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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00316

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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 suffered from an undiagnosed, misdiagnosed, or untreated mental health condition including Post-Traumatic Stress Disorder (PTSD) while in the service.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 26 Jul 99, via DD Form 4/1, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the Air Force Reserve Delayed Entry/Enlistment Program (DEP).

On 5 Apr 00, via DD Form 4/3, the applicant was discharged from the DEP and enlisted in the Regular Air Force.

On 15 Nov 00, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct.” He was credited with 7 months and 11 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 13 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.

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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 13 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 of his discharge. The applicant vaguely and contradictorily contends he suffered from an undiagnosed, misdiagnosed, or untreated mental health condition to include PTSD but did not clearly explain his traumatic experience causing him to meet diagnostic criteria for PTSD and how this condition caused his misconduct, the reason for his discharge. He claimed he had PTSD and submitted a letter from the Department of Veterans Affairs (DVA) reporting he was given service connection of 30 percent for an unspecified condition occurring 22 years after his discharge. The letter did not provide an explanation for the valuation and how his unspecified condition was related to his military service. Moreover, it is difficult to substantiate his contention as the objective records of his official discharge paperwork and service treatment records are not available for review. Without these vital records, the Psychological Advisor could not discern with a degree of certainty whether his mental health condition could cause or mitigate some, all, or none of his misconduct and eventual discharge. The burden of proof is placed on the applicant to support his contention and request, and his personal statement was found to be insufficient and not compelling enough to explain or mitigate his misconduct. Therefore, presumption of regularity is applied and there is no error or injustice identified with his discharge.

Liberal consideration is applied to the applicant's request. The following are answers 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 contends he believes his discharge was unjust because he suffered from undiagnosed, misdiagnosed, or untreated mental health condition to include PTSD while in service. He believes the reason for his discharge was related to this condition and did not provide any additional information.
2. Did the condition exist or experience occur during military service?

There is no evidence the applicant's condition of PTSD or any other mental health condition had existed or occurred during his military service. His service treatment records were not available for review and he did not submit any records to corroborate he had PTSD during service.

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

The applicant did not clearly explain how he met diagnostic criteria for PTSD and how this condition caused his misconduct and subsequent discharge. His discharge paperwork and service treatment records are also not available for review to corroborate his contention. From his available records, his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his discharge paperwork and service treatment records are not available for review, presumption of regularity is applied and there is insufficient evidence to support his mental health condition or experience may outweigh his 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 22 Feb 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. The applicant's official discharge paperwork and service treatment records are not available for review; therefore, presumption of regularity is applied, and the Board finds the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The Board concurs with the rationale and opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The burden of proof is placed on the applicant to provide evidence to support his request. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, the Board was unable to determine whether his mental health condition had a direct impact on his misconduct resulting with his discharge. The Board finds his personal statement was not sufficient nor compelling enough to explain or mitigate his misconduct. 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-2023-00316 in Executive Session on 27 Sep 23:

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Panel Chair

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, Panel Member

Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 12 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 13 Feb 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Feb 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Feb 23.

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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:

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