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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03248

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was suffering from depression, anxiety, and alcoholism due to his spouse having an affair. He was deployed and his drinking got completely out of control. Upon his return, he separated from his spouse and attempted suicide which led to a psychiatric hospitalization. He was discharged and not offered counseling, treatment, rehabilitation, or any other service that may have made a difference in his recovery.

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 4 Oct 93, the applicant's commander recommended he be discharged from the Air Force for Minor Disciplinary Infractions, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, section H, paragraph 5-46. The specific reasons for the action were:

- a. On 6 May 93, the applicant received a Record of Individual Counseling for being late for work.
- b. On 10 May 93, the applicant received a Letter of Reprimand (LOR) for being late for work. As a result, he was restricted to his hotel for the duration of his deployment and his misconduct was placed in an Unfavorable Information File (UIF).
- c. On 3 Jul 93, the applicant received a LOR that was placed in his UIF for having consensual sexual contact with another female while he was still legally married and not legally separated from his spouse.
- d. On 13 Jul 93, the applicant received a LOR that was placed in his UIF for cashing checks without sufficient funds in his bank account.

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Controlled by: SAF/MRB
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- e. On 13 Aug 93, the applicant received a LOR for reporting to his off-duty employment even though he had requested time off to take his son to his place of duty at the appointed time.
- f. On 28 Sep 93, the applicant received an Article 15 for failing to obey a lawful order. As a result, he was ordered 14 days of extra duty.

On 19 Oct 93, the acting Staff Judge Advocate found the discharge action legally sufficient.

On 20 Oct 93, the discharge authority directed the applicant be discharged for Minor Disciplinary Infractions, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 21 Oct 93, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct." He was credited with 1 year, 11 months, and 9 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 18 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 for Personnel and Readiness 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:

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- 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 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 18 Feb 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 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. The applicant was given diagnoses of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Alcohol Abuse, and Personality Disorder Not Other Specified (NOS) with antisocial traits and passive aggressive and narcissistic traits at hospital discharge. He was given similar diagnoses from his CDE. His mental health providers identified he had impulsive behaviors and reported he had an unsuited mental health condition of adjustment disorder which was the cause of his behaviors. The Psychological Advisor accepts his provider's assessment his mental health condition may have caused his behaviors and misconduct but opines his mental health condition does not excuse or mitigate his misconduct and subsequent discharge. The applicant's behaviors were found to be deliberate, dishonest, and unwilling to abide by the rules and authority. Furthermore, his behaviors existed prior to service (EPTS) and his military duties or service did not cause or aggravate his preexisting behaviors. He was recommended for administrative discharge for his mental health condition, but his commander chose an administrative separation for his misconduct. It is certainly within his commander's authority to elect the discharge that was deemed appropriate based on his service records. The applicant did engage in a pattern of inappropriate and unacceptable misconduct that could not be disregarded or outweighed by his

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mental health condition. Therefore, the Psychological Advisor finds no error or injustice with his discharge.

The Psychological Advisor opines liberal consideration is not required to be applied to his request as his behaviors or mental health condition were found to be EPTS with no service aggravation per the Kurta Memorandum. Should the Board elect to apply liberal consideration to his request, the following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contends his marriage began to crumble after their son was born in Jul 92 and his drinking began to get out of control. He was also suffering from depression, anxiety, and alcoholism at the time. He reported his drinking got completely out of control when he deployed and was hospitalized for suicide attempt because his marital and work stress. He claimed he received no treatment or help from his leadership and the Air Force.

2. Did the condition exist or experience occur during military service? There is evidence the applicant was referred to Social Actions for an alcohol related incident overseas. The incident was not specified in his notes. He was given a diagnosis of Problem Drinker and was referred to complete the Track 3-Reorientation, a 12-hour course. The applicant was hospitalized from 15-23 Sep 93 for suicide attempt by overdose. Although he was vague for his reason for the attempt, there was no evidence of psychosis or major affective disorder. He was given diagnoses of Alcohol Abuse, Adjustment Disorder with Mixed Disturbance of Emotions and Conduct and Personality Disorder Not Other Specified with antisocial traits and passive aggressive and narcissistic traits at hospital discharge. After he was discharged from the hospital, he received a CDE for his suicidal attempt. He reported having severe marital conflict and serious occupational problems to include a pending Article 15. The results of the evaluation yielded the same diagnoses he was given at hospital discharge and was recommended for discharge for having an unsuited condition of adjustment disorder.

3. Does the condition or experience excuse or mitigate the discharge? The applicant's impulsive behaviors and rule violations were EPTS that continued in the military were found to be EPTS per his hospital provider. There was no evidence his EPTS behaviors and conditions were service aggravated. His mental health condition was assessed to have caused his behaviors, but his condition does not excuse or mitigate his discharge especially since most of his behaviors appeared to be deliberate and planned.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does 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 6 Oct 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 and discharge requests are technically untimely. However, it would be illogical to deny such applications 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 opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's mental health condition does not excuse or mitigate his misconduct and subsequent discharge. In addition, the Board is satisfied the application of liberal consideration does not warrant relief. 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.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03248 in Executive Session on 21 Dec 22:

<i>Work-Product</i>	Panel Chair
	, Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 23 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 18 Feb 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Oct 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Oct 22.

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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.

9/10/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by

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