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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00530

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

In the last 39 years his memory has come back and questions about his substance abuse and past have become clearer to him. He took a class called "History of Emotions" in Fall 2015 and more memories returned and he spent several nights researching the Catholic Church's database on sexual abuse. He then went to counseling for a few years. Since his discharge, his only knowledge was of substance abuse, which ended on 10 Aug 84 for spiritual reasons. In 2016, he received a bachelor's degree and worked at a military daycare. If he had been treated for child trauma in 1970, he believes he could have been a better soldier and person.

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 1 Jul 83, 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*, for minor disciplinary infractions. The specific reasons for the action were:

- a. On 17 Aug 82, he was counseled for substandard duty performance.
- b. On 6, 11, and 18 Aug 82, he wrote three checks with insufficient funds totaling \$125.00. He ultimately paid the amount only after he was counseled by his first sergeant.
- c. On 8 Sep 82, he was observed urinating in a paper cup and tossing it out of the window of a military bus. As a result, he was counseled by his supervisor.
- d. On 11 Sep 82, he intentionally damaged a dormitory latrine door while intoxicated. As a result, he received nonjudicial punishment (NJP) action, pursuant to Article 15, Uniform Code of Military Justice (UCMJ) with suspended reduction to airman (E-2), suspended forfeiture of \$100.00 pay per month for 1 month, and restriction to the Base for 30 days. He was also entered into the Alcohol Rehabilitation Program on 29 Sep 82.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

e. On 27 Oct 82, he intentionally damaged two hallway ceiling tiles by punching them with his hands. As a result, his vacation of suspended punishment was instituted.

f. On 22 Jun 83, he intentionally broke a window with his hand while intoxicated. As a result, he was administered a letter of reprimand.

On 20 Jul 83, the Staff Judge Advocate found the discharge action legally sufficient.

On 22 Jul 83, the discharge authority directed the applicant be discharged with a general (under honorable conditions) service characterization. On this same date, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of "Misconduct – Pattern of Minor Disciplinary Infractions." He was credited with one year, five months, and four 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 27 Oct 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 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 27 Oct 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 member'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 insufficient evidence to support the applicant's request for an upgrade to his discharge from a mental health perspective. The applicant reported he had childhood trauma in 1970 and implied his substance abuse was related to this experience. While it is conceivable, he may have unknowingly coped with his childhood trauma because he alluded to having memory problems of his past, his behaviors do not excuse his misconduct especially since he had damaged government property on several occasions while intoxicated. His alcohol problems were unsuited for military service and existed prior to service (EPTS) because the applicant stated he had substance problems from 1970-1984. This timeline predated his time in service by over 10 years. His childhood trauma and substance abuse problems were EPTS and no evidence his military duties aggravated these prior service conditions/experiences. His mental health condition could also not explain or excuse his remaining misconduct to include his inappropriate behavior of tossing his urine out of a window while he was on a military bus, writing three checks with insufficient funds and had to be counseled by his supervisor to pay the debt, and his repeated substandard performance. His attitude was noted by others to be poor and disdainful when they offered him assistance that most likely was caused by his personality traits, another unsuited condition. The Psychological Advisor opines his mental health condition/substance abuse from his childhood sexual abuse trauma may have caused some of his misconduct but could not completely explain, excuse, or mitigate his misconduct and discharge. Therefore, there was no error or injustice with his discharge from a mental health perspective.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's request because his mental health condition was found to be EPTS and not aggravated by his military service per Kurta memorandum item #15. Should the Board elect to apply liberal consideration to his request, the following are responses to the four questions from the Kurta memorandum from the records available for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contends he had substance abuse problems from 1970-1984 and implied they were related to his childhood sexual abuse trauma in 1970.

2. Did the condition exist or experience occur during military service? There was evidence the applicant had alcohol abuse problems and his problems were addressed by his leadership during service. He received a command directed mental health evaluation and was found to be a problem drinker and was suggested to attend the alcohol rehabilitation program. It appeared he attended treatment for his alcohol problems based on statements from his leadership and primary care manager in his records. He was observed to be moderately depressed during the evaluation but did not meet diagnostic criteria for a diagnosis and the triggers of his depressed mood was not identified. There were no records he reported having childhood trauma during service and his childhood trauma did not occur during military service.

3. Does the condition or experience excuse or mitigate the discharge? The applicant's substance abuse problems and childhood sexual abuse trauma were EPTS conditions and there is no evidence they were aggravated by his military service. His mental health condition/substance abuse problems caused by his childhood trauma may have caused some of his problems but could not completely explain, excuse, or mitigate his discharge.

4. Does the condition or experience outweigh the discharge? Since his mental health condition or childhood trauma experience does not excuse or mitigate his discharge, his condition or experience 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 7 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 remains unconvinced the evidence presented demonstrates 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. Specifically, the applicant's mental health condition/substance abuse problems caused by his childhood trauma may have caused some of his misconduct, but could not completely explain, excuse, or mitigate his discharge. While the Board considered the applicant's request under liberal consideration due to his mental health condition and childhood sexual trauma experience, the Board finds liberal consideration is not applicable based on the applicant's condition and experience were EPTS and there is no evidence they were aggravated by his military

service. 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 good citizenship since his discharge, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00530 in Executive Session on 25 Jan 23:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, dated 7 Feb 22.

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 27 Oct 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 1 Nov 22.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, 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.

12/20/2023

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Board Operations Manager, AFBCMR

Signed by:

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