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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00857

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

While deployed in Afghanistan he suffered from Post-Traumatic Stress Disorder (PTSD) which led to his general (under honorable conditions) discharge from the Air Force. He is currently receiving disability from the Department of Veterans Affairs (DVA) and has been undergoing treatment for PTSD from a psychiatrist.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 May 05, the applicant's commander recommended the applicant be discharged from the Air Force for a pattern of misconduct, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, paragraph 5.50.2. The specific reasons for the action were:

- a. On 26 Jan 04, the applicant received a Letter of Counseling for arriving late to a mandatory squadron formation.
- b. On 14 Mar 05, the applicant received an Article 15 for unlawfully striking an airman in the face and entering the airman's room. As a result, the applicant was demoted to the grade of airman (E-2), ordered forfeiture of \$692 per pay for 1 month, ordered 30 extra duty days and reprimanded.
- c. On 15 Apr 05, the applicant received a vacation of suspended Article 15 for failing to go at the time prescribed to his appointed place of duty. As a result, the applicant was demoted to the rank of airman (E-2) with a new date of rank of 14 Mar 05 and reprimanded.
- d. On 19 Apr 05, the applicant received a Letter of Reprimand for failing to report for a scheduled appointment with his commander.

An undated memo indicates the staff judge advocate found the discharge action legally sufficient.

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On 18 May 05, the discharge authority directed the applicant be discharged for a pattern of misconduct, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 24 May 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct." He was credited with 2 years, 1 month, and 24 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 13 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 for Personnel and Readiness 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 13 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 finds insufficient evidence to support the applicant's request for an upgrade to his discharge. The applicant contends he suffered from PTSD while deployed in Afghanistan. There is no evidence of a nexus between his mental health condition or PTSD developed from his deployment experiences to his misconduct and discharge. The applicant did not attribute his behaviors were caused by his mental health condition or PTSD in any of his statements referring to his misconduct. There was no evidence presented by the applicant he was diagnosed with PTSD or experienced PTSD symptoms during service. It is very plausible he developed PTSD from his deployment experiences, but he did not submit any of these records to substantiate his reports to include when he was diagnosed with this condition. The most important factor is whether his condition of PTSD may have caused his behaviors leading to his discharge, and the available records do not support this impression. Therefore, the Psychological Advisor finds no error or injustice with his discharge.

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 he suffered from PTSD caused by his deployment experiences to Afghanistan that led to his general discharge. He had received VA disability for PTSD and has been undergoing treatment with a psychiatrist in the DMV (Work-Product) area.

2. Did the condition exist or experience occur during military service? There is no evidence the applicant was diagnosed with PTSD and/or experienced PTSD or similar conditions during service. There were no records his condition of PTSD had existed or was

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experienced during military service. He reported receiving VA disability and being treated for PTSD post service.

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

There is no evidence the applicant's mental health condition to include PTSD had a direct impact to his misconduct resulting with his discharge. His condition of PTSD caused by his deployment experiences does not excuse or mitigate his discharge especially since he physically assaulted an airman unprovoked.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition caused by his deployment experiences may excuse or mitigate his discharge, his condition and experience also do 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 15 Aug 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. 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/criminal history provided by the applicant, the Board finds no basis to do so. Finally, the Board is satisfied the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.

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

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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-2022-00857 in Executive Session on 21 Sep 22:

Work-Product [Redacted] Panel Chair
[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, dated 21 Mar 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 13 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Aug 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 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.

9/23/2023

Work-Product [Redacted] _____
Board Operations Manager, AFBCMR
Signed by: USAF