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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00328

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His mental health disability led to his discharge.

In support of his request, the applicant provides a copy of his NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, which shows he served honorably in the Army National Guard for six years and two days and a summary of benefits letter from the Department of Veterans Affairs (DVA) which shows a 70 percent disability rating for his service-connected injuries/illnesses.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 28 Sep 98, 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 prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 8 May 97, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for underage drinking, dereliction of duty, and drunk and disorderly misconduct. He received a reduction in grade to airman (E-2), suspended until 15 Nov 97, forfeiture of pay of \$250.00 for two months, and 30 days of extra duty.

**AFBCMR Docket Number BC-2022-00328
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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
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b. On 20 Apr 98, AF Form 3070, indicates the applicant received NJP, Article 15 for underage drinking, dereliction of duty, resisting arrest, and drunk and disorderly misconduct. He received a reduction in grade to airman (E-2), with a new date of rank of 20 Apr 98, forfeiture of pay of \$500.00, excess of \$250.00 suspended until 19 Oct 98, and 30 days of extra duty.

On 9 Oct 98, the Staff Judge Advocate found the discharge action legally sufficient.

On 13 Oct 98, the discharge authority directed the applicant be discharged for a pattern of misconduct prejudicial to good order and discipline, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 22 Oct 98, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 11 months, and 2 days of total active service.

On 26 Feb 01, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 11 Oct 01, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 11 Apr 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.

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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 11 Apr 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 applicant was engaged in two alcohol related incidents of underage drinking resulting in two Article 15's causing his discharge for misconduct. Although his service treatment records were not available or submitted for review, his personal statements at the snapshot in time of service reflected these were isolated occurrences and he was apparently referred to the mental health clinic and received psychoeducation relating to alcohol and substance use. He claimed he was classified by mental health as an "alcohol abuser" but no records exist to substantiate this report although it is likely. There was no evidence he needed continuous or long-term substance abuse treatment services and no evidence he developed alcohol dependency problems. He reported the same information to the DVA years post-discharge and stated he attended one group session for substance use disorder. This brief attendance indicated he attended a psychoeducation course about substance use. The applicant did not discuss having any mental health conditions such as anxiety, depression, trauma, etc. in any of his numerous personal statements that may cause him to use or cope with alcohol. He reported to the DVA he had attempted suicide in 1998 by putting his friend's gun in his mouth but no records exist to corroborate this information. There was no indication he sought medical assistance following the event or informed anyone of this incident. He also reported to the DVA in Aug 21 during his initial evaluation, he had recurring depression for 20-24 years and implied his depression coincided with his time in service. He had been given a diagnosis of Major Depressive Disorder (MDD), recurrent, moderate by the DVA but with no evidence he met diagnostic criteria for MDD and/or had depression or depressive symptoms such as hopelessness, anhedonia, sleep problems, appetite issues, poor memory and concentration, fatigue, etc. during service. There were no observations or records from his leadership of any emotional distress the applicant had displayed or impaired his ability to function in the service that would result with a command directed mental health evaluation. The applicant contends the incidents that led to his discharge were related to his mental health DVA disability. Again, his condition was not clarified, and he offered no explanation for how his disability/condition caused his misconduct and discharge. The burden of proof is placed on the applicant and presumption of regularity is applied reflecting his discharge was proper. Furthermore, the applicant submitted his Report of Separation and Record of Service from his service time with the Army National Guard. He enlisted into the Army National Guard about 10 years after his discharge from the Air Force. His ability to meet accession standards and gain admission into the Army National Guard after the Air Force would suggest he was fit for duty. He served in the Army for an additional six years and there was no mental health condition or disability that would hinder his functioning in the Army or caused his discharge. He was able to successfully complete his term of enlistment and earned an honorable discharge with the Army. Moreover, the applicant did not make any contentions pertaining to his mental health condition when he previously petitioned to the AFDRB for an upgrade of his discharge in 2001. It appeared there was no mental health issues at the time that was attributed to his discharge. The applicant's personal testimony and submitted evidence were found to not be sufficient or compelling to support his contention and request. As a result, the Psychological Advisor finds no error or injustice with his discharge from the Air Force.

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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 incidents that led to his discharge were related to his mental health DVA disability. His mental health condition was not specified by the applicant or in his submitted DVA letter.

2. Did the condition exist or experience occur during military service?
The applicant had two alcohol related incidents during service that caused his discharge for misconduct. He discussed in various personal statements at the time of service he had problems with alcohol and vowed and learned he needed to abstain from alcohol completely. He claimed he was classified by mental health as an alcohol abuser, but his service treatment records were unavailable to substantiate this report. He reported to the DVA he attended one group session pertaining to substance use during service. He also reported to the DVA he had recurring depression possibly during his time in service. He was given a diagnosis of MDD, recurrent, moderate by the DVA but with no evidence this condition existed or occurred during military service.

3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition to include MDD for which he had been diagnosed with post-service by the DVA had a direct impact to his misconduct resulting with his discharge. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since there is no evidence his mental health condition to include MDD may excuse or mitigate his discharge, his mental health condition also does not outweigh his 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 1 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 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. 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 had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. His misconduct stems from alcohol usage; however, there was no evidence he needed continuous or long-term substance abuse treatment services or that he developed alcohol dependency problems. 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-2022-00328 in Executive Session on 30 Nov 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/atchs, dated 29 Dec 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 11 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 31 Aug 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Sep 22.

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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.

12/7/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product