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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-2022-02107

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His mental illness was worsened by his military service. His otherwise honorable service warrants an honorable service characterization. He has had to suffer the stigma of a "mentally ill vet" and wants his record corrected.

In support of his request, the applicant provides his Department of Veterans Affairs (DVA) Rating Decision letter dated 28 Apr 22, which indicates he was granted an increase in rating from 50 percent to 100 percent for Post-Traumatic Stress Disorder (PTSD) to include unspecified and depressive disorder with mild cannabis use disorder, effective 8 Feb 22. He also included a letter from the DVA showing honorable service for commissary privileges and his AF Form 77, *Letter of Evaluation*, and DD Form 214, *Certificate of Release or Discharge from Active Duty*, from his deployment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) senior airman (E-4).

On 12 Jan 06, AF Form 2030, *USAF Drug and Alcohol Abuse Certificate*, indicates the applicant acknowledged he used marijuana 10 times prior to his enlistment into the ANG.

On 5 Nov 11, the applicant's commander recommended the applicant be discharged from the ANG under the provisions of AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, paragraph 3.21.3.2 for misconduct-commission of a serious offense-drug abuse.

**AFBCMR Docket Number BC-2022-02107
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
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CUI//SP-MIL/SP-PRVCY

On 6 Nov 11, the Chief of Military Justice found the discharge action legally sufficient noting the applicant was randomly selected for urinalysis (UA) which resulted in a positive test for tetrahydrocannabinol (THC), the active metabolite from marijuana use.

On 30 Dec 11, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, shows the applicant received a general (under honorable conditions) discharge. His reason for separation is “Drug Abuse” and his reenlistment eligibility (RE) code is “6H,” which denotes “Pending Discharge – Involuntary.” He was credited with 5 years, 10 months, and 7 days of total service.

On 21 Feb 18, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge and a change to his narrative reason for separation to “Secretarial Authority” and change his RE code to “3K,” which denotes “Reserved for use by Air Force Personnel Center (AFPC) or the Air Force Board for Correction of Military Records when no other reenlistment eligibility code applies or is appropriate.”

On 16 May 19, the AFDRB found insufficient evidence of an inequity or impropriety that would warrant a change to the applicant’s discharge and determined the discharge received by the applicant was appropriate. The board found no evidence to indicate the applicant was unaware of the Air Force policy of zero tolerance for illegal drug use and found the negative aspects of the applicant’s willful misconduct outweighed the positive aspects of his military service. Furthermore, after a thorough review of the service record and inputs from the board’s psychiatrist, the board found no conclusive indication any mental health issues had a direct impact on the applicant's misconduct or discharge.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits D and E.

POST-SERVICE INFORMATION

On 31 Mar 23, 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 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

CUI//SP-MIL/SP-PRVCY

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 31 Mar 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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 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. The applicant's electronic medical records revealed he began to seek mental health treatment after he tested positive for THC (marijuana). He contends for this petition he suffered from mental illness from his military service and repeated the same contention to the AFDRB. While this contention was substantiated by his DVA treatment as he did report his depressive symptoms increased after returning from deployment and was eventually diagnosed with PTSD from his military experience, his treatment records did not compellingly demonstrate his mental health condition from his military experience was the primary cause or reason for his drug use. During his psychiatric assessment at the emergency department (ED) on 31 Mar 11, he reported having stressors related to problems in his marriage and his sister's legal and financial troubles followed by this statement: "Shortly after these stressors, he met an old friend at a Walmart, went to his place, and ended up drinking beers and smoking a bowl of pot." There was no mention one of his stressors were his deployment or military duties at the time of his drug use. He was experiencing family stressors at or near around the time of his marijuana usage, but he never clearly reported he used marijuana to cope with his stressors at the time. His ED provider's report implied a proximity of time of his marijuana use to his stressors but never explicitly stated there was a nexus between the two events. He contended to the AFDRB he used marijuana to cope with suicidal ideations, but there was no evidence he had suicidal thoughts or was in emotional distress at the time of his drug use. It appeared he was spending time with his old friend, and they were drinking and smoking marijuana at that time according to the narrative he provided to his ED provider. His judgment was probably impaired when he used marijuana, but it was more likely than not from his alcohol use than from his stressors. This incident was not reported to have occurred when he was on orders or attending drill weekend. The ED report also reported his depressive symptoms had worsened since his return from deployment in November of the prior year, but there was no evidence his depressive symptoms had interfered with his overall functioning especially his functioning in a military setting or affecting his ability to reasonably perform his military duties. His primary problems were his marital and then his family concerns while the residual effects of his deployment experiences were reflected as a tertiary albeit more remote concern. He presented to the ED for depression and suicidal ideation because of his family problems that were exacerbated by his concerns of getting a dishonorable discharge from the military after he tested positive for THC.

The applicant's DVA treatment records reported he had a significant prior service history of depression caused by family problems and a chaotic childhood and first met with a mental health professional at the age of 15. Between the ages of 15 and 24, he met with various psychiatrists and was prescribed trials of psychotropic medications for his symptoms. He was also reported to have used a substantial amount of marijuana in his 20's. It is possible he had coped with marijuana in the past and prior to his service. His enlistment paperwork was not included in his military file and so it is not certain if he had reported this history at the time of enlistment. Either way, the applicant had pre-existing mental health conditions that were exacerbated but not permanently aggravated by his military service at the time of his drug use. He was not given a diagnosis of PTSD from his deployment experiences when he was hospitalized nor several years after his hospitalization. He was not diagnosed with PTSD until Oct 20, about nine years post-discharge,

and it appeared he had a delayed onset of PTSD. There was no evidence he had PTSD or trauma-related symptoms at the time of his drug use. He claimed he had undiagnosed mental health conditions at the time of his drug use, but his records indicated he had been diagnosed with and treated for recurring depression beginning at the age of 15. He at least had knowledge of his history of depression at the time of his misconduct and ED visit/psychiatric hospitalization treatment. Furthermore, the applicant was attending and receiving marital counseling with his wife at the time and so his own emotional and psychological stressors affecting the marriage most likely would have been identified or addressed in or from his sessions. His positive UA test for marijuana jeopardizing his military career was added to his pre-existing family stressors that made him unable to tolerate his cumulative and overwhelming stressors that prompted him to seek mental health treatment. The stressors and effects of his deployment experiences were relatively minor at the time in comparison to his other immediate and acute problems.

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 an undiagnosed mental illness/conditions caused by his military service that had worsen. He did not clearly explain how his mental health condition may excuse or mitigate his discharge. He submitted a DVA Decision Rating letter reporting he received an increase in disability rating from 50 percent to 100 percent for the condition of PTSD to include unspecified and depressive disorder with mild cannabis use disorder effective 8 Feb 22.

2. Did the condition exist, or experience occur during military service?
There is no evidence the applicant's mental health condition of PTSD had existed or occurred during his military service. The first available mental health treatment note that coincided with his time in the ANG was dated 31 Mar 11, when he presented to the ED for having depression and suicidal ideation caused by marital problems, family difficulties, and occupational stress for testing positive for marijuana putting his career with the ANG in jeopardy. He did report having increased depressive symptoms after returning from deployment in November of the previous year, but he did not meet diagnostic criteria for PTSD at time. There was no report or evidence demonstrating his depressive symptoms had interfered with his overall functioning. He was not formally diagnosed with PTSD until Oct 20, nine years post-discharge.

3. Does the condition or experience actually excuse or mitigate the discharge?
The applicant's ED psychiatric assessment reported shortly after his stressors of his family problems, he met an old friend at Walmart, he went to his friend's place, and they ended up drinking beers and smoking a bowl of pot. There is no evidence the applicant was in emotional distress, was depressed, was experiencing trauma-related or PTSD symptoms, or had any suicidal ideations at the time of his marijuana use. His judgment was probably impaired at the time of his drug use but was most likely caused by his alcohol use and not from his stressors based on his records. His mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

CUI//SP-MIL/SP-PRVCY

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

The complete advisory opinion is at Exhibit D.

SAF/MRBP recommends denying the application finding no evidence of an error or injustice in the discharge process or the AFDRB's deposition and review of the applicant's case. The applicant provided no evidence his discharge or the AFDRB decision was in error or unjust; he only indicates his mental illness has worsened. The applicant previously applied to the AFDRB and because there was evidence in his record of some mental health issues, liberal consideration was applied to his case. The Board included a clinical psychologist as required by 10 U.S.C. Section 1553. The applicant contended the discharge was inequitable because he was experiencing extreme emotional distress following a deployment to a combat zone. He believed that his undiagnosed mental health conditions resulted in the misconduct. The applicant regrets his decision to use marijuana but insisted that he used it to cope with suicidal ideations. The applicant claimed his leadership was aware of this mental health condition and discharged him in spite of the condition. The applicant stated he began to receive care through the DVA and was diagnosed with PTSD, Major Depressive Disorder, and Adjustment Disorder post-service. After a thorough review of the evidence of record, including a review by the Board's Clinical Psychologist, the AFDRB found there was no evidence of impropriety or inequity in the discharge. Additionally, the Board found no conclusive indication any mental health issues had a direct impact on the applicant's misconduct or discharge. Therefore, in the absence of an impropriety or inequity in the discharge, there was no basis for the Board to recommend relief.

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 17 Apr 23 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 and discharge upgrade requests are technically untimely. However, it would be illogical to deny such 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 and recommendation 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, PTSD; however, since there is no evidence his mental health condition or deployment experience had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. The Board finds his mental health issues stemmed from his marital problems, family difficulties, and occupational stress for testing positive for marijuana putting his career with the ANG in jeopardy. 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.

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.


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

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-2022-02107 in Executive Session on 24 May 23:

 *Work-Product* Panel Chair
 , 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 20 May 20.
- 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 31 Mar 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Mar 23.
- Exhibit E: Advisory Opinion, SAF/MRBP, dated 17 Apr 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Apr 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.

1/28/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product