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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02663

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His reentry (RE) code of "4H," which denotes "Serving suspended punishment pursuant to Article 15, UCMJ" be changed to "IM," which denotes "Eligible to reenlist, Second Term or Career Airmen not yet considered under the SRP" or another code allowing him to reenlist.

APPLICANT'S CONTENTIONS

While serving in the Air Force, he suffered with bipolar disorder which was not diagnosed until after discharge. His mental health affected his alcohol use while in service and contributed to his misconduct and he did not get the proper treatment. Over the last 19 years he has received treatment, attended Bible College and became an ordained Pastor. He would like to enlist in the Air National Guard and become a Chaplain.

In support of his request, the applicant provides copies of his 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 16 Apr 02, 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. The applicant received a letter of counseling (LOC) for failure to report to his place of duty between 31 Aug 00 and 1 Sep 00.
- b. The applicant received Nonjudicial Punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for failure to refrain from drinking alcoholic beverages while under the age of 21 and tampering with a smoke detector on or about 8 Oct 00.
- c. The applicant received NJP under Article 15, UCMJ, for failure to refrain from drinking alcoholic beverages while under the age of 21 on or about 28 Apr 01.

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

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- d. The applicant received a LOC for failure to show for his End of Course pretest on or about 2 Aug 01.
- e. The applicant received an LOC for failure to identify that a tool was missing from a toolbox that he checked in during shift change on or about 15 Dec 01.
- f. The applicant received a Letter of Reprimand for committing simple assault and wrongfully consuming alcoholic beverages while under the age of 21 on or about 23 Mar 02.

On 26 Apr 02, the Staff Judge Advocate found the discharge action legally sufficient.

On 29 Apr 02, the discharge authority directed the applicant be discharged for a Pattern of Misconduct (Conduct Prejudicial to Good Order and Discipline), with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

On 3 May 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" with an RE code of "4H." He was credited with 2 years, 4 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 15 Mar 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 medical records with his application, he did not respond to the request for 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

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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 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 15 Mar 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 finds insufficient evidence to support the applicant's request for the desired changes to his records. The applicant's contentions were found to be somewhat plausible; however, his objective military records do not support his contentions. There was no evidence the applicant experienced the onset of bipolar disorder or had bipolar symptoms to include any depressive, hypomanic or manic episodes during service. There were no records he had any other mental health conditions or experienced emotional distress as well. While coping with substances especially for bipolar disorder is not unusual, there was no evidence the applicant coped with his mental health condition to include bipolar disorder with alcohol during service. The applicant had three documented underage drinking incidents and he had submitted statements at the snapshot in time of service to explain his actions and behaviors. As discussed, he most likely experienced the onset of this condition post-service. This assessment is based on his submitted post service treatment records. Records from his first inpatient psychiatric hospitalization from 4 -7 Mar 03 reported he began to have trouble with his moods after he was discharged from service. There was no association to his time in the military. His mental health condition appeared to have decompensated rather quickly post service necessitating numerous hospitalizations. His clinical presentation and functioning post service were starkly different than his presentation and functioning during service. There were no records he had any depression, suicidal ideation, suicide attempt, and/or labile mood suggestive of bipolar disorder or symptoms during service that was evident post service. If he did experience these symptoms during service, he would need mental health treatment or at the very least, received a mental health evaluation. Despite the absence of his service treatment records, there was no indication in his post service treatment records reporting he had a mental health history during his military service. Giving the applicant the benefit of the doubt that he did develop bipolar disorder or had a mental health condition and drank to cope with his condition during service, the Psychological Advisor opines his contention was insufficient to mitigate his discharge because of the aforementioned reasons. There were also no observations or documentation from his leadership of any safety concerns, acute psychiatric symptomology or erratic behaviors displayed by the applicant. The applicant discussed having plans to attend Officer Training School (OTS) or United States Air Force Academy and even received a recommendation from his grandfather (a 4-star General), dated 9 Aug 00. It would be highly doubtful he would receive a recommendation if he had bipolar disorder or any other significant mental health conditions at the time. The Psychological Advisor commends the applicant for receiving the necessary treatment needed post service to improve his mental wellness and achieving stability; however, the records and evidence presented were found to be insufficient to support his request to change his discharge characterization and reenlistment code to allow him to reenlist. The applicant has a significant mental health history and would require a waiver for reentry. It would be very difficult and improbable for him to receive a waiver with his mental health condition and significant treatment history. After an exhaustive review of the available records, the Psychological Advisor finds no error or injustice with his discharge.

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 he suffered from bipolar disorder during service that was not diagnosed until after discharge. He proclaims he drank to cope with his mental health condition that caused his discharge.
2. Did the condition exist or experience occur during military service?

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There is no evidence the applicant's bipolar disorder had existed or was experienced during military service. There is no evidence he experienced any bipolar disorder symptoms such as hypomanic or manic episodes and depressive episodes to include having suicidal ideation or made suicide attempts during service. There is no evidence he experienced any other mental health condition or emotional distress during service. His submitted post service treatment records reported he was initially diagnosed with bipolar disorder several months post service and the hospital psychiatrist reported he began to have troubles with his mood after discharge.

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

There is no evidence the applicant's mental health condition to include bipolar disorder had a direct impact to his misconduct resulting with his discharge. There is no evidence he drank to cope with his mental health condition according to his personal statements in his objective military records. Thus, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition may excuse or mitigate his discharge, his condition also does not 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 22 Aug 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 and recommendation 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 the applicant's mental health condition to include bipolar disorder had a direct impact to his misconduct resulting with his discharge. There is no evidence he drank to cope with his mental health condition according to his personal statements in his objective military records. Thus, his mental health condition 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/her current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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-2021-02663 in Executive Session on 21 Dec 22:

Work-Product [Redacted], Panel Chair
Work-Product [Redacted], Panel Member
Work-Product [Redacted], Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Jul 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 15 Mar 22.
- Exhibit D: Advisory Opinion, AFRBBA Psychological Advisor, dated 15 Aug 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 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.

12/4/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by *Work-Product* [Redacted]