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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03192

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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 had undiagnosed medical conditions and provides his Department of Veterans Affairs (DVA) Decision Letter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 22 Mar 86, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Separation Upon Expiration of Term of Service*, paragraph 5-49c. The specific reason for the action was on or about 22 Jan 86, the applicant wrongfully used marijuana and received Nonjudicial Punishment (NJP). The applicant was reduced to the grade of airman first class and was ordered to forfeit \$195.00.

On 10 Apr 86, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged for drug abuse, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 14 Apr 86, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Drug Abuse" and he was credited with 2 years, 4 months, and 17 days of total active service.

On 2 Dec 87, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

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On 25 May 88, the 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 and the advisory at Exhibit D.

POST-SERVICE INFORMATION

On 11 Oct 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, he 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 post-traumatic stress disorder (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 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, know 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 11 Oct 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 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 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 Advisory completed a review of all available records and finds sufficient evidence to suggest the applicant had a mental health condition which would mitigate his misconduct resulting in his discharge. The applicant was involved in a motor vehicle accident (MVA) in which he was thrown from his vehicle and sustained injuries. Further, the applicant may have been robbed while he was unconscious from the accident. The applicant was diagnosed years later with service-connected PTSD. Records indicate the etiology of his PTSD was from the MVA while he was in service, which was also deemed "in line of service." Using drugs (marijuana) to manage symptoms is part of the sequelae of symptoms associated with PTSD. Therefore, his misconduct (drug usage) is mitigated by his mental health diagnosis of PTSD.

While the applicant may have developed PTSD as a result of his MVA, there is no indication it caused him to be unfit for service. The applicant had exemplary performance evaluations, even following his MVA. The applicant was promoted regularly throughout his career. He was never placed on a profile or had any duty-limiting conditions from a psychological perspective. He had two examinations (27 Aug 82 and 3 Apr 86), both completed after his MVA and cleared him

medically for duty. He was worldwide qualified. This specifies the applicant's mental health condition did not have an impact on his functioning from a psychological perspective and he was able to perform the duties of his office, grade, rank, and rating.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he had an undiagnosed medical condition. The applicant checked marked PTSD on his application.
2. Did the condition exist or experience occur during military service?
There is evidence to support the applicant's contention he had an undiagnosed medical condition, PTSD, which he may have stemmed from his time in service. The applicant is service-connected for PTSD at 100 percent through the DVA.
3. Does the condition or experience excuse or mitigate the discharge?
Using drugs (marijuana) to manage mental health symptoms is part of the sequelae of symptoms associated with PTSD. Therefore, his misconduct (drug usage) is mitigated by his mental health diagnosis of PTSD.
4. Does the condition or experience outweigh the discharge?
The applicant's mental health condition does appear to excuse and mitigate his discharge. Therefore, the applicant's condition of PTSD outweighs the 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 15 Nov 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on liberal consideration and concurs with the rationale of the AFRBA Psychological Advisor finding a preponderance of the evidence does substantiate the applicant's contentions. The Board finds the applicant may have developed PTSD as a result of his MVA; however, finds no indication his mental health condition caused him to be unfit for service. Due to the applicant's traumatic

experience and likely development of PTSD, the Board finds his misconduct is mitigated by his mental health condition and finds his use of marijuana to manage symptoms associated with PTSD a reasonable explanation for this misconduct. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 14 April 1986, he was discharged with service characterized as honorable, a separation code of JFF and corresponding narrative reason for separation of Secretarial Authority.

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-2022-03192 in Executive Session on 9 Apr 24:

- Work-Product**, Panel Chair
- Work-Product**, Panel Member
- Work-Product**, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Dec 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 11 Oct 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 14 Nov 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 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.

9/30/2024

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Work-Product, AFBCMR

Signed by: **Work-Product**