some 18 years ago and his current petition to the AFBCMR. Therefore, the Board majority agrees with the rationale of the AFRBA Psychological Advisor and finds the applicant's testimony he used marijuana to cope with depression plausible and compelling as many people in similar circumstance behave in a similar fashion and therefore, his condition would excuse or mitigate his discharge. In addition, the Board majority noted this was the applicant's only misconduct as listed on the commander's notification memorandum as the reason for discharge. As such, the Board recommends the applicant's narrative reason for separation be changed to Secretarial Authority, with corresponding separation code to be consistent with an honorable discharge. Therefore, the Board recommends correcting the applicant's records to the extent indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 30 Jun 03, he was discharged with service characterized as honorable, a separation code of "JFF," and narrative reason for separation of Secretarial Authority.

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-2021-02630 in Executive Session on 21 Dec 22:

Work-Product Panel Chair
Work-Product Panel Member
Work-Product Panel Member

A majority of the panel voted to correct the record. **Work-Product** voted against correcting the record and did not provide a minority opinion. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 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 25 Feb 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Aug 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Aug 22.

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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.

1/16/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*