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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00717

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His Uncharacterized Entry Level Separation (ELS) be upgraded to honorable discharge.

### APPLICANT'S CONTENTIONS

In Aug 17, the Department of Veterans Affairs (DVA) certified he was an honorably discharged Veteran of the Air Force.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 20 Nov 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.11.1 for a mental disorder. The specific reason for the action is on 13 Nov 95, the applicant was diagnosed by a psychiatrist as having an adjustment disorder with depressed mood, which was so severe that his ability to function effectively in the military environment was significantly impaired.

On 7 Dec 95, the deputy staff judge advocate found the discharge action legally sufficient.

On 9 Dec 95, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.11.1, with an ELS without the offer of probation and rehabilitation.

On 13 Dec 95, the applicant received an Entry Level Separation. His narrative reason for separation is "Personality Disorder." He was credited with 3 months and 21 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

AFBCMR Docket Number BC-2022-00717

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

On 29 Aug 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 for Personnel and Readiness (USD P&R) 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 29 Aug 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.

**Entry Level Separation.** Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

## AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to his record. His records indicated he was discharged from service for having an unsuiting mental health condition identified as an adjustment disorder. Based on a review of the available records this diagnosis was appropriate and valid based on his documented difficulties of adjusting and adapting to the military environment causing him to feel depressed and having suicidal ideation. His behaviors were assessed to be incompatible with military service and his acute adjustment disorder was considered to be unsuiting for continued military service. He was discharged under ELS and was furnished with an Uncharacterized character of service because he served less than 180 days of continuous active duty service. His service characterization is in accordance with current policy and regulation of DAFI 36-3208, the same regulation was discharged under, and thus, there is no error or injustice identified with his discharge and character

of service. It is acknowledged the applicant's discharge characterization is considered to be "Honorable" to the DVA, but the reason for the change is based on accessing certain privileges and benefits and has no relation to the military's policy and procedure pertaining to service characterization. The DVA and the military have two separate purposes and policies for service characterization. The applicant's Uncharacterized character of service is correct per policy and his request for an Honorable discharge could not be supported.

Although there is no error or injustice identified with his discharge, the applicant's DD Form 214 currently lists his narrative reason for separation as "Personality Disorder." The applicant was diagnosed with a personality disorder during service, but his reason for separation was for an adjustment disorder. Both of these conditions are considered unsuiting and it appears an administrative error was made when his DD Form 214 was generated. The Psychological Advisor recommends the Board change his narrative reason for separation to "Condition not a Disability" to correct the error and protect sensitive information.

Liberal consideration is applied to the applicant's request. The following are responses based on the available records to the four questions from the Kurta memorandum:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant reported he received a discharge upgrade from the DVA from Uncharacterized to Honorable in Aug 17. He made no mental health contentions.

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

The applicant was diagnosed with adjustment disorder with depressed mood, suicidal thoughts and inability to cope with the demands of service; dysthymia, chronic, early onset; and mild and chronic depressive feeling on Axis I and personality features passive, dependent, immature, impulsive, etc. immature features were most prominent on Axis II by a military provider and was hospitalized for having suicidal ideation during military service.

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

The applicant was discharged for having an unsuiting mental health condition identified as adjustment disorder with depressed mood. This diagnosis is determined to be appropriate and valid based on the rationale provided by his military provider for having difficulties adjusting/adapting to the military causing his poor behaviors, performance, depressed mood, and suicidal ideation. There is no error or injustice with this discharge and so 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 may excuse or mitigate his discharge, his mental health condition also does 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 29 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 and discharge upgrade requests are technically untimely. However, it would be illogical to deny such applications 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 the victim of an error or injustice. The Board concurs with the rationale and opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, due to possible adverse negative consequences of the applicant's narrative reason for separation, the Board recognizes the potential stigma of "Personality Disorder" listed on his DD Form 214, which is sufficient to warrant a change to his records. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. The Board notes the Psychological Advisor applied liberal consideration to the applicant's request; however, the Board notes liberal consideration does not apply to fitness determinations. However, even applying it under the circumstances, does not change the outcome, as the Board finds the applicant's mental health condition to be unsuited for continued military service. Therefore, the Board recommends correcting the applicant's records as indicated below.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that at the time of his 13 Dec 95 discharge, his narrative reason for separation was "Condition Not a Disability" with the corresponding separation code of "JFF."

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## CERTIFICATION

The following quorum of the Board, as defined in 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-2022-00717 in Executive Session on 21 Dec 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 22 Feb 22.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Aug 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 22.

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Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 29 Aug 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.

12/4/2023

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Board Operations Manager, AFBCMR

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