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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02205

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He requested medical assistance with his mental disorder while in service, but was denied and discharged instead.

In support of his request for clemency, the applicant provides a personal statement, character statements, certificates, commendations, and letters from his previous employers.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 1 Jul 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFMAN) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*. The specific reasons for the action were:

a. On 10 Aug 81, he received an Article 15 for the offense of failing to go to his appointed place of duty on 17 Jul 81, in violation of Article 86 of the Uniform Code of Military Justice (UCMJ), as evidenced by AF Form 1137, *Unfavorable Information File Summary*, undated.

b. On 10 Nov 81, he received a letter of reprimand for the offense of assault and battery, which was a direct result of him physically abusing his wife on 4 Nov 81, as evidenced by AF Form 1137, undated.

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c. On 10 Nov 81, he received an AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, for the offense of failing to go to his appointed place of duty on 6 Nov 81, in violation of Article 86 of the UCMJ.

d. On 6 Apr 82, he received an AF Form 3070, for the offense of being drunk and disorderly on station, on or about 2 Apr 82, in violation of Article 134 of the UCMJ.

e. On 30 Apr 82, he received a TAC Form 27, *Record of Individual Counseling*, for failing to report to his appointed place of duty at the prescribed time in violation of Article 86 of the UCMJ.

On 15 Jul 82, the appointed case evaluating officer reviewed the case file, the applicant's personnel and medical records, and interviewed his commander, first sergeant, noncommissioned officer-in-charge, supervisor, individuals from Social Actions Office, and the applicant. The recommendations were the following:

- a. He be discharged with a general discharge characterization for alcohol and personality problems.
- b. He be considered for rehabilitation under provisions of AFMAN- 39-12.

On 16 Jul 82, he provided a rebuttal letter to his discharge recommendation.

On 26 Jul 82, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On 27 Jul 82, the discharge authority directed the applicant be discharged under the provisions of AFMAN 39-12, paragraph 2-4c, with a general service characterization.

On 2 Aug 82, the applicant received a general discharge. His narrative reason for separation is "Unsuitability - Apathy, Defective Attitude" and he was credited with three years, eight months, and three 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 8 Dec 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 6 Jan 23 and provided an FBI report. According to the report, the applicant was arrested on 6 Nov 81 for assault and battery, but the case was dismissed on 22 Mar 83; on 10 Feb 90, for resisting officer/arrest; and on 20 Oct 94, for aggravated assault for two accounts and escape, but the escape charge was dismissed. The applicant also

provided a personal statement, character statements, certificates, commendations, and letters from his employers, and a copy of his DD Form 214.

The applicant's complete response is at Exhibit D.

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

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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 8 Dec 22, 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 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. Despite the applicant's condition being service-connected, there is no available evidence in his military or service record his mental health conditions were caused by his military service. The etiology of his mental health condition likely stems from trauma during his childhood. His Department of Veteran Affairs (DVA) mental health encounters indicate he reported significant childhood trauma and these experiences impacted his development which he believes is likely why he has struggled with depression for as long as he can recall. The applicant reported a history of growing up witnessing domestic violence and himself being the victim of childhood abuse. Again, there is no documentation of any event occurring during his military service that seems to have caused any of his mental health conditions of alcohol abuse/dependence, major depressive disorder (MDD), post-traumatic stress disorder (PTSD), adjustment disorder, or anxiety.

It is difficult to determine if his mental health conditions were caused or exacerbated by his military service, or if his symptoms are just a natural progression of his condition. There is nothing in his in-service mental health encounters that suggest how the military might have caused or exacerbated his symptoms, other than a brief mention of his sleep problems occurring after he started technical school. Even considering the military might have exacerbated his mental health symptoms, this still does not mitigate the most serious of his misconduct. While MDD and anxiety may mitigate his failure to go/report, it does not excuse being drunk and disorderly on station or assault and battery, which was a direct result of him physically abusing his wife. Neither of these behaviors is part of the sequela of symptoms associated with any of his mental health diagnoses. It is interesting to note his rebuttal to his failure to report dated 20 Nov 81 (near the time of the offense) is not related to any of his mental health conditions. He reported his failure to report was the result of staying up all night looking for his wife who had left home following an argument.

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His Rebuttal to the Discharge Recommendation, dated 16 Jul 82, indicated he felt he was being punished rather than attempts towards rehabilitation, and he was unaware of any problems. As noted on his performance evaluations, beginning with his initial evaluation, he was continually made aware of recommended improvements. Thus, his contention of being unaware of his deficits is not supported by available evidence.

The applicant checked the box Disability on his application form. It appears from his application he was only seeking an upgrade from general (under honorable conditions) to honorable, not that he was requesting a medical disability retirement. There is no indication, he was unfit for duty. His physical capacity/stamina, upper extremities, lower extremities, hearing and ears, eyes, and psychiatric (PULHES) score remained at an S1, indicating he was fit for duty from a psychological perspective. From a performance standpoint, his performance evaluations all indicate he can perform the duties of his office, grade, rank, and rating. It is also important to note the Department of Defense (DoD) does not compensate service members for anticipated future severity or potential complications of conditions that were incurred during active military service. This is a role reserved for the DVA. Thus, his service connection, from the DVA, for MDD approximately 40 years after discharge, does not demonstrate unfitness during his time in the military.

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 requested medical assistance with a mental disorder. He was diagnosed with anxiety in service. It was also noted (no formal diagnosis) on his in-service records he had alcohol abuse, depressed mood, and problems with sleep while in service.
2. Did the condition exist or experience occur during military service?
While the applicant was diagnosed with anxiety in-service and documented alcohol abuse, depressive symptoms, and sleep problems, the Psychological Advisor opines these conditions existed prior to service, and were not caused by the military. There is nothing in his in-service mental health encounters that suggest how the military might have caused or exacerbated his mental health symptoms, other than a brief mention of his sleep problems occurring after he started technical training school.
3. Does the condition or experience excuse or mitigate the discharge?
Even considering the military might have caused or exacerbated his mental health symptoms, this still does not mitigate the most serious of his misconduct. While MDD, anxiety, and his other mental health conditions may mitigate his failure to go/report, it does not excuse his most serious behaviors of being drunk and disorderly on station or assault and battery, which was a direct result of him physically abusing his wife. Neither of these behaviors is part of the sequela of symptoms associated with any of his mental health diagnoses. The Psychological Advisor finds the most substantial/serious offenses are not mitigated by his mental health conditions.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate the most substantial or serious offenses of his discharge, the applicant's condition also does not outweigh the 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 15 May 23 for comment (Exhibit E), and the applicant replied on 19 Jun 23. In his response, the applicant contends he was misdiagnosed and was denied a treatment program for his conditions.

The applicant's complete response is at Exhibit G.

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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board recognizes the applicant's condition as being service-connected; however, there is no available evidence in his military or service record to conclude his mental health conditions were caused or exacerbated by his military service. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, it is not sufficient to grant the applicant's request. His mental health condition may have possibly caused some of his misconduct resulting with his discharge; however the Board finds his more serious misconduct does not warrant a change to his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented and the applicant's post-service criminal history, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, additional character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and

activities, this Board would be willing to review the materials for possible reconsideration of his request 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02205 in Executive Session on 25 Aug 23:

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, w/atchs, dated 8 Sep 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 8 Dec 22.
- Exhibit D: Applicant’s Response, w/atchs, dated 6 Jan 23.
- Exhibit E: Advisory Opinion, AFBCMR MH, dated 10 May 23
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 15 May 23.
- Exhibit G: Applicant’s Response, dated 19 Jun 23.

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.

3/6/2024

Work-Product [redacted] _____

Board Operations Manager, AFBCMR
Signed by *Work-Product* [redacted]