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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02403

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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 was discharged from the Air Force 15 years ago and at the time of discharge he was an alcoholic but unaware of his condition. His alcoholism was the main contributing factor to his general discharge. During his time in service, he was an exemplary airman with exception of his alcoholism. He has been sober over 10 years, has earned his master's degree, has a successful career, amazing family, and would like his military service to reflect his success. When applying for school, he discovered he was not eligible to use the Montgomery GI Bill due to his service characterization. At the time he thought he was honorably discharged as that was reflected on his AF IMT 100, *Request and Authorization for Separation*. He considered putting in for a correction at the time of discovery but did not believe that he was deserving of the correction nor capable of pursuing it at that time.

In support of his request for clemency, the applicant provides a personal statement, his master's degree transcript, and an AF IMT 100.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 4 Jun 07, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action was the applicant was found guilty of driving under the influence (DUI) on or about 23 Feb 07 and was sentenced by a Summary Court-Martial on 20 Apr 07 to a reduction to the grade of E-1 and 20 days confinement.

On 8 Jun 07, the Staff Judge Advocate found the discharge action legally sufficient.

On 13 Jun 07, the discharge authority directed the applicant be discharged for Misconduct, with a General (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

AFBCMR Docket Number BC-2022-02403

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Controlled by: SAF/MRB  
CUI Categories: Work-Product  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

On 25 Jun 07, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Serious Offense)" and he was credited with three years, three months, and three days of total active service.

On 6 Feb 09, the Air Force Discharge Review Board (AFDRB) concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

For more information, see the excerpt of the applicant's record at Exhibit B.

## **POST-SERVICE INFORMATION**

On 14 Sep 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 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 17 Nov 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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 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 issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 14 Sep 22, 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 has been presented to support the applicant's request for an upgrade of his discharge. A review of the available records finds the applicant engaged in two alcohol related incidents during his time in service and both incidents involved him operating a vehicle while intoxicated. His behavioral patterns of operating a vehicle with an alcohol concentration level over the legal limit would reasonably demonstrate he had problems with alcohol, which the applicant freely admitted during his initial evaluation with the Alcohol and Drug Abuse Prevention and Treatment (ADAPT), in his response to his involuntary discharge action, and in his current AFBCMR application. His alcohol problems, for which he was diagnosed with Alcohol Abuse by ADAPT, would be an unsuiting condition for military service. His unsuiting condition or alcohol problems may explain his misconduct but does not excuse or mitigate his discharge. His offenses were serious enough that it resulted with him receiving an Article 15 and being convicted at Summary Court-Martial with his sentence consisting of a reduction in rank to E-1 and time in confinement. These serious offenses could not be disregarded or outweighed by his alcohol problems. Although he received a diagnosis of Alcohol Abuse, and this is a substance use disorder, there is no evidence he had any mental health condition such as anxiety, depression, PTSD, etc. during service. There is no evidence he used alcohol to cope with his mental health issues and no evidence he was in emotional distress at the time of any of his two alcohol related misconducts. There is also no evidence his military duties or service caused him to cope with alcohol or develop alcohol problems. His primary problem appeared to be alcohol abuse based on his objective military records. In addition to his two alcohol related incidents, he was also discharged for failing to obey a lawful order for driving his vehicle on base before his one-year suspension was over. There is no evidence his mental health condition

caused this misconduct. As a result of an exhaustive review of the available records, the psychological advisor finds no error or injustice with the applicant's discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to his contention of having alcohol problems during service. The following are responses to the four questions from the Kurta Memorandum from information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant contends his alcoholism was the main contributing factor to his General discharge.

2. Did the condition exist or experience occur during military service?  
The applicant was referred and seen by ADAPT following his second DUI during service. His ADAPT evaluation report was not available for review, but the applicant admitted he had a problem with alcohol to his ADAPT provider during the initial evaluation. He was given a diagnosis of Alcohol Abuse and was referred and participated in ADAPT's outpatient substance abuse treatment program from 7 Mar 07 to 18 Apr 07. There is no report or evidence he had other mental health conditions of anxiety, depression, PTSD, etc. during service.

3. Does the condition or experience actually excuse or mitigate the discharge?  
There is ample evidence the applicant had problems with alcohol during service that caused his two alcohol related incidents/DUI's. His alcohol problems, however, would be considered an unsuiting condition for military service. His alcohol problems may explain his behaviors and misconduct but does not excuse or mitigate his misconduct and discharge. His misconducts were serious offenses resulting with him receiving an Article 15 and Summary Court-Martial conviction that could not be disregarded or overlooked by his alcohol problems. There is also no evidence he used alcohol to cope with his mental health condition and no evidence he was in emotional distress at the time of any of his misconducts. He was also discharged for failing to obey a lawful order for driving on base. There is no evidence his mental health condition caused this misconduct. Therefore, 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.

#### **ADDITIONAL AIR FORCE EVALUATION**

AF/JAJI recommends denying the application. The applicant does not allege an error or injustice in the Letter of Reprimand, Non-Judicial Punishment, or Summary Court-Martial conviction. Rather, he challenges the administrative separation. Even so, he does not allege specific errors, but instead generally contends that he should not have received a general discharge. After careful review, there is insufficient evidence of error or injustice in the administrative separation.

The complete advisory opinion is at Exhibit F.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinions to the applicant on 5 Sep 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 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 AF/JAJI. 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 AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions that his alcoholism was the main contributing factor to his general discharge. In addition to his two alcohol related incidents, he was also discharged for failing to obey a lawful order for driving his vehicle on base before his one-year suspension was over. There is no evidence his mental health condition caused this misconduct. Next, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request as his mental health condition does not excuse or mitigate his discharge. Finally, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the limited post-service evidence presented, the Board finds no basis to do so. 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-2022-02403 in Executive Session on 30 Nov 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, w/atchs, dated 19 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 Sep 22.
- Exhibit D: FBI Report, dated, 17 Nov 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Jul 23.
- Exhibit F: Advisory Opinion, AF/JAJI, dated 21 Aug 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Sep 23.

**AFBCMR Docket Number BC-2022-02403**

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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.

1/12/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2022-02403**

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