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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03151

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable with a medical disability.

APPLICANT'S CONTENTIONS

The records show he had an undiagnosed medical condition of bipolar disorder that hampered his ability to serve in the Air Force. In 1994, after his discharge, he got into an argument with his mother and determined the best course of action was to commit suicide by hanging; however, he failed in his attempt. Subsequently, he was hospitalized and later learned that he had bipolar disorder.

In support of his request, the applicant provides a personal statement, character reference letters, records of individual counseling (RIC), letters of reprimand (LOR), performance reports, post service medical records and various other documents associated with his request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 25 Nov 92, the applicant received a mental health evaluation. A psychologist found the applicant did not have a mental or emotional disorder that would serve as the basis for a military discharge. The psychologist stated any decisions regarding his separation should be based on his overall duty performance and military bearing. Although he was distraught over the prospect of being separated, he strongly denied any suicidal thoughts or intentions.

On 7 Dec 92, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AF 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency, and Hardships*, paragraph 5-26a(1), 5-26b, and 5-26d for Unsatisfactory Duty Performance. The specific reasons for the action were between the period of 6 Feb 92 and 23 Nov 92, the applicant received multiple RICs and LORs for failing to perform duties satisfactorily, dereliction of duty, failing to follow directions, failing to comply with the Air Force dress and appearance standards, failing dormitory cleanliness standards and financial irresponsibility.

**AFBCMR Docket Number BC-2021-03151
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
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CUI//SP-MIL/SP-PRVCY

On 7 Dec 92, the applicant acknowledged receipt of the discharge recommendation and that he understood his right to consult counsel and submit statements in his own behalf.

On 14 Dec 92, the staff judge advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged for Unsatisfactory Performance, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 17 Dec 92, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsatisfactory Performance." He was credited with 1 year, 5 months, and 24 days of total active service.

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

POST-SERVICE INFORMATION

On 25 Apr 22, the Board sent the applicant a request for additional post-service information he may want the Board to consider; however, he has not replied (Exhibit D).

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense for Personnel and Readiness (USD P&R) 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?

CUI//SP-MIL/SP-PRVCY

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 25 Apr 22, the Board staff provided the applicant a copy of the guidance (Exhibit E).

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 his discharge. The Psychological Advisor finds the applicant had difficulties adjusting to the military during his relatively brief time in service as evidenced by his inability to conform to military standards. He struggled with maintaining proper dormitory, appearance and grooming, and uniform standards, made several mistakes on the job, and poor management of his financial and personal affairs. The comprehensive Mental Health Evaluation report had attributed his difficulties to his adjustment problems, immaturity, impulsivity, and other personality factors. His adjustment issues and personality traits were not found to meet diagnostic criteria for any mental disorder diagnosis. There was no evidence to support his claim of having undiagnosed bipolar disorder during service hindering his performance. His post service hospitalization records described his behaviors as erratic and explosive and had symptoms of sleep disturbances, decreased concentration and attention, increased appetite and low frustration tolerance. These behaviors and symptoms were not detected, observed, or reported during service and are different than his presentation during service. It is more likely than not he had developed bipolar disorder after service. His Department of Veterans Affairs (DVA) rating document reported the onset of his bipolar disorder was approximately 13 months following his discharge. The applicant had serious mental health issues prior to service as well. According to the mental health evaluation letter, he had reported he had a history of suicide attempts in high school and received counseling during his separation physical. The applicant did not report any of these significant mental health histories during his enlistment process as they are considered to be disqualifying conditions for service and could be considered as fraudulent entry. There was no evidence his military duties and service permanently aggravated his pre-existing conditions. When the applicant entered the service, he experienced situational stressors of adapting to the military environment and it was assessed from his command referred evaluation his emotions of anxiety and upset [sic] were

CUI//SP-MIL/SP-PRVCY

derived from his current circumstances rather than a chronic mood disorder. The applicant also struggled to adapt after he was discharged from the military causing a decompensation of his mental health condition necessitating a higher level of care. A condition like bipolar disorder takes time to develop and become clear and his post service treatment records reflected this trajectory as through time, his condition and symptoms further progressed causing disruption to his overall functioning. His condition and presentation diagnosed and observed post service were not reminiscent of his condition and presentation during service. The applicant's service treatment records found he did not have any potentially unfitting mental health condition to include bipolar disorder that would meet criteria for a possible medical discharge. He was never placed on a duty limiting conditions profile and was never deemed not worldwide qualified due to his mental health condition.

The Psychological Advisor acknowledges but disagrees with DVA rationale on compensating the applicant for bipolar disorder that was considered to be service connected. The DVA was contradictory with their rationale by declaring the onset of his bipolar disorder was 13 months after discharge per his medical records but somehow the condition was manifested while on active duty. The DVA also reported he had nervous symptoms which were identified as secondary to his occupational problems and were related to his bipolar disorder that began after service that was reasonable enough to determine service connection. The DVA has their own criteria to determine service connection and is vastly different than the military's definition and criteria for compensation. The Psychological Advisor finds no error or injustice with his discharge.

The Board applied liberal consideration to the applicant's request due to the contention of a mental health condition. If so, the following are answers to the four questions from 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 had an undiagnosed mental health condition identified as bipolar disorder hampering his ability to serve in the military. He is requesting a medical disability.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant had bipolar disorder during service. His post service records reported the onset of his bipolar disorder occurred 13 months post service. His service treatment records reported he had difficulties adjusting to the military and had personality traits influencing his behaviors and inability to adhere to the military structure. He had a condition of occupational problems and was given a rule [sic] of adjustment disorder with mixed emotional features and immaturity and self-defeating personality traits were noted during service.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence he had any unfitting mental health condition to include bipolar disorder that would meet criteria for a referral to the MEB for a medical discharge. As such, his condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweighs the discharge?
Since his condition does not excuse or mitigate his discharge, his condition also does not outweigh his original administrative 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 2 Mar 22 for comment (Exhibit D), 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. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. Finally, the Board is satisfied that the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.
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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03151 in Executive Session on 22 Jun 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 1 Sep 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, Psychological Advisor, dated 1 Mar 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Mar 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 25 Apr 22.

CUI//SP-MIL/SP-PRVCY

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.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF