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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00845

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was a model airman with awards and a clean record. He volunteered for an assignment in Vietnam. After serving honorably with no infractions, the pressure of being in Vietnam got to him. As a result, he went absent without official leave (AWOL), which may be related to his anxiety and depression. The Department of Veterans Affairs (DVA) has awarded him 50 percent disability rating for his service-connected major depressive disorder.

In support of his request for a discharge upgrade, the applicant provides a personal statement, and copies of military kudos, post-service certificates of achievement, an FBI Identity History Summary Check, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 28 Jun 67, according to DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, provided by the applicant, he received a general (under honorable conditions) discharge under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*. He was credited with 3 years, 11 months, and 9 days of total active service.

For more information, see the advisory at Exhibit C.

POST-SERVICE INFORMATION

On 12 Sep 22, the Board sent the applicant a request for any additional post-service information he may wish the Board to consider; however, he has not replied (Exhibit B). The applicant did however, provide an FBI Identity History Summary Check, dated 14 May 22, with his initial application. According to the report, the applicant has had one arrest since his discharge for carrying a concealed weapon (knife) (Exhibit A).

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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

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 12 Sep 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit B).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the 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.

General (Under Honorable Conditions). 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 member's military record.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge from a mental health perspective. Without his discharge paperwork and service treatment records, it could not be determined at this time whether his mental health condition may cause, excuse, mitigate, or outweigh his discharge. The burden of proof is placed on the applicant to submit the necessary documents to support his request and contention. As a result, presumption of regularity is applied and there is no evidence of any error or injustice with his discharge from a mental health perspective. The applicant may consider submitting his discharge paperwork and service treatment records for a reconsideration of his petition in the future.

Liberal consideration is applied to the applicant's request due to his contention of a mental health condition. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

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

The applicant contends while in Vietnam, he worked in a communications center where it was hot inside, very noisy, and busy. He worked 12 hours, 7 days a week with no days off and developed tinnitus from the loud noise. He went AWOL for three days partially due to the pressure he felt, which he regretted, and was discharged shortly after his AWOL. He informed his DVA provider his drinking problems caused his discharge. He submitted his post-service treatment records reporting he had passive aggressive personality disorder that may have matured while he was under stress and began drinking alcohol during service. He had been hospitalized numerous times post-service occurring and starting about two years after his discharge for anxiety, depression, and alcohol issues.

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

The applicant's objective service treatment records are not available or submitted by the applicant for review. His DVA post-service treatment records reported he had passive aggressive personality disorder during service that was in remission at the time of his discharge, and he claimed to his provider he started drinking during service. He was diagnosed with anxiety and depression and his drinking worsened post-service. His contentions, post-service providers' reports, and the existence and occurrence of his mental health condition during service could not be substantiated due to the absence of his service treatment records.

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

The applicant's discharge paperwork and service treatment records are not available for review. Without these records, it could not be determined whether his mental health condition had a direct impact to his discharge. Based on the available records, his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's condition or 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 C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 14 Mar 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but the time requirement is waived in the interest of justice because applicant is requesting a discharge upgrade.
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 injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. The Board contemplated the many principles included in the Wilkie memorandum to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct, service to the community, and job history. Given the evidence presented, the Board finds the applicant's post-service accomplishments sufficient enough to warrant a discharge upgrade. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 28 Jun 67, he was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2022-00845 in Executive Session on 26 Jul 23:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

A majority of the panel voted to correct the record. Work-Product voted not to correct the record. Work-Product did provide a minority opinion. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Mar 22.
- Exhibit B: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 12 Sep 22.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Mar 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Mar 23.

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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.

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