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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02372

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He wants his discharge upgraded due to possible undiagnosed depression-related issues towards the end of his career. He discovered his wife's infidelity after suffering the embarrassment of being called into the base commander's office and being told she had been involved in a traffic accident during the early morning hours with a military police officer while driving under the influence. Due to this experience and his expensive divorce, he had trouble controlling his weight as he began eating and buying things as a coping mechanism but never discussed these issues with his supervisor. He did not want to appear weak or be seen as making excuses for his personal failings. Eventually this led to his discharge for misconduct related to financial irresponsibility and his poor physical condition. It took several years after his discharge to straighten out his life. He obtained his degree in Criminal Justice and began work as a Juvenile Corrections Officer at the Texas Youth Commission.

In support of his request for clemency, the applicant provides his resume, character references, and his college transcripts.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Mar 94, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-47b, for a pattern of misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 11 Jan 93, an Insufficient Funds Letter was issued for a returned check.

AFBCMR Docket Number BC-2022-02372

Work-Product

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- b. On 9 Feb 93, a Letter of Reprimand (LOR) was issued for dereliction of duties, failing to complete quality control reports.
- c. On 26 Apr 93, a Letter of Counseling (LOC) was issued for dereliction of duties, failing to annotate required weather observations.
- d. On 24 Jun 93, a LOR was issued for failure to go.
- e. On 29 Jul 93, a LOR was issued for dereliction of duties, playing video games on his work computer after being counseled.
- f. On 27 Sep 93, a LOR was issued for failure to go.
- g. On 29 Sep 93, a LOR was issued for failure to pay debt.

On 11 Mar 94, the Acting Staff Judge Advocate found the discharge action legally sufficient.

On 23 Mar 94, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 3 years, 11 months, and 1 day of total active service.

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

POST-SERVICE INFORMATION

On 26 Oct 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 28 Oct 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, character statements, his resume, and his college transcripts. In his personal statement he attests to his involvement in his community through volunteer work for *Work-Product* *Work-Product* as a Bible study teacher, with the *Work-Product* *Work-Product* teaching marriage and parenting courses to inmates at the *Work-Product* and as a mentor with *Work-Product* a faith-based halfway house for offenders. He also serves the greater community through his research with rehabilitation therapy methods.

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 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 26 Oct 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. There is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his patterns of misconduct. The applicant contends he may have depression related issues. There is no evidence of a diagnosis for depression or any other mental health condition in his military service or post-service treatment records, nor did the applicant supply any medical records or documentation to support this contention. There is also no evidence he had depression or experienced any depressive symptoms during military service. While the applicant contends, he never asked for help for his issues, his misconduct was frequently identified and reprimanded, and attempts were made to counsel and provide corrective action to his misconduct. His weight issue was further addressed by a Weight Reduction Program. On his Recommendation for Discharge document, it further noted the applicant "made minimal efforts to improve" and "he continues to exceed Weight Management Program standards and displays no desire to meet and maintain Air Force standards."

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 may possibly have had undiagnosed depression-related issues stemming from his marital problems that led to his discharge for misconduct related to his financial irresponsibility and poor physical condition.
2. Did the condition exist or experience occur during military service?
There is no evidence of a diagnosis for depression or any other mental health condition in his military service or post-service treatment records. There is also no evidence he had depression or experienced any depressive symptoms during military service.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant had any mental health conditions at the time of his patterns of misconduct leading to his general (under honorable conditions) discharge. His mental health condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?

Since the applicant's 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.

AFPC/DPMSSR recommends denying the application finding no evidence of an error or injustice in the preparation of the DD Form 214. Upon review of the applicant's Master of Personnel Record (MPR), the commander provided the Base Discharge Authority (BDA) ample evidence to support discharge and the character of service given to the applicant. The BDA determined the significant negative aspects of the applicant's behavior outweighed any positive aspects of the applicant's brief military career. We do recognize the Board could consider granting the applicant's request based on clemency.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 May 23 for comment (Exhibit G) 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 the victim of an injustice. While the Board agrees with the rationale and recommendation of AFPC/DPMSSR finding no error in the original discharge process and finding no reason to grant relief based on liberal consideration due to his mental health contentions, to include the rationale of the AFRBA Psychological Advisor, the Board recommends relief based on fundamental fairness. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition. The Board finds his misconduct during service minor in nature with no post-service criminal activity and coupled with his post-service activity finds this evidence was substantial enough for the Board to conclude the applicant overcame the misconduct that precipitated the discharge. It appears the applicant made a successful transition from the military overcoming his self-destructive behavior by furthering his education by obtaining his Doctorate in Philosophy, having a successful career with professional achievements serving on various associations in leadership positions, and his

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extensive volunteer work through

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and through his research with rehabilitation therapy methods. Given the evidence presented, the Board finds the applicant's post-service accomplishments sufficient to warrant a discharge upgrade. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 23 March 1994, he was discharged with service characterized as honorable, and a separation code of JFF and corresponding narrative reason for separation of Secretarial Authority.

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-2022-02372 in Executive Session on 26 Jul 23:

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Panel Chair

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, Panel Member

Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 7 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 26 Oct 22.

Exhibit D: Applicant's Response, w/atchs, dated 28 Oct 22.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Mar 23.

Exhibit F: Advisory Opinion, AFPC/DPMSSR, dated 2 May 23.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 3 May 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.

4/24/2024

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Board Operations Manager, AFBCMR

Signed by:

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AFBCMR Docket Number BC-2022-02372

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