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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-2022-00107

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

He was not diagnosed with Post-Traumatic Stress Disorder (PTSD) during service but incidents in service caused his PTSD, anxiety, and Major Depressive Disorder (MDD). These conditions were contributing factors leading to his drinking which led to his discharge from the service. He has been punished enough; his enlisted performance reports (EPRs) were high and he did his job well.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 14 Mar 00, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2 for a pattern of misconduct, specifically conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 2 Mar 99, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for underage drinking and driving under the influence (DUI). He received a reduction in grade to airman basic (E-1), suspended until 1 Sep 99, forfeiture of \$250.00 pay for 2 months, and 30 days of extra duty.
- b. On 20 May 99, AF Form 3070, indicates the applicant received (NJP), Article 15 for being absent without leave (AWOL). He received a reduction in grade to airman basic (E-1) and 30 days of extra duty.

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c. On 19 Aug 99, AF Form 3070, indicates the applicant received (NJP), Article 15 for two counts of underage drinking. He received a forfeiture of \$479.00 pay for 2 months and 30 days of base restriction.

d. On 28 Feb 00, AF Form 3545, *Incident Report*, indicates the applicant was driving onto base while on a revocation of driving privileges. An additional two-year revocation order was issued.

On 23 Mar 00, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

By undated letter, the discharge authority directed the applicant be discharged for a pattern of misconduct, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 4 Apr 00, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 11 months, and 6 days of total active service.

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

POST-SERVICE INFORMATION

On 18 Jul 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

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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 18 Jul 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.

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 applicant's service treatment records were not available or submitted by the applicant for review and so there are no records to verify whether he had received any mental health evaluation,

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diagnosis, and/or treatment during service. There were also no reports of any mental health issues he may have experienced documented in his available objective military records. His military records contained three statements from the applicant at the snapshot in time of service in response to his three Article 15's explaining his behaviors. None of his statements discussed he had any mental health issues such as PTSD, anxiety, or depression that may have caused his behaviors. For a recap, he explained for his first underage drinking and DUI incident, he and his friend had been drinking and they decided to go to a club. It was decided the applicant would drive because he appeared to be more capable of the two to drive to the club and he got a DUI after he was given a sobriety test for parking in a non-parking zone at the shoppette before leaving base to go to the club. His second response for being absent from his place of duty, he explained he got into a car accident while on leave and by suggestion of his mother, he decided to stay in Virginia to deal with the aftermath of the accident instead of returning back to base in Louisiana. His third response for his second underage drinking, he reported drinking off-base at a friend's house and admitted to believing no one would find out he was drinking as he had planned on spending the night. He had to return to his dorm room after a fight broke out at his friend's house and was arrested later that night for suspicion of drinking in his dorm room after security forces had responded to noise complaints from his room. The applicant did not submit a personal statement for driving while on revocation, but an incident report stated he knew he was on revocation but drove anyway because it was the only way he could get to work. Again, none of these explanations were attributed to his mental health condition/issues or appeared to have been caused by his mental health condition and more likely than not, was caused by his poor judgment. The applicant's witness statement reported he experienced trauma from volunteering to clean up the aftermath of a tornado in Oklahoma occurring in May 99. The applicant also reported to the Department of Veterans Affairs (DVA) this experience was traumatic to him. Two of his three Article 15's for drinking underage and receiving a DUI and absenting himself from his place of duty and leaving the local area had occurred before his alleged traumatic experience. Therefore, his mental health condition caused by his traumatic experience could not have caused these predated serious misconduct. Also, it appeared he may have had drinking issues prior to his traumatic experience. It is possible he had drank to cope with his traumatic experience causing his third Article 15 of underage drinking as contended, but his condition or experience could not have caused his last documented misconduct of driving while on revocation because he acknowledged to willfully and purposefully violating the order.

The applicant contends his condition of PTSD, anxiety, and MDD may have caused his behaviors during service. He was never diagnosed with PTSD according to his DVA treatment records and the submitted one-page inpatient discharge summary. He reported to his DVA provider he had a history of PTSD but was never formally given this diagnosis and no records were submitted to substantiate his reported history. His last mental health treatment encounter with his DVA psychiatrist reported he was given a rule out of PTSD, indicating there was not enough information or symptoms meeting criteria for a confirmed PTSD diagnosis. Giving the applicant the benefit of the doubt that he did experience trauma from his experience of cleaning up the residual effects of the tornado during service as corroborated by his witness statement, his condition may cause one of his misconduct but did not cause, excuse or mitigate most of his misconduct as previously discussed. There was also no evidence he experienced anxiety or depression during service. He was diagnosed with Generalized Anxiety Disorder (GAD), anxiety, and MDD post-discharge and

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the origin and onset of these conditions were not clarified in his records. His DVA treatment notes did not specify whether he experienced these conditions/symptoms during service and/or if his military service caused him to develop these conditions, especially since he was not diagnosed with these conditions until 20 years post-service. The applicant was reported to have employment, legal, and housing issues post-service caused by his drinking problems and any of these post-service stressors may cause him to have anxiety and depression.

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 his condition of PTSD, anxiety, and MDD were related to incidents during service leading up to his drinking causing his discharge.

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

There was no evidence the applicant had any mental health conditions to include PTSD, anxiety, and MDD during military service. The applicant was diagnosed with GAD, anxiety, and MDD about 20 years post-discharge. There were no records confirming he was formally diagnosed with PTSD during or post-service. He reported to the DVA and from his character witness statement he experienced trauma from participating in cleaning up the aftermath of a tornado in Oklahoma occurring during military service.

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

The applicant's witness statement stated his traumatic experience occurred in May 99 and two of his three Article 15's to include his underage drinking and a DUI had occurred prior to his traumatic experience. Therefore, these misconduct could not have been caused by his mental health condition or traumatic experience. It was possible his third and last Article 15 for underage drinking was caused by him using alcohol to cope with this mental health condition since this misconduct occurred after his traumatic experience, but his mental health condition or traumatic experience did not cause his driving while on provocation as the applicant had knowingly and willfully drove because he needed to get to work. His mental health condition and traumatic experience may have caused one of his misconduct but did not cause most and his more serious misconduct. Thus, his mental health condition and traumatic experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition and traumatic experience do not excuse or mitigate his discharge, his condition and experience also do not outweigh his 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 19 Aug 22 for comment (Exhibit D), but has received no response.

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. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Furthermore, 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, since there is no evidence his mental health condition or his volunteering to clean up the aftermath of a tornado had a direct impact on most of his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his 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.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2022-00107 in Executive Session on 5 Oct 22:

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Work-Product [Redacted] Chair, AFBCMR
[Redacted] Panel Member
Work-Product [Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Nov 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 15 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Aug 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 18 Jul 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.

5/22/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by: USAF