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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03403

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His discharge should be upgraded because he suffers from major depressive disorder (MDD).

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 Dec 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 1 Dec 05, a Letter of Reprimand (LOR) was issued for use of disrespectful language.
- b. On 9 Dec 05, a LOR was issued for failure to obey a lawful order and failure to go.
- c. On 8 Jan 06, a LOR was issued for failure to maintain dormitory room standards and failure to have mandatory items at formation.
- d. On 3 Mar 06, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for three counts of failure to go. He received a forfeiture of pay of \$636.00, suspended until 2 Sep 06, and 14 days of extra duty.
- e. On 21 Aug 06, a LOR was issued for failure to go.
- f. On 18 Sep 06, a LOR was issued for failure to obey a lawful order.

**AFBCMR Docket Number BC-2021-03403
CUI//SP-MIL/SP-PRVCY**

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

g. On 9 Nov 06, a Memorandum for Record (MFR) indicates the applicant was verbally counseled regarding the suspension of his security clearance due to unpaid debts.

On 10 Dec 06, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 22 Dec 06, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 4 months, and 14 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 8 Mar 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:

CUI//SP-MIL/SP-PRVCY

- 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 8 Mar 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. He did not adequately discuss or explain how his mental health condition of MDD may have caused his behavior and misconduct resulting with his discharge. His statement was too vague without any clarifying information to reasonably establish a nexus had existed between his mental health condition and discharge. The burden of proof resides with the applicant. A review of his objective records finds he had made one visit to the Life Skills Support Center (LSSC) for marital problems but no depression was reported. He was diagnosed with MDD several years post discharge triggered by post-service stressors with no association to his military service per his Department of Veterans Affairs (DVA) treatment records. His personal statement in response to his Article

CUI//SP-MIL/SP-PRVCY

15 at the snapshot in time of service finds the applicant had discussed having various stressors such as his wife's illness, family deaths, and financial difficulties. He never discussed feeling depressed from these issues, but it is possible these stressors may cause him to feel depressed or experience emotional distress as he discussed having a "highly stressed mind." It appeared he had difficulties articulating this [sic] thoughts and experience. In terms of how these experiences affected his numerous misconduct during his brief time in service remains unclear as again, the applicant did not provide any clarifying information. Any inferences drawn fall outside her scope of responsibility. As a result, no error or injustice was identified with his discharge.

Liberal consideration is applied to the applicant's request. The Board may choose to upgrade his request based on the limited information found in his objective military records. This decision is at the Board's discretion. 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 did not know he had MDD and had been receiving treatment for this condition. He provided no other information about how his condition may excuse or mitigate his discharge.
2. Did the condition exist or experience occur during military service?
There is no evidence his condition of MDD existed or occurred during military service. He was diagnosed with MDD by the DVA several years post discharge caused by post service stressors.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant did not clearly explain how his mental health condition of MDD caused his behaviors and misconduct leading to his discharge in his petition. The burden of proof and responsibility lie on the applicant to provide the necessary clarifying information to determine if his condition could excuse or mitigate his discharge. Due to the lack of information, his condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his 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 4 Apr 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.

CUI//SP-MIL/SP-PRVCY

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. Liberal consideration was applied to the applicant’s request due to the contention of a mental health condition, however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his 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.

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-2021-03403 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/atc, dated 14 Oct 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 8 Mar 22.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 24 Mar 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 4 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 DAFI 36-2603, paragraph 4.12.9.

5/12/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF