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

### RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00063

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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 served honorably but was going through a bad divorce during the time. He caught his spouse and best friend in bed together and this event led him to be sent to a mental health clinic for a couple of weeks. Upon returning to his duty station, he began to abuse alcohol. There was a "No Contact" order in place between his wife and himself, however they were getting along otherwise for their child while the divorce was being finalized. In 1997, he requested to have the order lifted but was denied. He was still drinking too much and was not getting any help for it. Between Feb and Mar 97, he received a driving under the influence (DUI) charge and he called his wife to pick him up from the police station. He felt like he had no one else to call in the stressful situation and she was the closest to family he had. As a result, he received an Article 19 (sic) for the DUI and another for disobeying the no contact order. These actions were the final straw and his command moved to discharge him for misconduct. He does not believe he was provided or received appropriate mental health help for the situation he was in or how he was handling it. He was very young, immature, and lacked the skills to deal with everything. He believes it was noticed by many in his chain of command, but nothing was done to help him. He was removed from his position, stripped of his clearance and put on light duty. He was discharged in May. He tried to get his position and clearance reinstated prior to being discharged, after attending counseling for alcohol abuse, but was denied. He believes counseling was the best thing after hitting rock bottom because it brought him back to reality. He worked hard to get back in good standing with his command but was not given a chance.

To support his request for clemency, the applicant submitted a copy of his security clearance application dated 15 Oct 19, a personal statement, and a copy of his DoD Civilian Performance Appraisal for 2022.

The applicant's complete submission is at Exhibit A.

**AFBCMR Docket Number BC-2022-02992**

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Controlled by: SAF/MRB  
CUI Categories: *Work-Product*  
Limited Dissemination Control: N/A  
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## STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3) who entered the regular Air Force on 10 Feb 93.

On 28 Apr 97, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for misconduct. The specific reasons for the action were the following:

a. On or about 6 Apr 97, he failed to obey the lawful order to have no contact, either in person, verbal, via phone, mail or through third party with his ex-wife to which the applicant received an Article 15, nonjudicial punishment (NJP). He received a reduction in grade to airman first class with a new date of rank of 28 Apr 97 and forfeiture of \$50.00 pay per month for two months.

b. On or about 16 Mar 97, he was derelict in the performance of additional duties assigned to him as NJP to which the applicant received a Letter of Reprimand (LOR).

c. On or about 1 Nov 96, as a married man, he wrongfully had sexual intercourse with a married woman not his wife to which the applicant received NJP. He received 45 days of extra duty and forfeiture of \$50.00 pay per month for two months.

d. On or about 12 Feb 97, he failed to come to a complete stop when exiting the shoppette parking lot to which the applicant received a traffic citation.

e. On or about 3 Feb 97, he failed to go to the appointed place of duty at the time prescribed.

On 5 May 97, the applicant provided a statement in response to the recommendation for discharge.

On 6 May 97, the Staff Judge Advocate found the discharge action legally sufficient.

On 7 May 97, the discharge authority directed the applicant be discharged for minor disciplinary infractions with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 12 May 97, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with four years, four months, and three 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 9 May 23, the Board sent the applicant a request for additional 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 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 9 May 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition.

A review of the available records finds the applicant's contentions were not fully corroborated by his objective military records. There were some noticeable discrepancies between his current contentions, his statement at the time of service, and the information documented in his military records. He contended he was going through a divorce and his wife had an affair and this information was consistent with his response to his discharge action written during service. However, his version of how he violated his no contact order differs. In his statement during service he explained, "At the time I broke the lawful order I had been arrested for a DUI, she [ex-wife] was contacted by the arresting officer to pick up the individual that was with me. When she arrived there, I was almost done with the arrest procedures and she offered to take me home, I was drunk and just wanted to get out of the police station, so I went with her." In this statement, he did not contact his ex-wife to take him home as he claimed in his petition, but she was contacted by the police to pick up another individual and not him. He went with her because she offered to take him home and he obliged because he wanted to leave. In his current petition, he claimed he contacted her because he was in a stressful situation and did not know who else to call and she was the closest family he had. There is no doubt the situation was probably stressful to him, but his decision to violate his no contact order according to his past statement does not suggest his judgment was impaired by his mental health condition. His statement did not indicate he was in acute emotional distress that caused him to violate his no-contact order. He freely went with his ex-wife with the intent of leaving the police station because he no longer wanted to be there.

The applicant claimed he had a drinking problem at the time, which his DUI reflected he had overindulged in alcohol, but there were no records to indicate he had alcohol addiction or dependency issues, had recurring problems with alcohol, had other alcohol-related incidents, or he was using alcohol to cope with his mental health condition causing him to receive a DUI. He claimed he received an Article 15 for his DUI but there were no records of this disciplinary action in his records. His DUI was not one of the reasons for his discharge. There was no evidence he drank to cope with his mental health condition on the day he received his DUI. He did receive two Article 15s during service, the first for committing adultery with a married woman when he too was married at the time, and the second was for violating the no contact order with his spouse. The applicant did not address or report his acts of adultery in his petition but did admit to having a one-night stand in the same time period when his wife was allegedly sleeping with one of his best friends. It appeared the applicant and his then-wife were having marital problems at the time, but their problems do not excuse his inappropriate behavior and his serious misconduct. The applicant also did not address his other misconduct of failing to go and being late to escort detail, failing to make a complete stop when exiting the shoppette parking lot, and being derelict in the performance of his duty by failing to clean the dormitory. He did provide an explanation in his past statement he was wrong for not doing everything he was instructed to do (clean the dormitory) and he was at his shop and did not look at the detail board to see if he had any details that week as the reason he was late to escort duty. These explanations did not connote his mental health condition caused his behaviors or misconduct.

The applicant was also inconsistent with the reporting of the mental health treatment he received during service. In his petition, he said he did not handle his wife's affair well and was sent to the mental health clinic for an estimated two weeks. In his personal statement during service, he reported receiving counseling for nine months and was hospitalized for a week. The reported timeline of his treatment was significantly different. His service treatment records were not available or submitted by the applicant for review to corroborate any of his reports and to be able to assess his records to determine when, why, and how long he received mental health treatment and whether his mental health condition had influenced his maladaptive behavioral problems. He also did not clearly discuss the mental health condition or disorder he had received from treatment or that caused his behavioral changes. The burden of proof is placed on the applicant to submit the necessary records to support his contention and request. Considering the applicant's available records and his petition, the Psychological Advisor finds his contention and submitted records are not compelling enough to sufficiently demonstrate his mental health condition had caused changes in behaviors, his series of misconducts, and his discharge from service. To give the applicant the benefit of the doubt his marital problems may have caused him to experience emotional distress and increase his drinking causing his DUI, there is no evidence his mental health condition caused, excused, or mitigated the acts of misconduct that were identified as the reasons for his discharge. Therefore, there is no error or injustice with the applicant's discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses 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 contended he went through a bad divorce and caught his wife in bed with one of his best friends which he did not handle very well. He was sent to the mental health clinic for about two weeks and upon his return from treatment, he began to abuse alcohol. He reported receiving a DUI because of his drinking problems and called his then spouse to pick him up because he had no one else to call and she was the closest family he had causing him to violate his no contact order. He claimed he received an Article 15 for his DUI and disobeying a lawful order causing his command to initiate a discharge action. He did not clearly discuss the mental health condition or disorder he had that may have excused or mitigated his discharge.

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

There is evidence in the applicant's military records via his statement in response to his discharge action to corroborate his contention he had marital problems causing him to receive mental health treatment. There is, however, no evidence he received an Article 15 for a DUI and this incident was not one of the reasons for his discharge. There is no evidence he had any alcohol dependency problems, had recurring problems with alcohol, and/or had used alcohol to cope with his mental health condition causing his behavioral problems and discharge. His service treatment records are not available for review and so there is no evidence he received a mental disorder diagnosis during service.

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

There is no evidence the applicant was in emotional distress or had a mental health condition caused by his marital problems impairing his judgment that caused any of the documented acts of his misconduct (committing adultery, violating a no contact order, dereliction of duty, failing to go/being late to duty, and failed to make a complete stop in a parking lot) that were listed as the reasons for his discharge. His contention was not fully substantiated by his objective military records and there were many discrepancies noted between his contention for this petition and the statement he made at the time of service. 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 mental health condition or experience does not excuse or mitigate his discharge, his mental health condition or experience 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 2 Oct 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 AFRBA Psychological Advisor and finds insufficient evidence to support a characterization of service upgrade. Moreover, his contentions were not fully corroborated by his objective military records. There were some noticeable discrepancies between his current contentions, his statement at the time of service, and the information documented in his military records. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse 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.

## 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-2022-02992 in Executive Session on 18 Jan 24:

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Chair, AFBCMR

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 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 9 May 23.

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Exhibit D: Advisory Opinion, AFBCMR MH, dated 11 Sep 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Oct 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.

2/7/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2022-02992**

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