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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03662

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her general (under honorable conditions) discharge be upgraded to honorable and her narrative reason for separation be changed to "Secretarial Authority" from "Misconduct-Drug Abuse".

APPLICANT'S CONTENTIONS

As an airman basic (E-1), she was dating a master sergeant for two to three weeks. She was not aware of the seriousness of the military fraternization policy, but she is sure the master sergeant was aware. On 22 Jul 84, she went on a long drive with the master sergeant to the beach. The only thing she remembers was drinking a lot of alcohol and passing out. After she was dropped off at the military barrack, she was too drunk to walk straight or stand up. Her roommate called the military ambulance where she was transported to the emergency room (ER). She was told by the doctor she reported having voluntary sex on the beach but denied being raped. She was also told the incident would forever be in her military records and the military's policy on fraternization. She does not recall having voluntary sex or anything after she passed out. On 27 Jul 84, she had an appointment with the Human Development Center for Social Action but did not keep the appointment due to the humiliation, shame, and not knowing what really happened to her. She believed she was raped but wanted to move on with her life and forget everything about that day. She believes the incident caused dysfunction with her mental, physical, and sexual choices throughout her military career. The incident allowed her to become promiscuous, hang around the wrong group of people, and have bad behaviors. In 1986 she was called in for a urinalysis test after being seen in a gay bar by a military officer. The test came back positive for marijuana. She never admitted to smoking marijuana but did admit to being in the company of people that smoked marijuana. A medical records evaluation completed by a military doctor on 29 Sep 86 stated that her account may be true, and the doctor believed she used poor judgement by being around drug users but there was no evidence to show drug use. The doctor recommended she be given a special monitoring program, base housing, and separation if she had any more similar incidents. On 30 Sep 86, her commander and other officers disregarded the medical doctor's recommendations and gave her an Article 15 with subsequent discharge action. She was verbally and mentally abused by her commander who said she was a disgrace, worthless, she would never get a decent job, she would receive no benefits from the military, could never join another branch of the military, and other derogatory phrases. She believes she was discriminated against as a black female and for her sexual preference or sexual orientation. She knew of a couple of males who also tested positive for marijuana, and they were entered into a drug and alcohol program, one of which was from her hometown and who later retired from the Air Force.

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After her discharge through 1989, she had panic attacks about the rape incident and being kicked out of the military that led to deadly binges of abusing drugs, alcohol, and sex. Her mother reported her to the police to see if they could offer any help which led to discovering she did have benefits from the military after all and was able to enroll in a Department of Veterans Affairs (DVA) drug and alcohol treatment facility. She believes if she had received the proper help from the military, she may not have made bad choices.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 21 Oct 86, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship*. The specific reasons for the action were:

a. On 23 Jul 86, she tested positive for marijuana during an inspection urinalysis. As a result, she was issued nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ).

b. At the time of her marijuana abuse, she was an airman first class (E-3) with 2 years and 6 months in the Air Force and through briefings, commander's call and other official channels, she was aware that use of marijuana was against Air Force policy.

On 22 Oct 86, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On 27 Oct 86, the discharge authority directed the applicant be discharged for drug abuse, with a general service characterization. Probation and rehabilitation were not offered.

On 31 Oct 86, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of "Misconduct – Drug Abuse". She was credited with 2 years, 5 months, and 15 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 20 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) for consideration under fundamental fairness; however, she 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 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 20 May 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force (DAFI) 36-3211, *Military Separations*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met DAF 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.

General (Under Honorable Conditions). If a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds compelling and sufficient evidence has been presented to support her request for an upgrade to honorable and change her narrative reason for separation to "Secretarial Authority" based on liberal consideration. The psychological advisor does not condone her poor decision and behaviors but based on her mental state at the time, she most likely felt her decision was not improper and may explain her impaired thinking and judgment. If she used marijuana despite denying this behavior, many people with trauma and mental health issues cope with substances and may explain this hypothetical behavior as well.

The following are answers to the four questions from the Kurta Memorandum 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 she was raped during service causing her to experience shame, guilt, pain, and depression and affected her judgment. She stated she never admitted to using drugs but admitted to being around drug users.

2. Did the condition exist or experience occur during military service? There is evidence the applicant was seen at the ER on 22 Jul 84, the date she contended she was raped, but denied she was raped to her ER physician. She claims she did not remember making this statement, and she was reported to be intoxicated at the time of her evaluation in the ER and so her report at the time would not be credible. There is evidence the applicant had mental health concerns during service. She reported to sick call on 17 Jul 86, six days before her UA test, with complaints of lethargy, insomnia, mild anorexia, and constipation for the past two months relating to not being near her husband. She was given a diagnosis of Situational Anxiety with Mild Depression. She received a Drug/Alcohol Screening/Evaluation on 29 Sep 86 and denied using marijuana but disclosed being exposed to passive smoking. Her evaluator stated there was no evidence of any physical or psychological drug use and he believed she had poor judgment for being around drug users. During her separation physical on 24 Oct 86, she reported having frequent trouble sleeping and depression and excessive worry. Her sleep issues were attributed to her separation from her spouse. The applicant was given a diagnosis of PTSD caused by MST by her DVA provider over 30 years post discharge. There is no evidence she had PTSD or PTSD symptoms during service.

3. Does the condition or experience excuse or mitigate the discharge? There is evidence the applicant most likely had a mental health condition or issues whether caused by her marital separation or sexual assault at the time she was exposed to marijuana. This impression was evidenced by her complaints of lethargy, insomnia, eating issues, etc. for the past two months and a diagnosis of Situational Anxiety with Mild Depression given to her when she presented to sick call about six days prior to her drug test that yielded positive for Tetrahydrocannabinol (THC). Her anxiety, depression, insomnia, etc. may cause her impaired judgment of being around drug users or possible drug use that may have caused her positive urinalysis test. Her mental health condition and experience may excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition and experience were found to have excused and mitigated her discharge, her mental health condition and experience would also outweigh her original discharge to support her request for the desired changes to her records.

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 18 Nov 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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. While the Board finds no error in the original discharge process, the Board recommends relief. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. The Board applied liberal consideration based on the applicant's mental health condition and sexual assault experience and finds sufficient evidence that her condition and experience excuses and mitigates the misconduct that led to her general discharge. 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 31 Oct 86, she was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03662 in Executive Session on 9 Mar 23:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Sep 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 20 May 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Nov 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Nov 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.

4/13/2023

X *Work-Product*

Board Operations Manager, AFBCMR
Signed by: USAF