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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02742

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her Under Other than Honorable Conditions (UOTHC) discharge be upgraded to and unspecified character of service.

APPLICANT'S CONTENTIONS

She was a victim of sexual assault by her father for years. Her untreated post-traumatic stress disorder (PTSD) affected her service in the Air Force. The applicant provided a copy of her current medications as supporting evidence.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 21 Jan 88, court-martial charges were preferred against the applicant for allegedly stealing two personal drafts from an airman basic (Article 121); falsely making the signature of the airman basic with intent to defraud, on two separate occasions (Article 123); and fraudulently transferring two different drafts (Article 123).

On 2 Jan 88, the applicant requested to be discharged in lieu of trial by court-martial.

On 1 Feb 88, the applicant's commander recommended the applicant receive an UOTHC in lieu of trial by court-martial and indicated the applicant confessed to the offenses and the funds were recovered.

On 25 Feb 88, the Staff Judge Advocate found the discharge action legally sufficient.

On 9 Mar 88, the applicant received an UOTHC discharge. Her narrative reason for separation is "Request for Discharge In Lieu of Trial by Court-Martial" and she was credited with 7 months and 12 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

AFBCMR Docket Number BC-2022-02742

Work-Product

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On 1 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, she 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 for Personnel & 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, Wilkie memorandum.

On 1 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 types of service characterization:

Honorable. The quality of the member's service generally has met DAF 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 a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions (UOTHC). This 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.

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 to her discharge. The applicant contended she had untreated PTSD from being sexually assaulted by her father for years. While her experience and mental health condition deriving from her traumatic experiences are not disputed, there is no evidence she had PTSD or a similar condition during service and no evidence her mental health condition caused her misconduct and discharge. During her separation physical examination, she endorsed having depression and her primary care manager (PCM) had reported it was secondary to her life stressors. Her life stressors were not specified and was unlikely related to her sexual assault because her stressors were noted to be resolved. Moreover, she was under investigation for larceny and forgery, was in the process of being administratively discharged, and recently learned and was early in her pregnancy. Any of these events could be her life stressors. There were no records she displayed or had more classic PTSD symptoms such as avoidance of reminders of the traumatic event, being hypervigilant, having nightmares and sleep disturbances, exaggerated startled responses, flashbacks/dissociations, anxiety, etc. She denied most symptoms to include anxiety and sleep disturbances on her separation physical examination. She claimed she had untreated PTSD during service. Her claim could not be substantiated because her full service treatment records were not available or submitted by her for review. The available records do not suggest she had PTSD or untreated PTSD during service as claimed. She did receive mental health treatment during service for depression secondary to life stressors that had been resolved and no complications were noted. There was no clear indication her depression was related to her sexual assault or was a symptom of PTSD. She was given a diagnosis and treated for PTSD over 30 years post discharge by her civilian providers per the medical records she submitted for review. She most likely had a delayed onset of PTSD causing her to meet diagnostic criteria for PTSD at

a later time. Delayed onsets are not uncommon occurrences. Again, there is no evidence she had PTSD during service.

The applicant contended she was sexually assaulted by her father for years. She did not give a timeline of when her experiences occurred but presumably had occurred prior to her service because she was in the service for a little over seven months and not years. There is no evidence her military duties or service had aggravated her pre-existing condition. She was briefly in the service and have had some minor misconduct problems during that time indicating she may have struggled with adapting and adhering to the rules, procedures, and structure of the military environment. Her military duties or service did not cause her to develop PTSD or any other mental health condition and to reiterate, did not aggravate her prior service condition or experience.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's petition for an upgrade of discharge per Kurta memorandum #15. Should the Board choose to apply liberal consideration to the applicant's request, the following are responses to the four questions from the Kurta memorandum from the information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contended she was a victim of sexual assault by her father for years and had untreated PTSD affecting her service in the Air Force.

2. Did the condition exist or experience occur during military service? The applicant did not clarify a timeline of when her sexual assault occurred but based on her description, her sexual assault experience appeared to have occurred prior to service. There is no evidence her condition of PTSD had existed or occurred during her military service. She was diagnosed and treated for PTSD by her civilian providers 30 years post military service.

3. Does the condition or experience excuse or mitigate the discharge? There is no evidence the applicant's mental health condition and/or from her prior service sexual assault experience had caused her misconduct and discharge. There is no evidence her military service aggravated her prior service condition and experience. Her commander cited presumably from a mental health evaluation she had no mental disease or defect at the time of her misconduct and thus, her mental health condition or sexual assault experience does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge? Since her condition or experience does not excuse or mitigate her discharge, her condition or experience also does not outweigh her 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 8 Aug 23 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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 finds no evidence the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. 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 does not apply to mental health conditions considered EPTS and with no service aggravation; however, it was considered due to the applicant's PTSD and sexual assault experience and there is no evidence either had impacted her behaviors and misconduct that led to her discharge. The Board finds her PTSD stemming from her EPTS sexual assault experience does not excuse or mitigate her discharge.

In the interest of justice, the Board considered upgrading the discharge based on clemency; however, in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's record.

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-2022-02742 in Executive Session on 25 Oct 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 14 & 17 Oct 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 1 Feb 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Jul 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Aug 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.

3/25/2024

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AFBCMR Docket Number BC-2022-02742