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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03491

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His entry-level separation (ELS) with a "Non-Applicable" service characterization be changed to "Early Out."

APPLICANT'S CONTENTIONS

He is currently awaiting on a decision for his claim with the Department of Veterans Affairs (DVA). He had a traumatic incident that happened while he was at basic training which has manifested over the years; he could never put the dots together as to why certain triggers affected him. He is trying to get the necessary mental health treatment and was told by the DVA his separation code would not allow him to get the treatment he truly needs.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On or about 28 May 87, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-22 for entry-level performance and conduct. The specific reasons for the action were:

- a. On 26 Nov 86, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for theft of property from the Base Exchange. He received a reduction in grade to airman (E-2), suspended until 24 May 86 [sic], forfeiture of \$100.00 pay for 1 month, and 7 days of base restriction and extra duties.
- b. On 21 Jan 87, ATC Form 18, *Record of Individual Counseling*, indicates the applicant was counseled for missing his mandatory appointments with Social Actions.
- c. On 7 Apr 87, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 92 and 134 by disobeying

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a lawful order and underage drinking. The applicant was reduced to the grade of airman with a new date of rank (DOR) of 26 Nov 86.

On 29 May 87, the discharge authority directed the applicant be discharged with an ELS for entry-level performance and conduct without further participation in a program for probation and rehabilitation.

On 29 May 87, the applicant received a "Non-Applicable" ELS. His narrative reason for separation is "Entry-Level Performance" and he was credited with 9 months and 25 days of total active service.

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

POST-SERVICE INFORMATION

On 26 Sep 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?

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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 26 Sep 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

According to AFI 36-3208, *Administrative Separation of Airmen*, incorporating changes through 8 Jun 17, paragraph 1.18, the types of service characterization are as follows:

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.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.

- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

AFPC/DP2SSR was inconclusive in their recommendation finding an error was made by the Base Discharge Authority (BDA) regarding the applicant's type of separation directed which should be corrected. AFR 39-10 states that discharge must be initiated within the first 180 days of continuous active service. Although most of the documentation in the record is undated, there is documented evidence of an appointment made for the applicant and an acknowledgement letter signed by the applicant showing the discharge was initiated past the 180 requirement. As a result, the applicant should have been discharged as there is an error with the discharge processing. However, AFPC cannot clearly determine the separation provision nor the character of service. There is evidence of multiple infractions resulting in a basis for discharge along with further misconduct transpiring while the discharge was being processed. The serious nature of the misconduct would have been for the commander to recommend and the BDA to direct. It is AFPC's conclusion the Board should conduct a review of the applicant's record and determine the separation provision, the reason for separation/separation program designator (SPD) code, and the character of service. Based on the infractions committed by the applicant and how the negative impacts of these infractions outweighed any positive impacts of the applicant's brief military career, it is AFPC's estimation the BDA would have discharged the applicant for "Misconduct: Minor Disciplinary Infractions/JKN" as the reason for separation/SPD code with an under honorable conditions (general) service characterization. Understanding that this narrative reason/SPD code is not a favorable result the Board typically grants to applicants, AFPC can see the Board considering "Secretarial Authority/JFF" as an alternative narrative reason/SPD code, should the Board elect to grant a more favorable result for the applicant. The decision rests with the Board.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds an error was made to the applicant's discharge. The applicant served more than 180 days of continuous

active-duty service and would not be eligible for an ELS according to past regulation of AFR 39-10 or present regulation of DAFI 36-3208, *Administrative Separation of Airmen*. The Psychological Advisor recommends the Board to receive/review advisories from administrative/personnel subject matter experts to determine the applicant's appropriate discharge. From a mental health perspective, there is no evidence his mental health condition (not substance use disorder) and/or traumatic experience had a direct impact to his behaviors that may have led to an eventual discharge.

A review of the applicant's available military and service treatment records finds the applicant had a total of two alcohol related incidents resulting with him receiving two Article 15s within a short period of time. His remaining misconduct was related to him failing to go to his Social Actions/alcohol treatment appointments. His mental health evaluation reported he had alcohol issues that existed prior to service (EPTS) as he had experienced three black outs and was hit by a car when he had been drinking all predating his military service. He did not report his significant alcohol abuse history but did disclose using marijuana four times prior to service on his Military Entrance Processing Station (MEPS) form; this could be considered as fraudulent entry as he may be required to receive a waiver to enlist. There was no evidence his EPTS alcohol issues were aggravated by his military duties. There was no evidence he had any mental health issues to include experiencing any trauma that would cause him to use or cope with alcohol. He was reported to have a family history of alcohol abuse issues and so he may have a genetic predisposition to this condition. If this was the case, his alcohol issues would also be considered as EPTS. His mental health evaluation did not identify he had any mental health issues such as anxiety and depression and he denied during his separation physical he had mental health problems. The applicant was given a diagnosis of alcohol abuse during service and although this is technically a mental health condition categorized under substance use disorder, it is an unsuiting condition for military service.

The Psychological Advisor opines his alcohol issues were secondary to his misconduct issues that were influencing his behaviors. Most of his misconduct involved alcohol but did not appear to be primarily caused by alcohol. In his personal statement, the applicant claimed he was intoxicated impairing his judgment when he stole the knife (placed it in his pocket) at the Base Exchange and while this is possible, the security guard's account offered a different perspective of the incident. The incident report revealed the security guard overheard the applicant telling his friend there were too many people around for him to do it (implying to shoplift the knife) and observed him nervously pacing back and forth before he took the knife and placed it up in his arm and not in his pocket as he reported. The security guard's observation would indicate he knew what he was doing at the time and possibly not as intoxicated to have completely impaired his judgment. He reported to his commander he ran from the Security Police (SP) because he knew he would get into trouble because he was enrolled in the Social Actions program and started "jogging" back to his squadron and claimed he did not hear the SP even though they told him to halt three times. Again, this incident indicated he was aware of his situation at the time. It was poor judgment on his part and possibly attributed to his intoxicated state, but his intent of not being cooperative and fleeing the scene were because he recognized he was not supposed to be drinking while enrolled in the alcohol rehabilitation program (ARP). For his misconduct of missing his two Social Actions appointments, he failed to inform anyone his shift had changed and did not inform Social Actions

of his shift change as well. There was no evidence these events were caused by his drinking issues or mental health condition.

Lastly, the applicant claimed he experienced trauma during basic training but did not provide any clarifying information such as the nature of the incident and how his traumatic experience affected his misconduct/behaviors leading to his subsequent discharge. There is insufficient evidence presented to adequately demonstrate his traumatic experience had a direct impact to his misconduct. The applicant's involvement with alcohol caused most of his misconduct, but his EPTS alcohol issues were found to be secondary to his misconduct issues. The applicant was discharged under ELS, but his records indicated he served more than 180 days of continuous active duty service (he acknowledged receipt of discharge notification on 28 May 87 which was well over 180 days). Therefore, there is an error identified with his ELS discharge as confirmed by the advisory from HQ AFPC/DP2SSR dated 19 Apr 22 for the Board. This advisory from HQ AFPC/DP2SSR speculated his discharge reason resembled "Misconduct: Minor Disciplinary Infractions" based on his records but stated the decision rests with the Board to determine his discharge reason. At this time, his actual reason for discharge is unknown due to an error found with his ELS discharge, but it was evident his behaviors were incompatible with military service. The Psychological Advisor opines liberal consideration could not be adequately applied to his petition at this time because his actual discharge is unknown and so an opinion for whether his mental health condition or traumatic experience could excuse, mitigate, or outweigh his discharge could not be properly rendered. Despite being unable to answer the liberal consideration questions but rather focusing on his contention for this petition, the Psychological Advisor reiterates there was no evidence his alleged trauma experienced during basic training had a direct impact to his behaviors and functioning that may have resulted with an eventual discharge from service. The applicant did not provide sufficient information to support his request and the burden of proof is placed on the applicant to demonstrate his mental health condition from his traumatic experience affected his ability to function in a military setting that may cause 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 31 Aug 22 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the Board finds the applicant's discharge process was initiated beyond the 180 days to which the applicant erroneously received

an ELS which is sufficient to justify granting the applicant's request to change his narrative reason and separation code but not to "Early Out" as the applicant desires. The Board noted the applicant's misconduct and finds no evidence the trauma he experienced during basic training had a direct impact to his behavior resulting in his discharge. The applicant did not provide sufficient information to support his request and the burden of proof is placed on the applicant to demonstrate his mental health condition from his traumatic experience affected his ability to function in the military or caused his misconduct. However, the Board finds a more appropriate narrative reason for separation is "Secretarial Authority" and not "Misconduct Due to Minor Disciplinary Infractions" due to the negative connotations of this narrative reason which would make the applicant worst off. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 29 May 1987, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03491 in Executive Session on 21 Dec 22:

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Panel Chair

Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, dated 18 Oct 21.

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

Exhibit C: Advisory Opinion, AFPC/DP2SSR, w/atch, dated 19 Apr 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Aug 22.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 22.

Exhibit F: Letter, SAF/MRBC, w/atches (Post-Service Request and Liberal Consideration Guidance), dated 26 Sep 22.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.12.9.

3/28/2024

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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