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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00193

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT’S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable or medical.

APPLICANT’S CONTENTIONS

When he entered the military, he was just a teenager and endured a significant amount of trauma during his young life. While in the military, he suffered multiple undiagnosed mental illnesses to include depression, panic disorder and generalized anxiety disorder (GAD).

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 30 Nov 05, the applicant’s commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 13 Dec 04, the applicant received a Letter of Individual Counseling for failing a dormitory inspection.
- b. On 11 Feb 05, the applicant received a Letter of Reprimand (LOR) for willfully failing to maintain his assigned dormitory room within standards.
- c. On 10 May 05, the applicant received an Article 15 for willfully failing to maintain dormitory inspection standards. As a result, he was demoted to the grade of airman, 30 days extra duty, and a reprimand.
- d. On 21 Oct 05, the applicant received an Article 15 for willfully failing to maintain dormitory inspection standards. As a result, he was demoted to the grade of airman, 30 days extra duty, and a reprimanded.

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- e. On 17 Nov 05, the applicant received a LOR for failing to maintain his government quarters.

On 23 Dec 05, the discharge authority directed the applicant be discharged for Misconduct: Minor Disciplinary Infractions, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation. On this same date, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct.” He was credited with one year, eight months, and four 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 2 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 the paragraphs 6 and 7 of the Wilkie memorandum.

On 2 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his records. It is plausible the applicant's depression may have been a contributing factor to his room inspection failures as he contended because depression may cause poor concentration, loss of interest, low energy/fatigue, etc. However, he failed his room inspection a total of nine times over a year. He had ample opportunities to repair his behaviors and was counseled by his leadership numerous times to help him, but he was not receptive to these efforts. His mental health condition existed prior to service (EPTS) caused by his prior service and not military experiences and was not aggravated by his military duties or service. Therefore, there is no error or injustice with the applicant's discharge from a mental health perspective.

Liberal consideration is not required to be applied to the applicant's petition for an upgrade of his discharge per the Kurta Memorandum paragraph 15. His request for a medical discharge is not covered under this policy as well. Should the Board choose to apply liberal consideration to the applicant's request for an upgrade of his discharge, the following are responses to the four questions from the Kurta Memorandum from the information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contended he had an undiagnosed mental illnesses of GAD, MDD, and panic disorder at the time of service that were caused by significant trauma he endured from his young life/childhood. He believed his room was a mess from which he had received several LORs and an Article 15 from symptoms of undiagnosed depression.

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

There is evidence the applicant was diagnosed and was treated for depression during service. He received individual psychotherapy and inpatient psychiatric hospitalization treatment services for depression during service. There is no evidence he had or was diagnosed with GAD, MDD, or panic disorder during service as he was diagnosed with these conditions almost 20 years after discharge.

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

The applicant consistently reported he had difficulties prior to service and contended his undiagnosed mental health illness of GAD, MDD, and panic disorder were caused by significant trauma he endured during his young life. There is no evidence his military duties or experiences caused him to have depression, anxiety, etc., nor did his military service aggravate his prior service condition. He reported having no work stress and said his work was boring to this primary care manager. His EPTS 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 7 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. His mental health conditions may have influenced some of his behaviors as he failed his room inspection nine times over a one-year period; however, he did not respond positively to the counseling he was offered to correct his behavior. Additionally, the Board finds his mental health condition EPTS and was not aggravated by his military service. 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 military duties or experiences caused him to have depression and anxiety, nor did his military service aggravate his prior service condition 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 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-2023-00193 in Executive Session on 27 Sep 23:

-  Panel Chair
-  Panel Member
-  Panel Member

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

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- Exhibit A: Application, DD Form 149, w/atchs, dated 27 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 2 Feb 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Jul 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 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.

3/25/2024

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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