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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00315

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He requests an upgrade due to an undiagnosed mental illness. He needs an honorable discharge for benefits (Federal and State) and jobs.

The applicant provided a Department of Veterans Affairs (DVA) rating decision, dated 17 Sep 20, reflecting his adjustment disorder with mixed anxiety and depressed mood with insomnia disorder is service connected with 50 percent disability rating, effective 15 Oct 15.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 9 Sep 15, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32 and *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen* for sexual assault and a pattern of misconduct. The specific reasons for the action were:

- a. On 9 May 12, he failed his room inspection. As a result, he was issued a letter of counseling (LOC).
- b. On 2 Feb 15, he wrongfully consumed alcohol within eight hours before duty (Article 92) and absented himself from his place of duty (Article 86). As a result he was offered nonjudicial punishment (NJP) action pursuant to Article 15, Uniform Code of Military Justice (UCMJ).
- c. On 29 May 15, he physically operated a vehicle while impaired and did thereby cause said vehicle to strike the concrete barrier wall in the center median of a roadway. As a result he received NJP pursuant to Article 15, UCMJ and a reprimand.
- d. On or about 29 May 15, he engaged in sexual misconduct including five acts of abusive sexual contact arising from one night involving one victim (airman). As a result he received NJP pursuant to Article 15, UCMJ.

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On 21 Sep 15, the applicant was medically cleared for separation.

On 25 Sep 15, the applicant submitted a conditional waiver and requested to waive the discharge board contingent upon receiving no less than a general (under honorable conditions) discharge.

On 30 Sep 15, the victim who made a report of sexual assault against the applicant supported the applicant's request for a conditional waiver because she believed the most important thing was for the applicant to be separated from the Air Force.

On 1 Oct 15, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant's conditional waiver be accepted.

On 4 Oct 15, the discharge authority accepted the applicant's conditional waiver request and directed the applicant be discharged for sexual assault and pattern of misconduct, with a general (under honorable conditions) service characterization and indicated sexual assault was the primary basis for discharge. Probation and rehabilitation were not offered.

On 14 Oct 15, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of "Misconduct (Serious Offense)", and was credited with five years, five months, and four days of total active service.

On 21 Apr 16, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 25 Sep 17, the AFDRB concluded no change in his discharge was warranted.

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 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 9 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 an upgrade to his discharge based on a mental health condition. The applicant contends he had an undiagnosed mental illness while he was in the Air Force. His service records show he was diagnosed with an adjustment disorder and alcohol use disorder while still in the service. Further, he was given both substance abuse counseling for his alcohol use disorder and psychotherapy for his adjustment disorder. There is some evidence his adjustment disorder was caused by his reprimands following his misconduct. A mental health note stated that "The Pt was seen initially due to legal issues within his military unit." Additionally, his first diagnosis of adjustment disorder occurred after his NJPs for DUI,

drinking within eight hours of duty, and AWOL. While the applicant was service-connected for chronic adjustment disorder, there is no nexus between his “Misconduct (Serious Offense)” and his mental health diagnosis.

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 mental illness while he was in the Air Force.

2. Did the condition exist or experience occur during military service? The applicant was diagnosed with an adjustment disorder with depressed mood and alcohol abuse (alcohol use disorder).

3. Does the condition or experience excuse or mitigate the discharge? His diagnoses of adjustment disorder and alcohol use disorder are not mitigating factors for his misconduct. His diagnosis and likely his symptoms arose as a result of getting into trouble for his misconduct, rather than predating them. Additionally, five acts of abusive sexual contact, an arrest for DUI, wrongfully consuming alcohol within eight hours before duty, being AWOL, and failing dorm inspection are not part of the sequela of symptoms associated with an adjustment disorder. While the applicant was service-connected for chronic adjustment disorder, there is no nexus between his “Misconduct (Serious Offense)” and his mental health diagnosis.

4. Does the condition or experience outweigh the discharge? Since the applicant’s mental health condition does not excuse or mitigate his discharge, the applicant’s condition also does not outweigh 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 7 Jul 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 not the victim of an error or injustice. 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. The Board applied liberal consideration to the applicant’s request due to a DVA service-connected mental health condition and finds insufficient evidence his condition mitigated or excused behaviors and misconduct leading to 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. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his good citizenship since his discharge, in the

consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's record.

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-2023-00315 in Executive Session on 25 Oct 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/atchs, dated 24 Jan 23.
- 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 Feb 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 5 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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