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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00435

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than under honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

He was diagnosed with (1) major depressive disorder (MDD), recurrent, (2) panic disorder, and (3) post-traumatic stress disorder (PTSD), which contributed to occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgement, thinking and/or mood.

In support of his request for clemency, the applicant provides a Department of Veterans Affairs (DVA) Summary of Benefits letter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 17 Jul 98, the applicant's commander recommended the applicant be discharged from the Air Force In Lieu of Trial by Court-Martial, under the provisions of DAFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were multiple larcenies using a government credit card totaling approximately \$2,500 and related false official statements.

On 20 Jul 98, the Staff Judge Advocate found the discharge action legally sufficient.

On 22 Jul 98, the discharge authority directed the applicant be discharged In lieu of Trial by Court-Martial with a UOTHC service characterization.

On 29 Jul 98, the applicant received a UOTHC discharge. His narrative reason for separation is "Triable by Court Martial" and he was credited with 13 years, 6 months, and 16 days of total active service.

On 19 Jan 06, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 2 May 06, 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

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authority and the applicant was provided full administrative due process. The Board further concluded that there exists no legal or equitable basis for upgrade of discharge, and the applicant's discharge should not be changed.

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

POST-SERVICE INFORMATION

On 17 Mar 23, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 1 Jul 23 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, a resume, articles published, and extensive evidence of community service.

The applicant's complete response is at Exhibit D.

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 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 issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 17 Mar 23, 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.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to his records based on his mental health condition. A review of the available records finds no evidence the applicant's mental health condition had a direct impact or caused his misconduct of wrongfully using a government credit card for personal items on multiple occasions and making false official statements. The applicant is requesting an upgrade of his discharge due to his DVA service-connected mental health conditions of MDD, Panic Disorder, and PTSD. He did not provide an explanation for how these conditions caused or could mitigate his discharge. The mere statement of having a mental health condition or conditions, especially for conditions that were diagnosed, and service connected over 20 years after discharge, is not sufficient or compelling enough to support his request for a discharge upgrade. His service

treatments records were not available or submitted for review, but the available records found no evidence or reports he had any mental health conditions or symptoms to include MDD, Panic Disorder, or PTSD during service. There was no evidence he was in emotional distress or had a mental health condition that would impair his judgment at the time of any of his repeated misconduct. He acknowledged his actions were wrong in his request for discharge in lieu of court-martial at the time of service and in his personal statement to the AFBCMR. There was no evidence he had cognitive or intellectual impairments during service and his records indicated he was able to distinguish between right and wrong and to adhere to the right and refrain from the wrong. The applicant claimed to his psychiatrist at the DVA he was traumatized by the harassment he endured while he was in correctional custody for being in a fight with a colleague. He informed a different provider at his trauma assessment that he was picked on and bullied and had to fight back frequently. He was trying to defend himself and it resulted with him being in correctional custody. The applicant's reports were found to be inconsistent to his objective military records. He claimed to his psychiatrist his mood symptoms began because of his experience in correctional custody. There was no evidence from his objective military records to corroborate this report. Additionally, he reported experiencing PTSD and anxiety symptoms, i.e., intrusive memories, avoidance of crowds, hypervigilance, negative cognition, startled responses, panic attacks, etc. to his DVA providers but did not identify when he began experiencing these symptoms. Again, there were no records he experienced any PTSD or anxiety symptoms during service. He was diagnosed with MDD, Panic Disorder, PTSD and General Anxiety Disorder (GAD) by his DVA providers over 20 years post discharge. None of these conditions had existed or occurred during his military service according to his records and no evidence any of these conditions, supposedly caused from his stressful experiences in correctional custody, caused him to deliberately use a government credit card for personal purchases and make false official statements. Furthermore, he was in correctional custody in 1988 and his misconduct leading to his discharge occurred nine years later in 1997. There were no documented misconduct or behavioral problems occurring between this time frame and in fact, despite his misconduct problems early in his military career, he was able to overcome his problems and his performance improved.

Liberal consideration is applied to the applicant's petition due to his contention of a mental health condition. 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 is requesting a discharge upgrade due to his mental disorder diagnoses of MDD, Recurrent, Panic Disorder, and PTSD contributing to his occupational and social impairment with deficiencies in most areas such as work, school, family relations, judgment, thinking and/or mood.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant's mental health conditions of MDD, Panic Disorder, and PTSD, diagnosed by the DVA over 20 years post discharge, had existed or occurred during his military service. The applicant claimed to his VA provider he developed mood symptoms from his harassment experiences while in correctional custody. There is evidence he received punishment of 30 days in correctional custody for assaulting an A1C during service but no evidence he developed or had mood symptoms during service. He did not identify when he began to experience anxiety/panic attacks or PTSD symptoms.
3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition had a direct impact to his willful and premeditated behaviors/misconduct and discharge. There is no evidence he was in emotional distress or had a mental health condition that may impair his judgment at the time of his repeated

misconduct of unauthorized use of a government credit card for personal items and making false official statements. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition may excuse or mitigate this discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AF/JAJI recommends denying the application. DAFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 3.4.4, provides “[t]he applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice.” As this is not a de novo review, their scope is limited to determining whether there was an error to the detriment of the applicant. They find no error and defer to the fact finder. However, deference to the fact finder is not blind deference, as findings of fact can be evaluated for arbitrariness and capriciousness. Nevertheless, in the context of correcting military records, an “unusually deferential application of the ‘arbitrary or capricious’ standard” is applied. Under this deferential standard, the applicant’s Command was in the best position to evaluate the information available to them to support charges preferred for court-martial as well as making the determination to accept the request in lieu of going to trial. There was significant evidence showing the applicant used the government credit card to purchase items for his personal use totaling over \$2500, and then he provided false statements regarding the matter. Far from being arbitrary or capricious, Command’s conclusions and approved service characterization were based on evidence and witnesses uncovered during the investigation. Additionally, the applicant had other misconduct during his enlistment, including unlawfully assaulting an airman by grabbing his hair and cutting it, an offense that resulted in nonjudicial punishment and correctional custody. While the applicant has many notable accomplishments after his discharge, there is insufficient evidence to demonstrate a material error or injustice at the time of discharge.

The complete advisory opinion is at Exhibit F.

APPLICANT’S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinions to the applicant on 25 Sep 23 for comment (Exhibit G) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests are technically untimely. However, it would be illogical to deny a discharge upgrade 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness.

Furthermore, the Board considered the applicant's significant post service conduct and achievements for over 20 years, to include the length of time since the misconduct, his clean arrest record, numerous endeavors to serve his community, his humanitarian efforts in Haiti, an extensive job history with various leadership roles, and his degree of contrition. Given the evidence presented, the Board finds the applicant's post-service accomplishments sufficient to warrant a discharge upgrade. Therefore, the Board recommends the applicant's records be corrected as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 29 Jul 98, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2023-00435 in Executive Session on 20 Dec 23:

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Panel Chair

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Panel Member

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Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 31 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 17 Mar 23.

Exhibit D: Applicant's Response, w/FBI Report, dated, 1 Jul 23.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Aug 23.

Exhibit F: Advisory Opinion, AF/JAJI, dated 19 Sep 23.

Exhibit F: Notification of Advisories, SAF/MRBC to Applicant, dated 25 Sep 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.

7/7/2025

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Signed by: USAF

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