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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03028

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He is 100 percent service connected for Post-Traumatic Stress Disorder (PTSD) (chronic) and Major Depressive Disorder (MDD) (severe). He was under medical care after a suicide attempt on active duty and given what was never known in the 90's about PTSD, he feels he deserves an upgraded discharge. He is no longer homeless and spent 48 days in a Department of Veterans Affairs (DVA) hospital.

In support of his request, the applicant provides the DVA regional office address and his claim number.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-1).

On 12 Jan 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, for Minor Disciplinary Infractions. The specific reasons for the action were:

- a. Letter of Reprimand (LOR), dated 9 Dec 93, unlawfully consumed alcoholic beverages.
- b. Article 15 dated 16 Dec 93, derelict in the performance of his duties.
- c. LOR, dated 23 Dec 94, unlawfully sold his roommates personnel property
- d. LOR, dated 23 Dec 94, failed to perform a visual check before backing up a refrigeration truck, resulting in a vehicle accident.
- e. Article 15, dated 23 Dec 94, wrongfully stole food items of a value of less than \$100.00, property of the United States Air Force.

On 27 Jan 95, the Staff Judge Advocate found the discharge action legally sufficient.

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On 31 Jan 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.

On 3 Feb 95, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 3 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 Aug 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:

- 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

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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 Aug 22, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

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 finds insufficient evidence to support the applicant's request for an upgrade to Honorable. His service treatment records were not available or submitted by the applicant for review so his report that he was under medical care after a suicide attempt could not be substantiated. The applicant did report he received treatment and attended classes to better himself during service but did not provide any other clarifying information such as the condition or problems he was being treated for and when treatment occurred. It is acknowledged the applicant consistently reported to his DVA providers and compensation and pension (C&P) evaluator he was hospitalized during service, and these providers also acknowledged it was based on his report and no records were available to corroborate his report. He informed the DVA he attempted suicide by overdose after his wife decided to divorce him. The applicant mentioned he had personal problems resulting with the cancellation of his assignment orders to Germany in his personal statement, but again, the problems were not specified. It is possible he was referring to his marital problems. There was no evidence he was diagnosed with MDD or had depression during service, but this is possible since he claimed he attempted suicide during service. Regardless of the lack of information, there was no evidence his mental health condition had a direct impact to his behaviors and misconduct resulting with this discharge. The applicant's statements at the snapshot in time service finds he did not discuss he had any mental health conditions that may cause his behaviors. The applicant alluded in his petition he had PTSD during service, but there was no evidence to substantiate this notion. Contrary to his report that PTSD was not well known in the 90's, it was actually well-known at that time because PTSD had existed since 1980. His providers would be able to assess and detect PTSD symptoms if he had them. There was no evidence he had or experienced PTSD or similar conditions and symptoms during service. There were no records of any PTSD or MDD diagnosis or treatment, possibly because his service treatment was unavailable. He reported to the C&P evaluator his traumatic experience during service was being trapped in the vehicle from one of his motor vehicle accidents (MVA) for over an hour. While this may be possibly true, there was again, no evidence he developed PTSD from this incident during service and no evidence this condition affected his behaviors and misconduct leading to his eventual discharge from service. He may possibly have a delayed onset of PTSD from this incident that began post service. The applicant did not report experiencing PTSD symptoms until 4 Oct 19, 24 years post discharge, when he was evaluated by a DVA

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psychiatrist at the emergency room for his hospital inpatient psychiatric admission; his hospitalization post service was triggered by his post service stressors. He identified his PTSD symptoms at this time was from his assault experience while he was in jail in 1997 (post service) according to his records, and made no mention of his traumatic experience/MVA from service. PTSD from the DVA is currently focused on his post service trauma and not trauma from the military. Lastly, the applicant also did not clearly explain how his mental health condition caused his misconduct and discharge and did not establish a nexus between his mental health condition and reason for discharge. No additional records were submitted by the applicant to support his contention or request as well. His personal testimony was found to not be sufficient or compelling enough to support his contention and request. As a result, this Psychological Advisor finds no error or injustice with his discharge from service.

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 was service connected for PTSD (chronic) and MDD (severe) and was under medical care after a suicide attempt on active duty. He did not discuss how these conditions may excuse or mitigate his discharge.

2. Did the condition exist or experience occur during military service?
There are no records his conditions of PTSD and MDD had existed or was experienced during military service. The applicant did report in one his [sic] personal statements at the snapshot in time of service he received treatment and was taking classes to better himself but did not clarify the reason and condition for treatment. There is no objective evidence verifying he had been hospitalized for a suicide attempt during service. It is possible he may have been depressed if this experience did occur. He informed the DVA over 20 years post discharge he had overdosed after his wife told him she wanted a divorce and reported his traumatic experience was from being trapped in a vehicle for over an hour from one of his two MVAs during service. There is evidence he was involved in at least two MVAs during service and there was medical documentation he had to receive medical treatment after his first MVA in November 1994. There are no records he was trapped in the vehicle for over an hour, although this is possible. His service treatment records were unavailable for review to substantiate any of his reports. He was given diagnoses of PTSD and MDD several years post service by the DVA.

3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition to include PTSD and MDD had a direct impact to his misconduct resulting with his discharge. His condition of PTSD and MDD do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since there is no evidence his mental health condition to include PTSD and MDD may excuse or mitigate his discharge, his mental health condition also does not outweigh his discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 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, there is no evidence the applicant's mental health condition to include PTSD and MDD had a direct impact to his misconduct resulting with his discharge. His condition of PTSD and MDD do not excuse or mitigate his discharge, therefore his mental health condition also does not outweigh his discharge. Further, the applicant also did not clearly explain how his mental health condition caused his misconduct and discharge and did not establish a nexus between his mental health condition and reason for 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.
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-2021-03028 in Executive Session on 21 Dec 22:

 Panel Chair
 Panel Member
 Panel Member

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

- Exhibit A: Application, DD Form 149, dated 9 Aug 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Psychological Advisor, dated 11 Aug 22.

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Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration and Clemency Guidance), dated 15 Aug 22.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 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.

10/20/2023

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Board Operations Manager, AFBCMR

Signed by: USAF