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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-2021-03225

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He suffered from mental health issues that had a major contributing factor to alcohol abuse. As a result of the alcohol abuse, he made several poor decisions while off duty that ultimately led to his general discharge. However, his performance records show he performed his Aerospace Maintenance Journeyman duties honorably.

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 14 May 02, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFDPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49, for Minor Disciplinary Infractions. The specific reasons for the action were:

- a. On 22 Jan 01, the applicant received a Record of Individual Counseling for failing to refrain from drinking alcoholic beverages while under the age of 21.
- b. On 27 Sep 01, the applicant received a Record of Individual Counseling for failing to go to a dental appointment at prescribed time.
- c. On 10 Jan 02, the applicant received a Letter of Reprimand (LOR) and an Unfavorable Information File (UIF) was established for driving while intoxicated.
- d. On 23 Jan 02, the applicant received an Article 15 for willfully failing to refrain from unauthorized use of his government travel card and failing to make payments to his debt. As a result, the applicant was ordered to 30 days of correctional custody, demoted to the grade of airman, forfeiture of \$250 of pay for 2 months and reprimanded.
- e. On 24 Apr 02, the applicant received a LOR for sexually harassing another service member. As a result, the applicant received a no contact order.

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

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- f. On 25 Apr 02, the applicant received a LOR for driving while intoxicated. As a result, this LOR was added to his UIF.

On 16 May 02, the staff judge advocate found the discharge action legally sufficient.

On 17 May 02, the discharge authority directed the applicant be discharged for Minor Disciplinary Infractions under the provisions of AFPD 36-32 and AFI 36-3208, paragraph 5.49, with a general (under honorable condition) service characterization.

On 22 May 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct." He was credited with 2 years, 4 months, and 11 days of total active service.

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

POST-SERVICE INFORMATION

On 24 Feb 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?

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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 24 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 finds insufficient evidence to support the applicant's request for an upgrade to his discharge. The applicant did not clarify what his mental health issues were and stated it was a contributing factor to his alcohol abuse, misconduct, and discharge. There was no evidence in the available objective military records to support his claim that he had a mental health condition or psychiatric disorder such as anxiety, depression, traumatic stress, etc. besides alcohol problems during service. There was also no evidence he was diagnosed with an alcohol use disorder or received alcohol rehabilitation treatment during service. Although it was possible he drank to cope with his mental health condition, more substantive information is needed as his contentions are too broad. His service treatment records were unavailable, and he also did not submit any records to corroborate his claim. He clearly had problems with alcohol during service as evidenced by his three alcohol related incidents to include two driving while intoxicated. However, in addition to his alcohol related misconduct, he had other numerous non-alcohol related misconduct to include misuse of his government travel card, failed to pay his debts, missed an appointment, and sexually harassed another service member. These are inappropriate and serious misconduct that had resulted with him receiving LORs and an Article 15, his most severe disciplinary action. He did not provide a clear explanation for how his mental health issues and alcohol problems affected these non-alcohol related incidents especially for his behavior of sexually harassing another service member on at least two occasions. The explanations he had provided at the snapshot in time of service revealed he had purposefully used his government travel card due to having financial problems and missed his dental appointment because he did not wake

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up on time from working the grave shift. These explanations do not indicate they were caused by his mental health condition or anxiety, depression, or alcohol abuse issues. Alcohol abuse is considered an unsuiting condition and although it may cause or explain some of his misconduct, it could not excuse or mitigate most of his misconduct and discharge. Therefore, the Psychological Advisor finds no error or injustice with his discharge due to the insufficient evidence presented from a mental health perspective.

Liberal consideration is applied to the applicant's request. The following are answers to the four questions from the Kurta memorandum 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 mental health issues causing his alcohol abuse problems, misconduct, and eventual discharge.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant had any mental health condition/issues causing his alcohol problems and misconduct during military service. He most likely had alcohol abuse issues, but there was no evidence he was diagnosed with any alcohol use disorders or received alcohol treatment during service. His service treatment records were not available or submitted for review.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant's alcohol problems had caused some of his misconduct and contributed to his discharge action. He also had other serious non-alcohol related misconduct that were not found to be caused by his mental health condition or alcohol abuse issues. There was no evidence his mental health condition besides his alcohol issues caused or impacted his behaviors during service. His alcohol issues may cause some of his misconduct but 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 caused his behaviors and discharge and his mental health and alcohol issues do not excuse or mitigate his discharge, they 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 16 May 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. 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.

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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-03225 in Executive Session on 24 Aug 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, w/atchs, dated 8 Sep 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 24 Feb 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Apr 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 May 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.

5/15/2023



Board Operations Manager, AFBCMR
Signed by: USAF