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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02329

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was under medical stress at the time of his discharge. He was removed from duty by a psychiatrist and had to be sent to a separate military facility for medical treatment. His financial irresponsibility was a direct result of this terrible time in his life.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 18 Mar 92, the applicant's commander recommended he be discharged from the Air Force for a pattern of misconduct-dishonorable failure to pay just debts, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-47d. The specific reasons for the action were:

a. On 6 Jun 91, the applicant received a dishonored check notification for writing a worthless check in the amount of \$50.

b. On 23 Aug 91, the applicant received a Record of Individual Counseling for writing multiple worthless checks totaling \$100.39. As a result, on 26 Aug 91, he received mandatory financial counseling.

c. On 11 Oct 91, the applicant received a Letter of Reprimand (LOR) for writing a worthless check in the amount of \$13.38.

d. On 17 Jan 92, the applicant received counseling for writing a worthless check in the amount of \$175.

e. On 21 Jan 92, the applicant received a LOR for having a delinquent NCO club account in the amount of \$392.65 and writing a dishonored check in the amount of \$175. As a result, an Unfavorable Information File was established.

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f. On 11 Feb 92, the applicant received a dishonored check notification for writing a worthless check in the amount of \$160.53.

On 24 Mar 92, the Staff Judge Advocate found the discharge action legally sufficient.

On 25 Mar 92, the discharge authority directed the applicant be discharged for a pattern of misconduct under the provisions of AFR 39-10, paragraph 5-47d, dishonorable failure to pay just debts with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 27 Mar 92, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern Dishonorable Failure to Pay Just Debts." He was credited with 3 years, 6 months, and 15 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 14 Feb 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 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 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 the supplemental guidance, paragraphs 6 and 7.

On 14 Feb 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 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 finds insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contends he was under medical stress at the time of his discharge and his separation code does not take into account that he was removed from duty due to medical reasons.

2. Did the condition exist or experience occur during military service? The applicant was diagnosed with major depression, single episode, mild adjustment disorder with mixed emotional features during his military service.

3. Does the condition or experience excuse or mitigate the discharge? The applicant contends his depression caused his financial irresponsibility. There is evidence to suggest his misconduct, or more specifically, his being reprimanded for his misconduct caused his mental health symptoms of stress, depression, and sleep problems. His first instance of writing a worthless

check occurred on 24 May 91. It was not until 7 Jan 91, approximately 6 months later that he was diagnosed with major depression. Previous mental health encounters do not note any mental health conditions or diagnoses. A mental health encounter dated 12 Mar 92 specifically noted that his depression and sleep problems were secondary to his financial problems, meaning that his financial problems caused his mental health symptoms. Even considering that his major depression came first (which his service and military record do not support) his financial irresponsibility would not be mitigated. Rather, his writing of worthless checks is a willful, conscious act, perpetrated over time that has no nexus with his mental health condition (He wrote approximately 8 checks, on separate occasions that were non-sufficient funds). Even his response to his Administrative Action dated 19 Mar 92, indicated that he knew the checks would not clear the bank because he was paying for car repairs and did not have enough funds for all his financial responsibilities. This again indicates that it was a willful and conscious act.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the 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 2 Jun 23 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, the Board determined since there is no evidence his mental health condition 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. 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.

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-2022-02329 in Executive Session on 21 Sep 23:

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, dated 30 Aug 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 14 Feb 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 31 May 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 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.

Work-Product	10/2/2023
Board Operations Manager, AFBCMR	
Signed by:	Work-Product