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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Attorney-Client

DOCKET NUMBER: BC-2022-01552

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

While stationed in *Work-Prod...*, he began having depressive episodes, which caused him to want to harm himself or take his own life. He received Uniform Code of Military Justice (UCMJ) action as a result of being absent without leave (AWOL) on multiple occasions when his mental health condition became too much for him to handle. During his first AWOL, he attempted to harm himself with a knife and when he informed his direct supervisor of this problem upon his return, his supervisor cared about the disciplinary aspect of him being AWOL instead of his self-harming behaviors. During his second AWOL, he had additional thoughts of self-harm but did not act on these thoughts. He was never directed to complete a mental health evaluation. During his time in *Attorney-Client* he felt very isolated and detached and had an overwhelming dark feeling that led to his behavioral issues and UCMJ actions, incarceration, and ultimately prevented an honorable discharge. If he had been evaluated after his first AWOL and attempt to harm himself, his service would have had a different outcome with an honorable discharge. It took 17 years of self-medication and homelessness for him to begin to seek help for his mental health condition.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Feb 05, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2 for misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 12 Jun 03, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go. He

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received a reduction in grade to airman (E-2), suspended until 11 Dec 03, 30 days of base restriction, and forfeiture of \$150.00 pay for 2 months.

b. On 9 Nov 04, a Letter of Reprimand (LOR) was issued for failing to pay a debt, making a false statement, and driving without insurance.

c. On 9 Dec 04, the convening authority published Special Court-Martial Order Number [redacted] ^{Atto...} The Order stated the applicant pled guilty to one charge and three specifications of being AWOL (Article 86); one charge and five specifications of issuing checks with insufficient funds (Article 134); and one charge and nine specifications of failing to pay his debt (Article 134). The applicant was sentenced to confinement for four months, a reduction to the grade of airman basic, and discharge from the service with a bad conduct discharge (BCD).

On 18 Feb 05, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be administratively discharged, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 21 Feb 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 3 years, 5 months and 20 days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit E.

POST-SERVICE INFORMATION

On 23 Jun 22, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 31 Jul 22 and provided an FBI report. According to the report, the applicant was arrested on 16 and 26 Jul 10 for marijuana possession. The applicant also provided a personal statement in which he contends since his discharge, he has had several jobs. His depression continued after discharge and he also experienced psychosis which led him to seek mental health treatment resulting in a diagnosis of schizophrenia. He is currently receiving Supplemental Security Income (SSI) and is receiving treatment from the Department of Veterans Affairs (DVA) from an intensive mental health team. He is actively engaged in psychosocial rehabilitation and recovery groups.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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

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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 23 Jun 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. His service treatment records were not available for review so there are no records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. There were also no records he made any complaints relating to his mental health issues to his leadership/supervisor as claimed or was observed to have any mental health concerns or behavioral problems that would warrant a command referred mental health evaluation. There was no evidence he was depressed, had engaged in self-harming behaviors, or attempted to engage in self-harming behaviors in his records. If he did engage in self-harming behaviors as claimed, a mental health evaluation would have been appropriate. Unfortunately, his service treatment records are not available for review, and it is possible he was referred or there may have been a note about his mental health concerns from his medical providers, unfortunately this cannot be confirmed. His Enlisted Performance Report (EPR) for the rating period of 6 Oct 02 thru 1 Aug 03 reflected he received a rating of two (out of five) and an EPR referral due to his failure to report and two separate incidents of financial irresponsibility. Although he received a poor performance evaluation, his additional rater discussed positive contributions he made to his unit, stating he displayed maximum drive in fulfilling duty-related responsibilities, performed above his rank and expertise, maintained optimistic when being disciplined, and continued to display strong work ethics. These observations of his behaviors are not consistent to an individual with depression and self-harming thoughts. The Psychological Advisor acknowledges he may have had internal distress but his mental health condition did not appear to have interfered with his ability to perform his military duties, influenced his behaviors, or affected his overall functioning from his records. His performance improved after this poor EPR because in his subsequent EPR, for the rating period of 2 Aug 03 thru 30 Jan 04, his overall rating increased to a four signifying good performance. His supervisor acknowledged his improved behaviors and performance and recommended he be able to reenlist per AF Form 418, *Selective Reenlistment Program Consideration*, dated 3 Mar 04. This

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was his last EPR during service. There were no observed mental health issues documented in any of his EPRs.

The Psychological Advisor finds the applicant's contention his first two AWOLs were caused by his depression and self-harming thoughts as compelling. It is plausible his mental health condition became too overwhelming to him that he was unable to tolerate his stressful environment causing him to be AWOL. However, the applicant's two AWOL incidents were not the sole reasons he was discharged from service. He was AWOL or failed to report for duty a total of four times on 29 May 03, 18 Aug 04, between 23 and 24 Aug 04, and between 30 Aug 04 and 4 Sep 04, and he was financially irresponsible such as issuing checks with insufficient funds and failing to pay his debts on multiple occasions, about 14 times or more, to different vendors or organizations. He also received an LOR for making a false official statement to his First Sergeant about paying his debts which was also a reason listed for his discharge. He did not address or discuss his additional two AWOLs, any of his financially irresponsible behaviors, or making a false statement to his First Sergeant. The Psychological Advisor gives the applicant the benefit of the doubt his depression could possibly be a factor influencing his behaviors and misconduct, but his documented behavioral issues were plentiful and excessive and these cumulative behaviors and/or misconduct had resulted with his conviction by special court-martial. These facts are difficult to overlook or be completely disregarded by his mental health condition especially since there was no evidence to corroborate his mental health condition or symptoms had existed during service or was a mitigating factor to his behaviors and misconduct. Furthermore, the applicant reported to the DVA he had depression and suicidal ideation since childhood and so his mental health condition had existed prior to service (EPTS). There was no evidence his military duties aggravated his EPTS condition. He was also diagnosed with schizophrenia several years post-service. There was no evidence he had psychosis during service and he most likely developed this condition post-service. At this time, the Psychological Advisor finds the applicant has not met the burden of proof to support his request. There was no error or injustice identified with his discharge.

Liberal consideration is not required to be applied to the applicant's petition because his depression and suicidal ideation were EPTS with no evidence of service aggravation in accordance with the Kurta Memorandum paragraph 15. Should the Board choose to apply liberal consideration to his request, the following are responses 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 he began to have depressive episodes causing him to want to hurt himself and take his own life and was AWOL twice for these problems. He received UCMJ action as a result of being AWOL on multiple occasions when his mental health became too much to handle. He claims he reported his self-harming thoughts to his direct supervisor and was never directed to receive a mental health evaluation. He felt if he would have been evaluated after the initial AWOL and attempt to harm himself, he would have had a very different outcome with an honorable discharge.
2. Did the condition exist or experience occur during military service?

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There is no evidence his depression or self-harming thoughts had existed or occurred during military service. His service treatment records were not available for review and so there are no records indicating he received a mental health evaluation, treatment, or mental disorder diagnosis during service. There were no reports in his available objective military records from his leadership of any observations or concerns for mental health condition which would result in a command referred mental health evaluation. He began to receive mental health treatment from the DVA over 10 years post-discharge and reported having depression and suicidal thoughts during his childhood/prior to service, claimed he had depression during service, and was diagnosed and presently treated for schizophrenia. There was no evidence he had schizophrenia, psychosis, or psychotic symptoms during military service.

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

The applicant's mental health condition of depression and suicidal ideation were EPTS with no evidence of aggravation by his Air Force service. There is no evidence he had depression or self-harming thoughts or behaviors during service. Giving the applicant the benefit of the doubt, it is possible he had depression causing at least two of his AWOLs, there was no explanation offered for his remaining and numerous misconduct infractions that resulted with his conviction by special court-martial. His misconduct resulting with his discharge were excessive and serious and could not be overlooked by his mental health condition based on the available records. Thus, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Nov 22 for comment (Exhibit F), 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. 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. Furthermore, 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence he had a mental health condition, suffered from depression or had self-harming thoughts during military service, which directly impacted his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, a lack of documentation showing post-service accomplishments, and a criminal history report showing arrests post-discharge, 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 current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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-2022-01552 in Executive Session on 25 Jan 23:

<i>Attorney-Client</i>	Panel Chair
<i>Attorney-Client</i>	, Panel Member
<i>Attorney-Client</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 May 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 23 Jun 22.
- Exhibit D: Applicant's Response, w/atchs, dated 31 Jul 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Nov 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Nov 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.

11/3/2023

Attorney-Client

Board Operations Manager, AFBCMR
Signed by: USAF

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