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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00165

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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 offered no explanation for his request. He submitted a letter from the Department of Veterans Affairs (DVA), which reported he was given a 100 percent service-connected disability rating. The conditions for this service connection were not specified in the letter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 18 Jan 05, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Policy Directive (AFPD) 36-32, *Military Retirements and Separations*, and Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2, for misconduct. The specific reasons for the action were:

- a. On 5 May 03, he received a Letter of Reprimand (LOR) for damaging military property.
- b. On 22 May 03, he received a LOR for violating a general order by bringing a weapon to the workplace.
- c. On 26 May 03, he received a Letter of Counseling (LOC) for the offense of loitering in a restricted area.
- d. On 7 Jan 04, he received a LOC for the offense of failing to obey a lawful order.
- e. On 17 Jan 04, he received a LOR for the offense of failing to obey a lawful order.

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f. On 14 Feb 04, he received a LOC for the offense of using a government vehicle for a personal errand.

g. On 5 Jul 04, he received a LOC for the offense of making a false official statement.

h. Dated 3 Sep 04, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for the offense of being derelict in the performance of his duties on or about 20 Jul 04 and 7 Aug 04. He received a reduction in grade to airman (E-2), suspended until 2 Mar 05, forfeiture of \$200.00 pay for two months, and 15 days of base restriction and extra duty.

i. Dated 5 Nov 04, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated the conditions of his suspension for the offense of being disrespectful towards a non-commissioned officer (NCO) and of being derelict in the performance of his duties on or about 18 Sep 04, and failing to go at the time prescribed to his appointed place of duty on 19 Sep 04. The applicant was reduced to the grade of airman (E-2) with a new date of rank (DOR) of 3 Sep 04.

j. Dated 24 Nov 04, AF Form 3070 indicates the applicant received NJP for the offense of being derelict in the performance of his duties on or about 18 Sep 04 and failing to go at the time prescribed to his appointed place of duty on 19 Sep 04. He received a forfeiture of \$350.00 pay for two months and 15 days of base restriction and extra duty.

On 21 Jan 05, he provided a written response to the discharge action.

On an undated memorandum, the Staff Judge Advocate found the discharge action legally sufficient.

On 28 Jan 05, the discharge authority directed the applicant be discharged for a pattern of misconduct, conduct prejudicial to good order and discipline with a general service characterization. Probation and rehabilitation were not offered.

On 11 Feb 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with two years, seven 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 30 Jan 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 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 30 Jan 23 and again on 9 May 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C and Exhibit F).

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. His service treatment records were not available for review and so there are no records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. There were also no records he made any complaints relating to his mental health issues to his leadership or was observed to have any mental health concerns or behavioral problems that would warrant a command referred mental health evaluation. He submitted several personal statements in response to his disciplinary and discharge actions at the time of service, of which he did not allude or discuss his mental health condition causing any of his behaviors or misconducts resulting with his discharge. The applicant did not receive mental health treatment from the DVA until Sep 18; 13 years post-discharge. He initially presented to the Emergency Department (ED) at the DVA hospital where he reported to the evaluating social worker about his traumatic experiences as a fire fighter during his military service of which were causing his behavioral changes. PTSD symptoms he reported experiencing included insomnia, anxiety, poor concentration, difficulty breathing, isolate himself from others, avoidance, and frequently angry. There is no evidence he experienced any of these symptoms during service with the exception of anger issues during service. It is very likely he had a delayed onset of PTSD, which is not uncommon, causing him to experience these symptoms and meet diagnostic criteria for PTSD several years after his discharge.

During his evaluation at the ED, the applicant also discussed his reason for discharge during his mental health evaluation. He mentioned his anger had caused him to put his fist through glass. There was an incident during service in which he had broken a glass frame in a door out of anger. However, his explanation for this incident at the time in service was in relation to him being provoked by another service member. He claimed the member pushed him first and pushed him twice. His anger was in response to him being physically assaulted by the member, which is comprehensible, and not from his PTSD. He also reported to the social worker he did not receive a debriefing after a motor vehicle accident in which his friend was killed and his sergeant told him to man up causing him to fight his sergeant which eventually got him discharged from the Air Force. This explanation is not substantiated by his objective military records. There are no records

of this incident documented anywhere in his military records. There was a similar incident during service in which he received his second Article 15 for wrongful use of provoking words towards a staff sergeant (SSgt). He submitted two personal statements, Written Presentation to Vacation Proceedings and Written Presentation to Article 15 action, dated 1 Nov 04 and 22 Nov 04 respectively, to explain his version of the incident. In these two almost identical statements, he reported a SSgt yelled at him to do details while the applicant was trying to explain to him he needed to contact his ride. He believed the SSgt had intentions to strike him due to his displayed behaviors and the applicant's response of taking off his sweatshirt was in preparation to defend himself and not because of any hostile actions on his part. It appeared he knew what he was doing at the time as he was trying to defend himself in response to hostile/aggressive behaviors displayed by the SSgt and not from his PTSD. This incident during service is different than the incident he discussed with the social worker at the ED. There is no evidence his mental health condition or traumatic experience caused any of his behaviors and misconducts. He discussed one and possibly two incidents to the social worker, but his Notification Memorandum reflected he had at least 10 behavioral or misconduct problems listed as reasons for his discharge. He did not discuss his other numerous misconducts to the social worker and in his petition to the Board.

Liberal consideration is applied to the applicant's petition. 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 marked "PTSD" on his application to the Board as the issue/condition related to his request for a discharge upgrade to honorable. He submitted a letter from the DVA declaring he was granted 100 percent service-connection, and the condition was not specified but presumably related to his mental condition of PTSD. He offered no explanation for how his condition of PTSD may excuse or mitigate his discharge.
2. Did the condition exist or experience occur during military service?
There is no evidence his condition of PTSD or any other mental health condition had existed or was experienced during his military service. His service treatment records were not available or submitted for review. The applicant was diagnosed with PTSD caused by his military duties as a firefighter by his DVA provider 13 years post-discharge.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition to include PTSD caused his numerous behavioral and misconduct problems resulting with his discharge. He had submitted several personal statements at the time of service and made no mention of any mental health issues that caused his behaviors or misconducts. His mental health condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since his 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 9 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. 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. Therefore, 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. Furthermore, 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 that 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-2023-00165 in Executive Session on 27 Sep 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/atch, dated 13 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 30 Jan 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 May 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 9 May 23.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 9 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.

3/11/2024

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Board Operations Manager, AFBCMR
Signed by: Work-Product