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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03524

Work-Product

COUNSEL: NONE

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Her general (under honorable conditions) discharge be upgraded to honorable.
2. Her narrative reason for separation be changed to "Medical."

APPLICANT'S CONTENTIONS

She was denied proper medical treatment when she was in the Air Force. She requested stress management classes, anger management, and alcohol evaluation [sic] prior to being discharged but her requests were denied by her supervisors and commander. She went undiagnosed for post-traumatic stress disorder (PTSD), anxiety disorder, panic attacks, bi-polar and depression. Since 2012 she has been taking medications for general anxiety disorder (GAD), depression, panic attacks, insomnia, agitation, and bi-polar. After being diagnosed and treated for her conditions, she has been a productive member of society and veterans in need. She would like to be eligible for a Department of Veteran's Affairs (DVA) loan.

In support of her request for clemency, the applicant provides a personal statement, her Air Force Discharge Review Board (AFDRB) decision, an unofficial college transcript, medical documentation, and various other documents associated with her request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Nov 99, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On or about 2 Oct 98, she was arrested for assault. She received a Letter of Counseling (LOC) dated 9 Oct 98.
- b. On or about 28 Dec 98, she made a false official statement to the first sergeant. She received a Letter of Reprimand (LOR) dated 13 Jan 99, and an unfavorable information file.

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

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- c. On or about 17 Jan 99, she failed to control her guests, in that she sponsored an individual on base with a loaded weapon. She received a Letter of Reprimand (LOR), dated 26 Jan 99.
- d. On or about 25 May 99, she disrespected a Non-Commissioned Officer. She received an LOC, dated 25 May 99.
- e. On or about 24 Aug 99 through 26 Aug 99, she absented herself from her place of duty, and on or about 26 Aug 99, she made a false official statement. She received an Article 15, dated 21 Sep 99.
- f. On or about 27 Sep 99, she wrongfully possessed alcoholic beverages while under the age of 21. She received a vacated suspension of nonjudicial punishment, dated 14 Oct 99.
- g. On or about 11 Nov 99, she consumed alcohol while under the age of 21. Discharge action was initiated.

On 7 Dec 99, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 15 Dec 99, 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 99, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct" and she was credited with 1 year, 9 months, and 28 days of total active service.

On 11 Oct 00, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to her discharge.

On 4 Dec 00, the AFDRB noted that only after the commander formally notified the applicant of his initiation of discharge action, did she request an alcohol evaluation and enrollment in anger management classes. 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.

POST-SERVICE INFORMATION

On 26 Sep 22, the Board sent the applicant a standard request for post-service information (Exhibit D). This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating her case. Although the applicant provided post service information with her initial application, she did not respond to the request for her FBI background check or other criminal history data.

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

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

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.

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.

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 her records. There was no evidence the applicant's leadership had denied her the ability to attend anger and stress management classes and/or receive an alcohol evaluation during service. She reported in her response to her discharge action she had a problem dealing with anger and stress and when feeling angry and under stress, she would have poor judgment. She also discussed being enrolled in the anger and stress management classes and had plans to talk to counselors, but there were no records to verify she received or completed any of these services. There was no evidence she had any anxiety, panic attacks, or depression during service, although it is plausible because she reported having anger issues and stress and had two alcohol related incidents that could be related to her anxiety and depression. These notions are speculative as her objective records did not explicitly reflect these actual experiences. Giving the applicant the benefit of the doubt that her mental health condition may have caused some of her misconduct such as her anger issues causing her to be disrespectful to her leadership, her mental health condition could not excuse or mitigate the majority of her misconduct of making numerous false official statements or being untruthful to her leadership, absenting herself from her place of duty for 2-3 days, sponsoring an individual on base with a loaded weapon, and being arrested for assault. These were serious offenses and misconduct that could not be disregarded or overlooked to include by her mental health condition. The applicant's submitted post service medical records revealed she received medication management services from the period of 25 Sep 12 through 26 May 21, occurring several years post discharge, for conditions of bipolar disorder and GAD. There was no evidence she had any of these conditions or diagnoses during service and appeared to have had developed them post service.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. 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 she was extremely stressed, had anxiety, panic attacks, depression, and was self-medicating with alcohol, and her disciplinary actions were caused by these issues during service. She claims she had requested and was denied anger and stress management and an alcohol evaluation by her leadership prior to being discharged from service.

2. Did the condition exist or experience occur during military service?

The applicant's service treatment records were not available or submitted by the applicant for review. There is no evidence she experienced any anxiety, panic attacks, or depression during service. There is evidence she reported having anger and stress management issues and letters from military mental health providers confirmed she was enrolled in the anger and stress management courses and had requested and was scheduled for an alcohol evaluation after she was informed of her administrative discharge action. There were no records confirming she received or completed these services during military service. Her post service treatment records reported she was treated for anxiety, agitation, insomnia, and depression and was given diagnoses of Bipolar I Disorder and GAD several years post discharge by her provider. There is no evidence she experienced or exhibited symptoms of bipolar disorder or GAD during service.

3. Does the condition or experience excuse or mitigate the discharge?

There is no evidence the applicant was denied receiving anger and stress management and an alcohol evaluation by her leadership. There is evidence she had anger and stress during service, which may be symptoms of anxiety and/or depression, and she may have coped with alcohol as she contended. However, these behaviors or mental health conditions may have caused some but not all of her misconduct especially her more frequent and serious misconduct. Her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate her discharge, her condition also does not outweigh her original 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 3 Oct 22 for comment (Exhibit E), and the applicant replied on 31 Oct 22. In her response, the applicant contends her undiagnosed mental health conditions does excuse or mitigate her discharge and there was evidence that she was denied receiving anger and stress management along with an alcohol evaluation. Also, she provides documentation related to her requested scheduled anger and stress management classes and alcohol evaluation. Finally, she provides her response to the discharge authority recommendation for discharge.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade 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 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. While there is evidence she had anger and stress during service, which may be symptoms of anxiety and/or depression, and she may have coped with alcohol as she contended, these behaviors or mental health conditions may have caused some but not all of her misconduct especially her more frequent and serious misconduct. Therefore, her mental health condition does not excuse or mitigate her 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 a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.



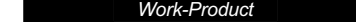
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 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-2021-03524 in Executive Session on 22 Feb 23:

-  *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/atchs, dated 27 Oct 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 22 Sep 22.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 26 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Oct 22.
- Exhibit F: Applicant's Response, w/atchs, dated 31 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.

12/7/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product