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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03587

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable and his narrative reason for separation of "Misconduct" be corrected.
2. He be awarded the National Defense Service Medal (**No Board Action Needed-Corrected by ARPC via MyPers**).

APPLICANT'S CONTENTIONS

He was a member of the Air Force Reserve (AFR) and was ordered to active duty in response to 9/11. Everything that happened leading up to his separation was related to his mental illness that is now service-connected by the Department of Veterans Affairs (DVA) or a condition that existed during his active duty service. He was charged with being absent without leave (AWOL) and left *Work-Product* Air Force Base and checked into a civilian mental hospital in West Monroe, LA. The reason for his hospitalization was because he was having mental health issues that had a critical effect on his training and duty performance on base as they were preparing to deploy. The result of his summary court-martial (SCM) was 30 days restriction to base and loss of grade from E-4 to E-1. He was temporarily assigned to work for the first sergeant during base restriction and it was during this time he requested separation because of his mental health issues. After his separation, he struggled with his civilian employer and was terminated. He struggled until his DVA disability rating was approved and awarded on 1 Oct 10. He has been rated at 70 percent for his anxiety and 30 percent for his unemployability.

In support of his request for clemency, the applicant provides a personal statement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Oct 01, Special Order *Work-Product* indicates the applicant was partially mobilized in support of Operation NOBLE EAGLE for a tour length from 23 Oct 01 to 22 Oct 02.

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On 31 May 02, a trial by SCM was held. The applicant pled guilty to one charge and one specification of being AWOL and did remain absent until he was apprehended in violation of Article 86 of the Uniform Code of Military Justice (UCMJ). The applicant was sentenced to hard labor without confinement and base restriction for 45 days, forfeiture of \$250.00 pay per month for 1 month, and reduction to the grade to airman basic.

On 17 Jul 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and was credited with eight months and four days of active service for this period.

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

POST-SERVICE INFORMATION

On 7 Jun 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?

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- 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 7 Jun 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. The Psychological Advisor will only address his mental health condition and defers to the Board to seek an advisory from a subject matter expert pertaining to his medal request. A review of the available records finds there was evidence from his DVA treatment records he was hospitalized during service after he returned from AWOL for having depression and suicidal ideation from his family, marital, financial, and social problems. He was also reported to have used illicit substances and his drug test at the emergency room (ER) yielded positive results for cannabis. There was no evidence his stressors were related to his military duties as claimed, but he experienced distress from being separated from his family caused by his active duty service. He had informed his DVA providers he was admitted to Glenwood Hospital in Monroe, LA when he was AWOL because he had a "nervous breakdown" and was given a diagnosis of Major Depressive Disorder (MDD),

Recurrent, Unspecified. Records from this hospitalization were not available for review but nevertheless, did somewhat corroborate his report that he was hospitalized for his mental health issues when AWOL. The applicant was diagnosed by his DVA psychiatrist during hospitalization with an Adjustment Disorder with Mixed Emotional Disturbance of Emotions and Conduct and Personality Disorder Not Otherwise Specified (NOS) that was later confirmed and clarified through psychological testing to include Avoidance Personality Disorder and Cannabis Abuse from the testing psychologist. All of these conditions were unsuited and not unfitting for continued military service that would meet criteria for an administrative discharge and not a medical discharge. His adjustment disorder was considered acute and not chronic. There was no evidence his adjustment disorder had transitioned from acute to chronic that would meet criteria for a referral to the Medical Evaluation Board (MEB) for a medical discharge. The applicant was diagnosed with MDD, Recurrent by the psychologist when he was evaluated at the ER and supposedly during his hospitalization at Work-Product Hospital. There was no evidence this condition/diagnosis had elevated to potentially unfitting. Having a mental health condition or being diagnosed with a mental disorder does not automatically render a condition as unfitting. His service treatment records from the military were not available and so there was no evidence he was ever placed on a duty limiting condition profile and/or was deemed not worldwide qualified due to his mental health condition by his military providers. These designations were possible because of his hospitalization and his mental health condition would most likely interfere with his ability to perform his military duties due to his reported suicidal ideation, and hospitalization but again, his condition was considered unsuited and not unfitting. The applicant was diagnosed with bipolar disorder in 2009, about seven years post-discharge, by his DVA provider and is currently receiving treatment for this condition. There was no evidence he experienced bipolar symptoms or a manic episode during service. It appeared more likely than not this condition had developed post-service. Therefore, based on review of the available records, the Psychological Advisor finds insufficient evidence has been presented to support his request for a medical discharge.

For awareness, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

The applicant was discharged for misconduct, but his discharge paperwork was not available for review to assess the type of misconduct he had engaged in that led to his discharge. He was convicted at a SCM for being AWOL; however, his sentencing did not include any discharge action. He also tested positive for cannabis during his hospitalization. It is possible his misconduct included his AWOL, cannabis use, and/or other misconduct that is unknown at this time because his discharge paperwork is unavailable for confirmation. He claimed he requested

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to be separated due to his mental health issues but no records exist to substantiate this claim. Without the vital record of his discharge paperwork, it could not be determined with a degree of certainty whether his mental health condition could cause, excuse, or mitigate his misconduct and discharge. The burden of proof is placed on the applicant to submit the necessary documents to support his request and contentions. As a result, presumption of regularity is applied and there was no evidence of any error or injustice with this discharge to support his request for an upgrade to honorable.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in 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 while he was AWOL he checked into a civilian hospital for his mental health issues. His mental health issues were having a critical effect on his training and performance on base and they were preparing to deploy. He claimed he requested to separate from the service due to his mental health issues. He did not clarify his mental health issues.

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

There is evidence the applicant received inpatient psychiatric treatment at a DVA hospital from 9 to 15 Apr 02 after he was apprehended and returned from AWOL for having depression and suicidal ideation during military service. He reported to his DVA providers he was previously hospitalized at Work-Product Hospital in Work-Product when he was AWOL for supposedly depression and having a nervous breakdown. Records from this hospitalization were unavailable to corroborate this experience had existed or occurred. During his hospitalization at the DVA, he was given diagnoses of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct and Personality Disorder NOS from his psychiatrist that was later confirmed and clarified through psychological testing to include Avoidance Personality Disorder and Cannabis Abuse from the testing psychologist. There were no records indicating he received any mental health evaluation, mental disorder diagnosis, or treatment from a military provider because his service treatment records were unavailable.

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

There is no evidence the applicant had any unfitting mental health conditions meeting criteria to be referred to the MEB for a medical discharge. He had unsuiting conditions of an adjustment disorder, personality disorder, and cannabis abuse that met criteria for an administrative discharge, which he did receive. His request for a medical discharge could not be supported due to his unsuiting conditions. He was discharged for reason of misconduct according to his DD Form 214, *Certificate of Release or Discharge from Active Duty*, but his discharge paperwork was missing from his military personnel records to verify the type of misconduct he had engaged in leading to his discharge and to determine whether his mental health condition had a direct impact to misconduct and discharge. Presumption of regularity is applied signifying there was no error with his discharge. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

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Since there is no evidence his mental health condition excuses or mitigates his discharge, his mental health 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 16 Sep 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 upgrade requests are technically untimely. However, it would be illogical to deny such 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 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, there is no evidence his mental health condition excuses, mitigates, or outweighs his discharge. His discharge paperwork was missing from his military personnel records; therefore the Board cannot determine whether his mental health condition had a direct impact on his misconduct and discharge. The burden of proof is placed on the applicant to submit the necessary documents to support his request and contentions. As a result, the Board applies the presumption of regularity and finds no evidence of any error or injustice with this discharge to support his request for an upgrade. The Board takes note of his DVA treatment records; however, finds his current mental health condition developed post-service. 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.

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.

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-2021-03587 in Executive Session on 21 Dec 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/atch, dated 7 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 7 Jun 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 15 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Sep 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.

12/21/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*