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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02643

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

Due to her mental health issues, she left the military so early in her service. She was told her discharge would read "honorable" in the system due to a "Heck Alert" [sic].

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 July 99, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section D, Paragraph 5.22.2. The specific reasons for the action were:

- a. On 29 Apr 99, the applicant received a Letter of Counseling (LOC) for her room being unsecured (medicine was found in her drawer), which is a security violation.
- b. On 5 May 99, the applicant received a LOC for failing her room inspection.
- c. On 1 Jun 99, the applicant received a LOC for failing to go to formation.
- d. On 3 Jun 99, the applicant received a LOC for failing to report to her military training leader.
- e. On 19 Jul 99, the applicant was diagnosed with an Axis I: Adjustment Disorder, with Depressed Mood, an Axis II: No diagnosis and on Axis III: No diagnosis during an in-patient psychiatric evaluation. The Mental Health Evaluator found the disorder so severe the applicant's ability to function in the Air Force environment is significantly impaired and interferes with her performance of duty. She had no medical/psychiatric disorder warranting action under AFR 35-4, *Physical Evaluation for Retention, Retirement, and Separation*. Subsequently, the Mental Health Evaluator recommended expedient actions be taken for separation from service under the appropriate administrative instruction.

**AFBCMR Docket Number BC-2022-02643
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 2 Aug 99, the applicant received an Uncharacterized ELS. Her narrative reason for separation is "Entry Level Performance and Conduct." She was credited with six months of total active service.

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

CUI//SP-MIL/SP-PRVCY

On 7 Nov 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for an upgrade of her discharge. There was no evidence her mental health condition caused any of her behavioral/misconduct problems. Her unsuiting adjustment disorder in tandem with her entry level performance and conduct issues were the basis of her discharge. She was furnished with an Uncharacterized rather than an Honorable character of service because she served less than 180 days of continuous active military service. This characterization is consistent and in accordance with current regulation of AFI 36-3208, the same regulation used for her ELS discharge. Therefore, there was no error or injustice identified

CUI//SP-MIL/SP-PRVCY

with her character of service discharge and so her request for an Honorable discharge could not be supported.

Liberal consideration is applied to the applicant's request. The following are responses based on the available records to the four questions from the Kurta memorandum:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends she had mental health issues and was the reason for her early discharge from service.
2. Did the condition exist or experience occur during military service?
There is evidence she was admitted to inpatient psychiatric hospitalization and was diagnosed with adjustment disorder with depressed mood due to identifiable stressors during service. She was diagnosed with bipolar disorder several years post-discharge by her post-service providers to include the Department of Veterans Affairs and there was no evidence she had or experienced bipolar symptoms or disorder during service.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant's unsuiting mental health condition of adjustment disorder was part of the reason for her discharge; she was also discharged for entry level performance and conduct issues. There was no error identified with her adjustment disorder diagnosis and ELS discharge. Her mental health condition does not excuse or mitigate her discharge.
4. Does the condition or experience outweigh the discharge?
Since there is no evidence her mental health condition may excuse or mitigate her discharge, her mental health condition also does not outweigh her original discharge.

The complete advisory opinion is at Exhibit D.

AFPC/DPMSSR recommends denying the application. Airmen are in entry level status with uncharacterized service if discharge processing starts during the first 180 days of continuous active military service. The member's status is determined by the date of notification of discharge, thus, if a member is in entry level status when the separation action is initiated, it is an entry level separation. The applicant was notified of discharge action on 22 Jul 99, while in entry level status. The Department of Defense determined that it is unfair to the member and the service to characterize such a brief period of service. Based on review of the applicant's request and the Master of Personnel Record, there is no error or injustice with the discharge processing.

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 12 Apr 23 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 recommendation of AFPC/DPMSSR and opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service; therefore, the type of separation and character of service are correct as indicated on her DD Form 214. 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. 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-2022-02643 in Executive Session on 26 Jul 23:

Work-Product [Redacted] Panel Chair
Work-Product [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, dated 22 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 7 Nov 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Nov 22.
- Exhibit E: Advisory Opinion, AFPC/DPMSSR, dated 8 Nov 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Apr 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.

2/17/2024

Work-Product [Redacted] _____
Board Operations Manager, AFBCMR
Signed by: *Work-Product* [Redacted]