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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00039

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. All derogatory information be removed from his records.
3. His grade of sergeant (E-4) be restored.

APPLICANT'S CONTENTIONS

Due to a misdiagnosis and absence of treatment for his mental health condition, his performance suffered in the last several months of his service. Prior to that, he had good performance reviews and was recommended for special duties. He was found to be 100 percent service-connected disabled for his mental health conditions by the Department of Veterans Affairs (DVA). The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 6 Apr 90, 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 5-46 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 29 Mar 89, a Letter of Counseling (LOC) was issued for his job performance and behavior not being within military standards.
- b. On 21 Apr 89, AF Form 174, *Record of Individual Counseling*, indicates the applicant was counseled for failure to go on several occasions.
- c. On 13 Jun 89, a Letter of Reprimand (LOR) was issued for his job performance and behavior not being within military standards. An unfavorable information file (UIF) was established.

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- d. On 14 Nov 89, a LOR was issued for failure to go.
- e. On 30 Nov 89, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go. He received a reduction in grade to airman first class (E-3) and base restriction for 14 days which was suspended until 29 May 90, forfeiture of pay of \$120.00 for one month and 14 days of extra duty.
- f. On 16 Mar 90, AF Form 174, indicates the applicant was counseled for an alteration of a public record.
- g. On 27 Mar 90, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 134 for altering a public record. The applicant was reduced to the grade of airman first class with a new date of rank (DOR) of 30 Nov 89.

On 9 May 90, the applicant was notified of an Administrative Discharge Board scheduled for 15 May 90.

On 8 Jun 90, an Administrative Discharge Board convened and found the applicant did alter a public record, acted inappropriately towards a female patient, failed to go on several occasions, and performed his duties and behaved in a manner inconsistent with Air Force standards. The Board recommended the applicant be separated with a general discharge without being offered probation and rehabilitation.

On 27 Jun 90, a legal review found the board was properly constituted and appointed by the special court-martial convening authority.

On 6 Jul 90, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern of Minor Disciplinary Infractions" and he was credited with six years and five 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 G.

POST-SERVICE INFORMATION

On 1 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

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petition regarding discharge upgrade requests by veterans claiming Post-Traumatic Stress Disorder (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 paragraphs 6 and 7 of the Wilkie Memorandum

On 1 Sep 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:

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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. His records reflected he had numerous misconduct, behavioral, and performance problems during service. Most of his misconduct were being late for duty, but he was also documented to receive disciplinary actions for his poor job performance and behaviors, leaving his work early, behaved inappropriately towards female patients, and altered an AF Form 555, *Patient Visit Register*, in an attempt to keep a female patient from being questioned concerning his conduct towards her. His testimony during the administrative board proceeding on 8 Jun 90 revealed he attributed his difficulties to his marital problems primarily related to his wife's mental health condition and him being unable to manage or deal with her condition. He reported his wife's mental health condition began right after they got married and he was unaware of her condition prior to their marriage. The applicant's service treatment records were not available or submitted for review, and he gave an unclear timeline of his treatment during the board hearing. He did, however, report he began receiving mental health treatment after they got married in Jun 89 and did not take an anti-depressant medication until 24 May 90. The applicant had pre-existing problems reporting to work on time prior to his marriage and so his mental health condition relating to his marriage could not have caused these misconducts. The applicant did report to the DVA he began to feel depressed in 1984 and received treatment during that time. There were no records to substantiate this report and the applicant also did not discuss this prior history during his board proceeding. There was no evidence he had depression or any other mental health conditions at the time of the prior marriage misconduct. The majority of his misconduct occurred after he got married in Jun 90 and so it is reasonable to assume his mental health condition developed from the stressors of his marriage and may have directly impacted some of his misconduct but not all of them. Some of his failures to go or reporting late to work could not be mitigated because he had explained his children played with his alarm clock causing him to not wake up on time and he was late to detail because he had to get his children ready and take them to daycare. His numerous failures to go ultimately led to him to receive an Article 15. His reduction of rank to airman first class was initially suspended but was vacated when he was found to have altered the AF Form 555 intentionally. This latter incident was reported by his leadership during the hearing as a serious offense causing potential consequences to the clinic that he too had conceded was erroneous. There was no evidence the applicant's mental health condition caused this purposeful behavior and if somehow it did, this behavior still could not be excused or mitigated because of the nature of the misconduct and this behavior could be considered as premeditated. Additionally, he behaved inappropriately and unethically towards female patients that constituted as sexual harassment on multiple

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occasions. His behaviors were improper, were not caused by his mental health condition, and could not be excused or mitigated by his mental health condition. His statements indicated he knew what he was doing and had admitted it was poor judgment pertaining to his advances towards the wife of another service member. These incidents occurred after he had been separated from his wife and even though there were reports he had some stressors following their separation, there was no evidence his stressors caused his egregious behaviors toward these female patients.

The applicant claimed he was misdiagnosed and had an absence of treatment for his mental health condition. There was no evidence to corroborate any of these claims. He did not identify the disorder that he was allegedly misdiagnosed with, and his service treatment records were not available for review to determine whether he was misdiagnosed. His testimony during his board hearing also did not discuss a diagnosis. It was alluded he had depression because he was prescribed an anti-depressant medication, but there were no actual medical records to verify this condition/diagnosis. The applicant did receive treatment during service, which disputes his contention of an absence of treatment. He had discussed at the board hearing he received marital counseling, individual counseling, and psychiatry/medication management services occurring between the period of around Jun 89 and until about May 90. The applicant also contends his performance suffered in the last several months of his service. This contention is supported by his records because there were numerous documentations about his poor performance, and he received a referral enlisted performance report on 7 Feb 90 for poor performance. It is known he had marital problems and had mental health issues and received treatment during the last year of service that may have impacted his behaviors and poor performance; however, and as discussed previously, some of his misconduct could be attributed to the stressors of his marital problems but the remaining more serious misconduct, were by his own behaviors and misconduct with no relation to his marital problems or mental health condition. Those serious misconduct could and would not outweigh his minor misconduct. The Psychological Advisor opines there were too many serious offenses and inappropriate behaviors that he had engaged in during service that could not be disregarded, be excused, or mitigated by his mental health condition.

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 he was misdiagnosed, there was an absence of treatment for his mental health condition, and his performance suffered in the last several months of his service. He had been granted a 100 percent service-connected disability for his mental health condition. He did not clarify his diagnosis or mental health condition in his statement.

2. Did the condition exist or experience occur during military service?
The applicant's service treatment records were not available for review. There is evidence from his testimony during his administrative board proceeding he had marital problems during service causing him to seek martial counseling. He also received individual counseling and was prescribed a sleep aid and an antidepressant medication (Desyrel) for his sleep issues and possibly depression. There was no mental disorder diagnosis documented in any of his available records. The applicant

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reported to the DVA several years post-discharge he had psychiatric difficulties to include having sleep difficulties, decreased appetite, moderate to severe feelings of sadness, anhedonia, and depressed mood lasting for months starting in 1984. He received mental health treatment at Sheppard AFB in 1984 and later received psychiatric care at Womack hospital in 1990.

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

There is no evidence the applicant was misdiagnosed or did not receive mental health treatment during service as claimed. He did have performance issues and the majority of his misconduct and behavioral issues had coincided with his marital problems and the time he received mental health treatment. His mental health condition may have caused/impacted some of his misconduct but not all of them. He had engaged in purposeful serious misconduct, inappropriate behaviors with female patients, and some failures to go that were not caused by his mental health condition. Thus, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his mental health condition also does not outweigh his 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 1 Sep 22 for comment (Exhibit D), and the applicant replied on 16 Sep 22. In his response, the applicant contends his outstanding service outweighs his period of misconduct. He did ask a patient on a date, he did express interest in a married woman, and he did alter a patient schedule roster as these things were precipitated by a period of mental health instability. Being young and uninformed about mental health, he did not conduct himself with sound reasoning. It has been 32 years since his discharge from the Air Force and he has lived with the shame over the ending of his career. He submitted his medical records for review highlighting several pages to support his claim.

The applicant's complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor has reviewed the newly submitted records and finds these new records are still insufficient to overturn the opinion rendered from the original advisory. The original advisory had included comprehensive information of his mental health history and behaviors leading to his discharge that will not be reiterated in this supplementary advisory. The Psychological Advisor recommends the Board review this original advisory in tandem with this supplementary advisory for a holistic clinical picture of the applicant's mental health history and functioning. This supplementary advisory addresses his newly submitted evidence relating to his request. The applicant did submit evidence to corroborate he was prescribed a psychotropic medication, Desyrel, during service, and his use of this medication was acknowledged in the original advisory. His post-service treatment for Bipolar Disorder, PTSD, General Anxiety Disorder (GAD), and Borderline Personality Disorder (BPD) appeared to have no relation to his

functioning during service as he did not exhibit symptoms or traits for any of these conditions during service that may have had a direct impact to his behaviors and subsequent discharge. There was indication he had a mental health condition during service and it was discussed in the original advisory that his mental health condition may have caused or impacted some of his misconduct but not all of them. The original advisory also stated “he had engaged in purposeful serious misconduct, inappropriate behaviors with female patients, and some failures to go that were not caused by his mental health condition. Thus, his mental health condition does not excuse or mitigate his discharge.” The applicant concedes in his rebuttal that he indeed had engaged in inappropriate behaviors and misconduct. It is comprehensible the reason he did not openly discuss his mental health condition during service, and the Psychological Advisor commends him for acknowledging his behaviors and mental health concerns; however, having or experiencing a mental health condition does not always or automatically excuse or mitigate a behavior or misconduct, especially for egregious behaviors that he was reported to have engaged in during service. This latter issue is of importance to the applicant’s petition. The Psychological Advisor finds his behaviors and misconduct were too serious and could not be overlooked or disregarded and continues to find no error or injustice with his discharge. At this time, the decision to provide relief or grant his request lies with the Board to settle whether his mental health condition may excuse, mitigate, and outweigh his discharge for engaging in a pattern of minor disciplinary infractions. This decision is at the Board’s discretion and determination. Liberal consideration was applied to the applicant’s request and questions from the Kurta Memorandum were already answered in the original advisory. The answers to these questions remained unchanged even with the newly submitted records and information.

The complete advisory opinion is at Exhibit G.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Oct 22 for comment (Exhibit H), and the applicant replied on 7 Nov 22 and submitted additional medical documentation from the DVA. The letter indicates he is receiving mental health treatment with the Behavioral Health team for Bipolar Disorder to which is he receiving 100 percent rating for his service-connected disability. The letter also indicates he suffers from severe anxiety.

The applicant’s complete response is at Exhibit I.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The discharge was not unduly harsh or disproportionate to the offenses committed. Therefore, the Board concurs with the rationale and recommendation 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, the Board does not find his condition excuses, mitigates, or outweighs his discharge. Even though some of his misconduct could be attributed to the stressors of his marital problems which had a direct impact on his behaviors and misconduct resulting with his discharge; the Board finds his mental health condition does not excuse or mitigate his more serious misconduct which led to his discharge, nor does it warrant a restoration of the applicant's grade. The Board takes note of the applicant's mental health post-service treatment but finds he did not exhibit symptoms or traits for any of the conditions during service that may have had a direct impact on his behaviors and subsequent 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 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.

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-2022-00039 in Executive Session on 21 Dec 22:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	Panel Member

All members voted against correcting the record. The panel considered the following:

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- Exhibit A: Application, DD Form 149, dated 29 Dec 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Sep 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 1 Sep 22.
- Exhibit F: Applicant's Response, w/atchs, dated 16 Sep 22.
- Exhibit G: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Oct 22.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Oct 22.
- Exhibit I: Applicant's Response, w/atch, dated 7 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.

12/6/2023

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Board Operations Manager, AFBCMR

Signed by:

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