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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03401

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

Upon his return from Iraq, where he served on a quick response team and was exposed to explosives and conducted convoys across the nation, he suffered from severe Post-Traumatic Stress Disorder (PTSD) and sleep related disorders. He was not diagnosed upon his return from deployment as there was a lack of understanding regarding PTSD in his unit and mental health. The Department of Veterans Affairs (DVA) evaluated his PTSD and awarded him 70 percent service-connected disability and he has been on several medications for his PTSD, nightmares and depression.

In support of his request, the applicant provides a resume, a character reference and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 12 Jul 05, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2, for a pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline. The specific reasons for the action were:

- a. On 16 Dec 04, the applicant received an Article 15 for willfully failing to refrain from consuming alcohol while under the legal age. As a result, the applicant was demoted to the grade of airman suspended through 15 Jun 05, forfeiture of \$668 pay, reprimanded and an Unfavorable Information File (UIF) was established.
- b. On 13 Mar 05, the applicant received a Letter of Reprimand (LOR) for not completing a career development course. As a result, this information was placed in the applicant's UIF.

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- c. On 14 Mar 05, the applicant received a Vacation of Nonjudicial Punishment for being late for duty on three different occasions. As a result, this information was placed in the applicant's UIF.
- d. On 24 May 05, the applicant received a LOR for being untrue about his whereabouts.
- e. On 2 Jun 05, the applicant received an Article 15 for being late for duty on four occasions, missing a mandatory appointment and failing to maintain Air Force standards by not shaving or getting a haircut. As a result, the applicant was demoted to airman basic with a new date of rank of 2 Jun 05 and a reprimand.

On 26 Jul 05, the discharge authority directed the applicant be discharged for Pattern of Misconduct with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 29 Jul 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with two years, two months, and nine days of total active service.

On 15 Jun 16, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 15 May 17, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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 May 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 (Exhibit E). The applicant did however provide a resume, a character reference and other documents related to his request for upgrade with his initial application (Exhibit A).

## **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 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 May 22, the Board staff provided the applicant a copy of the liberal consideration 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 has reviewed all available records and finds sufficient evidence to support the applicant's request for an upgrade to his discharge. His records indicated he was deployed to Iraq from 5 March 04 to 30 August 04 and all of his misconduct occurred after his return from deployment. There was no evidence he was diagnosed with PTSD during service as he mentioned, but there was evidence he reported feeling depressed and had sleep issues as contended. His statements to his commander and in response to his discharge action at the snapshot in time of service both detailed his difficulties managing his family, work, legal, and

financial stressors in addition to the lack of support from his unit causing him to feel depressed, have poor concentration, fatigue, and difficulties with sleep. He discussed having difficulties accessing mental health treatment from the Life Skills clinic and help from the chaplain due to work priorities or lack of assistance from his leadership. When he was finally able to receive help, he felt relieved and had a better understanding of his condition of depression. His depressive symptoms in particular his sleep problems caused him to miss multiple appointments, failed to report, and/or was late to work on several occasions. He accepted responsibility for his underage drinking and attributed it to peer pressure but did not go into details about why he failed to complete his CDCs or was dishonest about his whereabouts, but his remaining and the majority of his misconduct of being late to work many times and having an unkempt appearance could be attributed to his mental health condition. He reported having low motivation, poor concentration, fatigue and depersonalization experience and these symptoms could cause one to neglect one's hygiene.

It is acknowledged the applicant did not explain how his mental health condition of undiagnosed PTSD and sleep related disorder affected his misconduct and discharge for this petition, but the AFRBA Psychological Advisor finds his explanations at the time in service were adequate and more significant to demonstrate his mental health condition had a direct impact to most of his behaviors, misconduct, and eventual discharge. Therefore, the AFRBA Psychological Advisor finds sufficient evidence to support his request to upgrade his discharge to Honorable and his narrative reason to "Secretarial Authority" based on liberal consideration.

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 undiagnosed PTSD and sleep related disorder caused by his deployment experiences in Iraq. He has been receiving treatment for PTSD, sleep disturbances, and depression from the DVA.
2. Did the condition exist or experience occur during military service?  
There was no evidence he was diagnosed with PTSD during service, but there was evidence through his personal statements to his disciplinary and discharge actions he reported having depression and sleep related issues after returning from deployment and caused by multiple stressors.
3. Does the condition or experience excuse or mitigate the discharge?  
There was evidence the applicant explained in his personal statements to his disciplinary and discharge actions his depression and sleep issues caused him to miss several appointments, failed to report to duty on time, and failed to report to work on multiple occasions. His unkempt appearance could be attributed to his depression due to his report of having a lack of motivation, poor concentration, and fatigue that may cause him to neglect his hygiene. Thus, his mental health condition of depression and sleep related issues may excuse and mitigate his discharge.
4. Does the condition or experience outweigh the discharge?

Since his mental health condition was found to have caused, excused, and mitigated his discharge, his condition would also 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 25 May 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 discharge upgrade requests are technically untimely. However, it would be illogical to deny a discharge upgrade 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 the victim of an injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. While the Board finds no error in the original discharge process, the Board recommends relief based on liberal consideration due to the applicant's mental health history. Although the applicant has not provided evidence showing he was ever diagnosed with PTSD, there is evidence he had difficulties with depression and sleep issues following his return from deployment in Iraq that more likely than not, mitigated his misconduct. As such, the Board believes the applicant's discharge should be upgraded to fully honorable and his narrative reason for separation be changed to "Secretarial Authority" with the corresponding separation code of JFF. Therefore, the Board recommends the applicant's records be corrected as indicated below.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 29 Jul 05, he honorably discharged with a narrative reason for separation of Secretarial Authority, and the corresponding separation code of JFF.

### **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-2021-03401 in Executive Session on 8 Aug 22:

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Panel Chair

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, Panel Member

Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 20 Sep 21.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

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Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Mar 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 May 22.  
Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 25 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.

1/29/2025

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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