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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03735

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board grant relief from his court-martial sentence and upgrade his bad conduct discharge(BCD) to a general (under honorable conditions) discharge.

APPLICANT'S CONTENTIONS

He was diagnosed with a mental health condition prior to his discharge which negatively impacted his performance. He was a "superb performer" prior to his declining mental health. His performance began to decline after he suffered a personal assault during his second reenlistment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 26 Oct 89, the convening authority published General Court-Martial Order Number [REDACTED]. The Order stated the applicant pled guilty for the following charges: 1) Between on or about (o/a) 20 Dec 88 and o/a 20 Jan 89, he wrongfully used cocaine; 2) O/a 22 May 89 until o/a 30 May 89, without authority, absent himself from his place of duty; 3) O/a 2 Jun 89, without authority, absent himself from his place of duty; 4) O/a 2 Jun 89, failed to obey an order despite having knowledge of a lawful order issued to not leave the psychiatric ward; and 5) O/a 12 Jun 89 until o/a 5 Jul 89, without authority, absent himself from his place of duty. On 7 Sep 89, the applicant's sentence was adjudged resulting in confinement for 15 months, forfeiture of \$399.00 pay per month for 15 months, reduction to the grade of airman basic (E-1), and a BCD.

On 15 Aug 91,

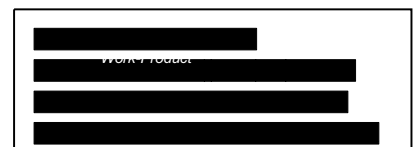
For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

POST-SERVICE INFORMATION

On 14 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.

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APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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 to the supplemental guidance, paragraphs 6 and 7.

On 14 Jun 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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 an exhaustive review of the available records and finds sufficient evidence to support the applicant's request for an upgrade of his character of service to general (under honorable conditions) based on liberal consideration.

There was compelling evidence in his records to suggest his mental health condition may be a mitigating factor to his misconduct and court-martial conviction. The applicant's records indicated there was no evidence he was assaulted during service as claimed, but there was evidence he was diagnosed with a mental health condition as he contended and received multiple evaluations and treatment during service. Considering the applicant's overall documented clinical presentation at the snapshot in time of service, there was evidence he was depressed at the time of each listed misconduct he was convicted at general court-martial, and so it is reasonable to conclude his mental health condition had a direct impact to his misconduct and behaviors and subsequent discharge. An upgrade to honorable is not supported as he did use cocaine, a heavy and serious drug, on multiple occasions and this behavior is inappropriate for service members and against policy and regulation.

The applicant had depression during service, and he did not meet criteria for a medical discharge and his administrative discharge was appropriate. The applicant's hospital discharge paperwork reported he was also given a personality disorder diagnosis with histrionic and narcissistic traits. His provider assessed his personality traits was also a factor to his suicidal gestures and opined his personality disorder would be most appropriate to be dealt with through administrative rather than medical channels. The Psychological Advisor concurs with this opinion and the applicant did not have any unfitting mental health conditions that would warrant a referral to the medical evaluation board for a medical discharge. He had an unsuiting condition meeting criteria for an administrative separation.

Liberal consideration is applied to the applicant's request. 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 he was diagnosed with a mental health condition prior to his discharge and negatively impacted his performance.

2. Did the condition exist or experience occur during military service? There was evidence the applicant was diagnosed with various forms of an adjustment disorder such as adjustment disorder with mixed emotional features, adjustment disorder with mixed disturbance of conduct, and adjustment disorder with depressed mood during military service. He was also diagnosed with suicidal gesture, personality disorder not otherwise specified with histrionic and narcissistic features, and occupational, legal, and marital problems.

3. Does the condition or experience excuse or mitigate the discharge? There was evidence the applicant's mental health condition had a direct impact to his behaviors and misconduct resulting with his court-martial conviction. There was evidence he was depressed or had suicidal ideation around the time of all his misconduct indicating his mental health condition may cause, excuse, or mitigate his discharge.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition may excuse or mitigate his discharge, his condition may also outweigh his original discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 14 Jun 22 for comment (Exhibit D) 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 error or injustice. While the Board finds the sentence of the military court was not improper or that it exceeded the limitations set forth in the UCMJ, the Board recommends relief based on liberal consideration. In particular, the Board agrees with the rationale of the AFRBA Psychological Advisor and finds there is sufficient evidence the applicant's mental health condition had a direct impact to his behaviors and misconduct that led to his court-martial conviction. However, the Board opines the applicant's use of cocaine to be egregious and it does not equate to acceptable conduct and performance for upgrade to an honorable characterization. Therefore, the Board recommends the applicant's records be corrected as indicated below.
4. The applicant has not shown that a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 15 Aug 91, he was discharged with service characterized as general (under honorable conditions), a separation code o “JFF,” and a narrative reason for separation of Secretarial Authority.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03735 in Executive Session on 24 Aug 22:

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, dated 16 Nov 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFRBA Psychological Advisor, dated 8 Jun 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 14 Jun 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 14 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

5/17/2023

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Board Operations Manager, AFBCMR
Signed by: USAF