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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00357

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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 had undiagnosed mental health conditions during military service and the services were not available to him. The limited services affected his ability to serve honorably. His current mental health treatment has had a major impact on his life and he believes his records should be updated to reflect his Department of Veteran's Affairs (DVA) treatment progress.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1) who entered the Regular Air Force on 12 Sep 00.

On 29 Aug 03, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54 for Misconduct: Drug Abuse. The specific reasons for the action were as follows:

- a. On 18 Apr 01, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP) for the offense of failing to go at the time prescribed to his place of duty on 10 Apr 01, in violation of Article 86 of the Uniform Code of Military Justice (UCMJ). He received 30 days of correctional custody.
- b. On 11 Aug 03, AF Form 3070 indicates the applicant received NJP for the offense of using marijuana on or about 28 Nov 02, in violation of Article 112a of the UCMJ. He received a reduction in grade to airman basic (E-1) and forfeiture of \$100.00 pay and a reprimand.

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POC: [SAF\\_MRBC.Workflow@us.af.mil](mailto:SAF_MRBC.Workflow@us.af.mil)

On 5 Sep 03, the Staff Judge Advocate found the discharge action legally sufficient and on the same date, the discharge authority directed the applicant be discharged for drug abuse with a general (under honorable conditions) service characterization. Probation and rehabilitation were not offered.

On 11 Sep 03, according to the 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 three years of total active service.

On 13 Dec 10, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 2 Mar 12, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit D.

## **POST-SERVICE INFORMATION**

On 10 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) (Exhibit C); 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 10 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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge. The applicant vaguely and contradictorily contends he suffered from undiagnosed and untreated mental health conditions during service. The applicant submitted his service treatment records confirming he did indeed receive mental health treatment during

service (he was seen at least three times in Mar 03 and Apr 03) and was given a diagnosis of Adjustment Disorder with Depressed Mood and a condition of Occupational Problem on Axis I of the Diagnostic and Statistical Manual, fourth edition, text revision (DSM-IV-TR). These records were vague and did not elaborate on the cause(s) or trigger(s) of his depressed mood and transient suicidal ideation but nevertheless, he did receive treatment and a mental disorder diagnosis which would dispute his contentions. He submitted extracted pages from his service treatment records and so his entire treatment history during service could not be assessed. It is possible he attended additional psychotherapy sessions or received additional mental health treatment modalities, but this impression could not be verified at this time due to the absence of records. There was no indication from his submitted service treatment records his mental health condition had a direct impact to his misconduct and discharge. It is, however, noteworthy to mention that one of his Article 15's in his military records reported he wrongfully used marijuana on or about 28 Nov 02, which occurred several months prior to his initiation of mental health treatment in Mar 03. It is possible his depressed mood and occupational problems were in response or related to his misconduct problem of marijuana use. This notion is speculative as again, his entire service treatment record was not available or submitted for review for confirmation. The applicant reported he is currently receiving mental health treatment from the DVA but the submitted records showed he received two evaluations, not treatment, on 9 Feb 22 and 28 Mar 22, almost 20 years post-discharge, for anxiety and depression caused by his post-service stressors. He had declined treatment services when they were offered to him during his last and most recent evaluation in Mar 22. There was no declaration in any of these evaluations his anxiety and depression were a mitigating factor to his misconduct or discharge. The applicant previously attended a 30-day intensive alcohol/substance treatment program at the DVA from Mar 06 to Apr 06 for his social alcohol use to be eligible to enlist into the Army National Guard. At the time, he reported he first used marijuana at the age of 17 (prior to service) and this substance became a problem for him at the age of 21, coinciding with his time in service. The reason for his marijuana usage and problem were not reported. Lastly, the applicant marked "PTSD" on his application to the Board. There was no evidence he had this condition or was diagnosed with this condition during service or by the DVA.

The applicant's official discharge paperwork was not available or submitted for review. Without this vital record, the Psychological Advisor is unable to determine whether his mental health condition may have caused or could mitigate some, all, or none of his misconduct that led to his eventual discharge without his discharge paperwork. There were two Article 15's in his military records and he reported to the DVA he had multiple disciplinary infractions during service and thus, it appeared more likely than not he had other misconduct issues that were not in his current military record. The burden of proof is placed on the applicant to submit the necessary records to demonstrate there was an error or injustice with his discharge and to support his contentions and request. The Psychological Advisor finds the available records to include his personal statement were insufficient and not compelling enough to explain or mitigate his misconduct. As a result, 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 had an undiagnosed mental health condition that affected his military career and available resources during military service affected his ability to serve honorably. He marked "PTSD" and "OTHER MENTAL HEALTH" on his application to the AFBCMR and provided no other information.

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

There is no evidence the applicant's condition of PTSD had existed or occurred during his military service. He was never diagnosed with this condition by any of his DVA providers. His submitted service treatment records revealed he received mental health treatment during service from the period of Mar to Apr 03 and was reported to have depressed mood and transient suicidal ideation. The causes and triggers for these problems were not reported. He was given a diagnosis of Adjustment Disorder with Depressed Mood and a condition of Occupational Problem by his military mental health provider.

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 or any other mental health condition caused his misconduct and subsequent discharge. His discharge paperwork is not available for review to assess the actual reason(s) for his discharge. From his available records, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his discharge paperwork is not available for review, presumption of regularity is applied and insufficient evidence was presented 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 23 Feb 23 for comment (Exhibit E), and the applicant replied on the same date. In his response, the applicant provides an internal DVA form, *Mental Disorders Disability Benefits Questionnaire*, dated 28 Mar 23. There is no accompanying statement with the questionnaire.

The applicant's complete response is at Exhibit F.

## **ADDITIONAL AIR FORCE EVALUATION**

The Psychological Advisor reviewed the additional records and continues to find insufficient evidence to support the applicant's request. The original mental health advisory dated 16 Feb 23 was completed using records and information available at that time. A new set of the applicant's military records were discovered and received several months after the original advisory was completed.

There were no new service treatment records for review; therefore, the analysis of the applicant's mental health condition in the original advisory remains unchanged. The applicant's discharge paperwork revealed he was discharged for using marijuana; however, he was also reported to have engaged in a pattern of misconduct. In the original advisory, it was mentioned the applicant's discharge paperwork and service treatments were not available for review. The new set of records did contain his discharge paperwork but not his service treatment records. From the newly discovered records, Notification Memorandum dated 25 Aug 03 revealed the applicant was notified for discharge action for wrongfully using marijuana, a controlled substance, for which he had received NJP under Article 15 of the UCMJ. This misconduct was the basis of his discharge action.

The applicant submitted a statement presumably in response to his discharge action dated 28 Aug 03. He apologized to his leadership and discussed gaining a lot of knowledge being in the military. He regretted not being able to finish his term and felt like he took the easy way out. He was disappointed with himself for not allowing anyone to know who he really was and apologized again for his behaviors. There was no mention of any mental health condition or issues. The applicant had previously petitioned to the AFDRB for an upgrade of his discharge. He submitted no issues contesting the equity or propriety of his discharge and it appeared from the AFDRB Decisional Rationale document, he had made no contentions in his application to include any contention relating to his mental health condition. The AFDRB adjudicated his petition on 2 Mar 12 and unanimously denied his request finding there existed no legal or equitable basis for an upgrade of his discharge.

There was no evidence the applicant had PTSD or any other mental health condition as he claimed in his newly discovered military records. He had submitted a response to his discharge action at the time of service and made no mention of any mental health condition or problems. He apologized for his action and alluded to feeling like he took the "easy way out" suggesting he may have intentionally engaged in misconduct to get discharged or he was not able to complete his enlistment. The newly discovered records did not provide any credible evidence that his mental health condition was a mitigating factor to his discharge. His personal testimony was determined to be not sufficient or compelling enough to explain or mitigate his misconduct. Therefore, the Psychological Advisor continues to find no error or injustice with his discharge from a mental health perspective.

Liberal consideration was applied to the applicant's request in the original advisory. The following are answers to the four questions from the Kurta Memorandum that were slightly revised based on the available records to include the newly discovered records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant contended he had undiagnosed mental health condition affecting his military career and available resources during military service affected his ability to serve honorably. He marked "PTSD" and "OTHER MENTAL HEALTH" on his application to the BCMR and provided no other information.
2. Did the condition exist or experience occur during military service?

There was no evidence the applicant's mental health condition of PTSD had existed or occurred during his military service. He was never diagnosed with this condition by any of his DVA providers or any providers post service. His submitted service treatment records revealed he received mental health treatment during service from the period of Mar 03 to Apr 03 and was reported to have depressed mood and transient suicidal ideation. The causes and triggers for these problems were not reported but appeared to be related to his situational stressor of his occupational problems as reflected by his assigned mental disorder diagnosis. He was given a diagnosis of Adjustment Disorder with Depressed Mood and a condition of Occupational Problem by his military mental health provider.

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 or any other mental health condition caused his misconduct and subsequent discharge. His available military records, DVA treatment records, and submitted records find no evidence his mental health condition had a direct impact to his misconduct and discharge. Thus, 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 mental health condition also does not outweigh his discharge.

The complete supplemental advisory opinion is at Exhibit G.

## **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the supplemental advisory opinion to the applicant on 24 Aug 23 for comment (Exhibit H), 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 requests are technically untimely. However, it would be illogical to deny a 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. Furthermore, 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. Liberal consideration was applied to the applicant's request due to the contention of mental health conditions to include PTSD; however, since there

is no evidence the applicant's mental health condition of PTSD had existed or occurred during his military service or it had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. Additionally, the Board finds the preponderance of evidence does not support his contention he did not receive proper medical care as he was diagnosed with an Adjustment Disorder with Depressed Mood while in the service. Notwithstanding, the Board finds no reasonable explanation as to how his mental health condition impacted his misconduct nor do they find evidence to suggest he used drugs to cope with his mental health condition. 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.

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-2023-00357 in Executive Session on 25 Oct 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 27 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 10 Feb 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Feb 23.

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

Exhibit F: Applicant's Response, dated 17 Mar 23.

Exhibit G: Supplemental Advisory Opinion, AFBCMR MH, 21 Aug 23.

Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Aug 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.

3/1/2024

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Board Operations Manager, AFBCMR

Signed by:

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**AFBCMR Docket Number BC-2023-00357**

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