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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00924

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He experienced systemic racism from superior officers; he was targeted for punishment, given menial tasks to complete, and was accused of theft, intoxication, and insubordination that he claimed he was not guilty of. He was traumatized during service; when learning of the death of a superior officer who was killed in a plane crash, when his squadron was placed on deployment notice to *Work...* and when one of the first activities he did when he got to *Work-Product* was to help clean up and reconstruct an aircraft crash. He was threatened, followed by the military police, and had to be watched. All the stress and constant targeting led him to feel depressed and to consume alcohol. He became paranoid, could not trust anyone, was afraid of retaliation, and did not feel safe. His performance and motivation declined, his marriage turned violent and turbulent, and he took excessive leave due to all of the aforementioned situations. He was seen on base by a psychiatrist who believed he was experiencing paranoia, mood swings, and anger issues as a result of the environment and the psychiatrist wanted him to take psychotropic medications at the time. His commanding officer tried to force him to take a "section 8," but he ended up taking a general discharge. He had severe depression, anxiety, and panic attacks that continued after his discharge, and at the time of his discharge, he could not eat or sleep.

In support of his request for clemency, the applicant provides a personal statement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Aug 79, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation,*

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or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program, paragraph 2-4b for a personality disorder. The specific reasons for the action were:

- a. On 11 Jul 79, a mental health evaluation was conducted on the applicant which diagnosed him with having a mixed personality disorder, chronic, moderate, with sociopathic and passive-aggressive features with a recommendation of an administrative separation.
- b. Manifestations of that personality disorder are as follows:
 - On 8 Jun 78, a dishonored check notification was issued to the applicant.
 - On 12 Jul 78, a dishonored check notification was issued to the applicant.
 - On 14 Mar 79, a Letter of Counseling was issued for suspicion of larceny.
 - On 29 Mar 79, TAC Form 27, *Record of Individual Counseling*, indicates the applicant was counseled for leaving his place of duty without authorization.
 - On 27 Apr 79, TAC Form 27, indicates the applicant was counseled for cashing bad checks.
 - Dated 24 May 79, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for leaving his place of duty without authorization on two occasions and making a false statement. He received a reduction in grade to airman (E-2) and forfeiture of pay of \$200.00 for two months, reduction in grade and forfeiture of pay in excess of \$50.00 per month, suspended until 23 Nov 79.
 - Dated 5 Jul 79, a letter from his bank indicating an overdrawn account.
 - On 10 Jul 79, a Letter of Reprimand (LOR) issued for failure to pay debt.
 - Dated 16 Jul 79, a Vacation of Suspension memorandum indicates the applicant violated Article 134 for disorderly conduct. The applicant was reduced to the grade of airman with a new date of rank (DOR) of 4 Jun 79.

On 6 Sep 79, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged for a personality disorder, with a general (under honorable conditions) service characterization.

On 12 Sep 79, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is SPD:JMB which denotes "Character of Behavior Disorder" and he was credited with 1 year, 9 months, and 13 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 31 Mar 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 Post-Traumatic Stress Disorder (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.

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On 31 Mar 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.

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 completed a review of all available records and finds no error or injustice with his discharge and finds the applicant's objective military records do not support the applicant's contentions. The Board may elect to upgrade his discharge based on the updated policy in AFI 36-3208. However, this decision is at the Board's discretion. The applicant is requesting an upgrade of his discharge to honorable. His military provider had recommended he receive an under honorable conditions (general) discharge because his behaviors and military records were not sufficiently meritorious for an honorable discharge. While this reasoning was probably acceptable in accordance with policy and procedures at the time, updated and current policy of AFI 36-3208 provided guidance that the types of separation authorized for "Conditions that interfere with military service" which include personality disorders, are either entry-level separation (ELS) or honorable discharges. Since he served more than 180 days of continuous active duty service, he is not eligible for ELS but for the latter characterization of an honorable discharge.

While it is possible, he had his described experiences, there was no evidence these experiences caused his behaviors and misconduct problems during service. In his personal statements in response to his disciplinary and discharge actions, he discussed his financial problems were caused

by reduced income when his wife had to stop working because she was having their first child, he admitted to leaving work without authority resulting with his Article 15 because they were “severely overmanned” and did not believe his absence would affect his work’s output, and he denied engaging in alleged theft from the Red Cross, being drunk and disorderly, and failing to pay his debts. He continues to deny engaging in these behaviors in this petition as well. Since he denied engaging in these behaviors and misconduct, his mental health condition would not have had a direct impact on his behaviors and misconduct based on his reasoning. However, the applicant was not discharged for engaging in a pattern of misconduct but was discharged for having an unsuited personality disorder identified as mixed personality disorder, chronic, moderate, with sociopathic and passive-aggressive features from his command referred evaluation. His personality disorder traits were assessed to have caused his numerous misconduct and behavioral problems. The applicant claimed he experienced paranoia, mood swings, anger, depression, trauma, and increased alcohol consumption from his military experiences and alluded there may be a nexus between these symptoms and his behaviors. There was no evidence he experienced any of these symptoms during service. His behaviors during service were not consistent to these alleged symptoms (depression, trauma, paranoia, etc.) but were better aligned to his personality traits as opined by his military provider. The Psychological Advisor concurs with his military provider’s assessment. The rationale provided by his military provider for his personality disorder diagnosis appeared to be valid and was consistent to the diagnostic criteria for this disorder. There was no evidence presented by the applicant that his unsuited personality disorder diagnosis given during service was made in error. It is acknowledged the applicant has been receiving mental health treatment from the Department of Veterans Affairs (DVA) for anxiety, depression, and PTSD, but these conditions were caused by his post-service stressors and childhood trauma respectively, and they were not associated to his military experiences. Therefore, and after an exhaustive review of the available records, the Psychological Advisor finds no error or injustice with his personality disorder diagnosis and subsequent discharge from a mental health perspective.

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 experienced systemic racism, was targeted for punishment, experienced multiple traumatic experiences, depression, paranoia, mood swings, and anger issues that may have caused his discharge.
2. Did the condition exist or experience occur during military service?
There is no evidence to substantiate any of his contentions and specifically, there was no evidence his mental health condition to include trauma, depression, paranoia, mood swing, and anger issues had existed or were experienced during military service. He was command referred for a mental health evaluation and the results of the evaluation yielded a diagnosis of mixed personality disorder, chronic, moderate, with sociopathic and passive-aggressive features.
3. Does the condition or experience excuse or mitigate the discharge?

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The applicant had an unsuiting personality disorder that was the reason and cause for his discharge. His personality traits were assessed to have caused his behavioral and misconduct problems and not from his traumatic experiences, depression, paranoia, mood swings, and anger issues. There is no evidence his personality disorder diagnosis and discharge were made in error and thus, his mental health condition and experience do 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 condition and experience also do not outweigh his original 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 8 Sep 22 for comment (Exhibit E), and the applicant replied on 2 Oct 22. In his response, the applicant contends he was diagnosed with a mental health disorder which impacted his ability to adapt to the military environment and not as alleged in the report that he was basically just acting out. His behaviors were in direct alignment with the diagnosis at the time. Special processing was not implemented in his case prior to his discharge. According to AFI 36-3208, paragraph 15.11.10.1.1, when diagnosis of personality disorder is given, the evaluation must specifically address PTSD or other mental health illnesses. This was not done in his case. Furthermore, the regulation states he should have been evaluated for PTSD, he should have received a second opinion/evaluation on his diagnosis of Personality Disorder, and he should have received a review by the Air Force Surgeon General, all of which were never done. He was offered no assistance to address his mental health issues. He reported he was overwhelmed, felt like he was being targeted, and was apologetic for his actions, asking for assistance. He now understands those were the symptoms of PTSD and his mental health was impacted by the systemic racism he endured at the time. He basically became paranoid, could not sleep, and was anxious because of the treatment he was receiving, as well as the other experiences he listed in his original submission.

The applicant's complete response is at Exhibit F.

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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly

harsh or disproportionate to the offenses committed. Therefore, the Board concurs with the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While noting the current policy of AFI 36-3208 where the types of separation authorized for "Conditions that interfere with military service" which include personality disorders, are either entry-level separation (ELS) or honorable discharge, the Board finds the applicant's misconduct does not warrant a change to his discharge. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim that his personality disorder diagnosis and discharge were made in error and thus, his mental health condition and experience do not excuse or mitigate his discharge. There was no evidence his traumatic experiences caused his behaviors and misconduct problems during service; his personality traits were assessed to have caused his behavioral and misconduct problems. The burden of proof is placed on the applicant to submit evidence to support his claim. 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.

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-2022-00924 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/atc, dated 31 Dec 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atc (Post-Service Request and Liberal Consideration Guidance), dated 31 Mar 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Sep 22.
- Exhibit F: Applicant's Response, dated 2 Oct 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.

9/25/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by

Work-Product