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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03128

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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 suffered from an undiagnosed, misdiagnosed, or untreated mental health condition, while in the service. He was discharged for reasons related to this condition.

In support of his request for clemency, the applicant provides several Department of Veterans Affairs (DVA) Decision Memorandums, a letter of recommendation, a letter of appreciation, two Graduation Certificates, and two photos.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 8 Mar 02, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant was punished under Article 15, Uniform Code of Military Justice (UCMJ). He received a reduction to the grade of Airman and 30 days correctional custody (suspended). The specific reason for the action was:

a. Violation of the UCMJ, Article 92. On or about 15 Feb 02, the applicant was derelict in the performance of his duties in that he willfully failed to refrain from consuming alcoholic beverages while under the legal drinking age of 21, as it was his duty to do.

On 13 May 03, AF Form 3070 indicates the applicant was punished under Article 15, UCMJ. He received a reduction to the grade of Airman Basic, with reduction below Airman suspended, and forfeiture of \$250.00 pay per month for two months. The specific reasons for the action were:

a. Violation of the UCMJ, Article 92. On diverse occasions between on or about 2 Mar 03 and on or about 12 Apr 03, the applicant was derelict in the performance of his duties in that he willfully failed to refrain from entering the group tent of the opposite sex, as it was his duty to do.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

b. Violation of the UCMJ, Article 92. On or about 8 May 03, the applicant was derelict in the performance of his duties in that he willfully failed to refrain from allowing a member of the opposite sex to enter his group tent, as it was his duty to do.

c. Violation of the UCMJ, Article 107. On or about 24 April 03, with intent to deceive, the applicant signed an official statement, knowing the statement was false.

d. Violation of the UCMJ, Article 107. On or about 8 May 03, with intent to deceive, the applicant signed an official statement, knowing the statement was false.

e. Violation of the UCMJ, Article 134. On or about 2 Mar 03, the applicant wrongfully committed indecent acts with another service member by engaging in sexual intercourse and oral sex in a group tent, an area occupied and easily viewed by others.

On 17 Jun 03, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 7 months, and 22 days of total active service.

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

#### **POST-SERVICE INFORMATION**

On 8 Dec 22, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did provide post-service information with his initial application (Exhibit A), he did not provide an FBI background check or other criminal history data.

#### **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 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 the supplemental guidance, paragraphs 6 and 7.

On 8 Dec 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 has reviewed the available records and finds the applicant's contentions could not be corroborated by his military records and finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge. He began to receive mental health treatment from the DVA in 2011, about seven years post discharge, for complaints of anger and depressed mood and was treated over the years for anxiety, depression, insomnia, binge eating, and alcohol abuse problems caused by his military experiences and post service stressors. He was given service connection by the DVA for major depressive disorder, recurrent, moderate with intermittent explosive disorder and alcohol use disorder mild, in sustained remission effective in 2020, about 17 years post service. His available limited military records found no evidence any of these mental health conditions, disorder, or symptoms existed or occurred during his military service. Receiving service connection does not indicate his condition caused his discharge. His available records reflected he received at least two Article 15's during

service for various misconduct problems of underage drinking, failing to refrain from entering a group tent of the opposite sex and allowing a member of the opposite sex to enter his group tent, making false official statements twice that he knew was false, and committing indecent acts of engaging in sexual intercourse and oral sex with another airman in a group tent that was in an area occupied and easily viewed by others. None of his documented misconduct appeared to have been caused by his mental health condition and no evidence he had mental health issues or was in emotional distress during the time of any of his misconduct. He reported to his DVA provider he sustained a shoulder injury during service causing the onset of his mental health symptoms, coped with alcohol, and was eventually separated from the military. His contentions are plausible but again, there are no records to substantiate his contentions. He did engage in underage drinking during service and had alcohol abuse problems post service, but no evidence existed to suggest he was drinking to cope with his mental health symptoms and no indication he had any recurring alcohol problems after that incident during service. He had numerous misconduct problems after his underage drinking incident that were not identified to have been alcohol related. The burden of proof is placed on the applicant to submit the necessary documents/records to support his request and contentions. As a result, presumption of regularity is applied and there is no evidence of any error or injustice with his discharge.

Liberal consideration is applied to the applicant's request due to his contention of a mental health condition. The following are answers to the four questions from the Kurta Memorandum from 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 had undiagnosed, misdiagnosed, or untreated mental health condition and his discharge was related to his condition. He submitted DVA decision rating letters declaring his mental health condition of major depressive disorder, recurrent, moderate with intermittent explosive disorder and alcohol use disorder mild, in sustained remission was service connected with a rating of 100 percent effective 15 April 2020, 17 years post discharge.

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

There is no evidence the applicant's mental health condition of major depressive disorder, recurrent, moderate with intermittent explosive disorder and alcohol use disorder mild, in sustained remission had existed or occurred during his military service. His service treatment records were unavailable for review. He was diagnosed with these conditions developed by his military experiences and post service stressors several years post discharge by the DVA.

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

The applicant's service treatment records and discharge paperwork are not available for review. The available limited records do not support his mental health condition had a direct impact to his discharge. Presumption of regularity is applied, and his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's condition or experience does not excuse or mitigate his discharge, his condition or experience also does not outweigh his 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 18 May 23 for comment (Exhibit E) 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 and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence he had mental health issues or was in emotional distress during the time of any of his misconduct. The burden of proof is placed on the applicant to submit the necessary documents/records to support his request and contentions. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records. The Board encourages the applicant to apply in the future and provide additional evidence such as an FBI report, post-service certificates of achievements, civilian memberships, volunteer work, and character references.

## 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-2022-03128 in Executive Session on 3 Oct 23:

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Panel Chair

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Panel Member

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Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 29 Nov 22.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration

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Guidance), dated 8 Dec 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 May 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 18 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.

8/29/2025

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X

Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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