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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-03275

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT’S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable with full benefits.

APPLICANT’S CONTENTIONS

The applicant did not state any contentions.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 29 Jan 98, the applicant’s commander recommended the applicant be discharged from the Air Force for Drug Abuse and Minor Disciplinary Infractions, under the provisions of AFD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 2 Dec 96, the applicant received a Record of Individual Counseling (RIC) for reporting late for duty.
- b. On 9 Dec 96, the applicant received a RIC for reporting late for duty.
- c. On 2 Jan 97, the applicant received a RIC for turning in his Career Development Course (CDC) late and incomplete.
- d. On 10 Jan 97, the applicant received a Letter of Reprimand (LOR) for reporting to work significantly late on more than one occasion.
- e. On 19 Mar 97, the applicant received a RIC for failing to obey an order and failure to progress in CDC by neglecting going to supervised study as ordered to do so. On this same date, the applicant received a RIC for failing to comply with dress standards.

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- f. On 8 Sep 97, the applicant received a LOR for reporting to work in the improper uniform of the day. As a result, on 12 Sep 97, an Unfavorable Information File (UIF) was established.
- g. On 1 Oct 97, the applicant received a Memorandum for Record (MFR) for not attending Red Flag Training.
- h. On 2 Oct 97, the applicant received a RIC for turning in CDCs late. On this same date, the applicant received a RIC for failing to report to work on time.
- i. On 20 Oct 97, the applicant received an Article 15 for willfully failing to prepare for red flag training by not having the proper uniform and failing to obtain the required equipment. As a result, he was demoted to the grade of airman, ordered forfeiture of \$150.00 pay per month for 2 months and 15 days of extra duty.
- j. On 13 Nov 97, the applicant received a RIC for disobeying a lawful order to complete his PHA.
- k. On 16 Dec 97, the applicant received an Article 15 for wrongful use of marijuana. As a result, the applicant was demoted to the grade of airman, ordered forfeiture of \$100.00 pay per month for 1 month and 30 extra days of duty.

On 15 Feb 98, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct." He was credited with 2 years, 4 months, and 25 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

On 3 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, 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 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.

On 3 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 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. Based on a review of the available records there is no nexus between his mental health condition and misconduct or discharge. The applicant provided no explanation and information about his alleged mental health condition of Post-Traumatic Stress Disorder (PTSD) in his request. There is no evidence he had any mental health conditions to include PTSD during his military service. His military records indicate he engaged in a pattern of misconduct, totaling at least 14 documented misconducts. The burden of proof is placed on the applicant to submit the necessary records and/or paperwork to substantiate his claims and support his request. Therefore, there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to his designation of a mental health condition on his application to the BCMR. The following are responses to the four questions from the Kurta Memorandum from the information presented in the available records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant made no contentions relating to his mental health condition. He marked "PTSD" on his application to the AFBCMR and provided no other information about this condition or how this condition may excuse or mitigate his discharge.
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records are unavailable for review and the applicant also did not submit them. There is no evidence his condition of PTSD or any other mental health condition had existed or occurred during his military service.
3. Does the condition or experience excuse or mitigate the discharge?
Since there is no evidence the applicant had any mental health condition to include PTSD during service, 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 D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Jul 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 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. 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. 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 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 to include PTSD 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. The burden of proof is placed on the applicant to submit evidence to support his claim. 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 post-service information and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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-2022-03275 in Executive Session on 27 Sep 23:

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Panel Chair
Work-Product, Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, dated 12 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 3 Feb 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Jul 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Jul 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.

3/26/2024

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Board Operations Manager, AFBCMR
Signed by: Work-Product