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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2022-02387

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His entry level separation (ELS) be upgraded from uncharacterized to honorable.

APPLICANT'S CONTENTIONS

He did not have any mental health issues that he was aware of prior to entering the Air Force. His time in the Air Force either caused or exasperated his mental condition(s).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 7 Dec 89, 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 5-22. The specific reasons for the action were:

- a. On 2 Dec 89, the applicant was diagnosed with an Axis I: Adjustment Disorder, with physical complaints and adolescent antisocial behavior, Axis II: diagnosis deferred tendencies toward antisocial previously noted, an Axis III: chest pains during a mental health evaluation. The Mental Health Evaluator found the applicant's ability to function in the military environment significantly impaired and recommended removal from basic military training (BMT).
- b. On 7 Dec 89, according to TC Form 105a, *Basic Training Record*, the Basic Military Training Squadron Commander recommended the applicant's immediate removal from training and an administrative separation citing the applicant's emotional instability and psychological condition make him totally unsuited for military service.

On 8 Dec 89, the Chief, Civil Law found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged under the provisions of AFR 39-10, Chapter 5, Section D, paragraph 5-22 with an ELS without the offer of probation and rehabilitation.

On 12 Dec 89, the applicant received an Uncharacterized ELS. His narrative reason for separation is "Entry Level Performance." He was credited with 16 days of total active service.

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

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 20 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.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a

hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge. The applicant had a significant prior service mental health condition that he did not divulge during his enlistment process, denied having any mental health issues and being treated for his mental health condition. This could be considered as fraudulent entry. The applicant's pre-existing mental health condition was disqualifying for service and he would need to receive a waiver to enter the service; he most likely would not have received a waiver due to his pre-existing chronic mental health condition. His inability to adapt to the military may have been temporarily exacerbated but did not permanently aggravate his prior service mental health condition. The applicant was discharged from service for his failure to adapt to the military environment and there was ample documentation in his objective military records to support this action. His discharge was classified under ELS and he was furnished with an Uncharacterized Character of Service because he served less than 180 days of continuous active military service. His discharge procedure was consistent to past and present policy. Therefore, there was no error or injustice identified with his discharge from a mental health perspective.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's request because his mental health condition was found to have existed prior to service (EPTS) and not aggravated by his military service per Kurta memorandum paragraph 15. Should the Board elect to apply liberal consideration to his request, the following are responses to the four questions from the Kurta memorandum from the records available for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he believes his mental health condition was caused and exacerbated by the Air Force. He did not specify his mental health condition.

2. Did the condition exist or experience occur during military service?

There is evidence the applicant was referred for a mental health evaluation during service by his squadron commander after he reported having chest pains during a medical dental processing. He was evaluated on 4 Dec 89 and disclosed during the evaluation he had difficulties adjusting to the military, wanted to be discharged, had suicidal thoughts and thoughts of hurting others in the past, and received counseling for about two years prior to service. He was given a diagnoses of adjustment disorder with physical complaints and adolescent antisocial behavior (EPTS) from the evaluation. He submitted a letter from the Social Security Administration reporting he had been diagnosed and/or treated for severe social anxiety, bipolar disorder, depressive disorders, and borderline personality disorder several years post-service. There was no evidence any of these conditions occurred during military service.

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

There was no evidence his military service caused his mental health condition as claimed. There were records reporting his mental health condition was EPTS. His inability to adapt to the military may have temporarily been exacerbated but did not permanently aggravate his prior service mental health condition. His military duties did not cause an exacerbation or aggravation of his prior service mental health condition. He had apparent difficulties adjusting to the military and was appropriately discharged for this reason. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition excuses or mitigates his discharge, his mental health condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

AFPC/DPMSSR recommends denying the application. Based on review of the applicant's request and the Master Personnel Record (MPR), there is no error or injustice with the discharge processing. The MPR reveals the applicant reported to the medical authorities not long after arrival at BMT he could not cope with being in the military and wanted to separate as soon as possible. This information was reported to the unit and the member was immediately processed for discharge from the Air Force. Furthermore, airmen are given entry level separation with uncharacterized service when discharge is initiated within the first 180 days of continuous active service. The Department of Defense determined that it was unfair both to the member and the service to characterize such brief periods of service.

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 16 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 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. The Board concurs with the rationale and opinion of AFRBA Psychological Advisor and recommendation of AFPC/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Therefore, the Board recommends against correcting the applicant’s records. His inability to adapt to the military may have been temporarily exacerbated but did not permanently aggravate his prior service mental health condition. Liberal consideration was applied to the applicant’s request due to the contention of a mental health condition; however, since there is no evidence her mental health condition had a direct impact on her behaviors and misconduct resulting with her discharge, her condition or experience does not excuse, mitigate, or outweigh her discharge. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service and the applicant only served 16 days of active service, therefore, the type of separation and character of service are correct as indicated on her DD Form 214. Therefore, the Board recommends against correcting the applicant’s records.

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-2022-02387 in Executive Session on 26 Jul 23:

-  Panel Chair
-  , Panel Member
-  Panel Member

All members voted against correcting 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 20 Oct 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Oct 22.
- Exhibit E: Advisory Opinion, AFPC/DPMSSR, dated 3 Nov 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Nov 22.

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

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Board Operations Manager, AFBCMR
Signed by: *Work-Product*