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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00468

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT’S REQUEST

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

APPLICANT’S CONTENTIONS

Her discharge was based on an isolated incident and not equitable for her prior 21 months of service. She was in the early stages of mental health issues and addiction. After her incident and discharge, she became pregnant and stopped drinking and using any type of drug.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3) who entered the regular Air Force on 1 Nov 95.

On 17 Jul 97, the applicant’s commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54 for misconduct based on drug abuse. The specific reasons for the action were as follows:

- a. On 29 Mar 96 and 4 Apr 96, the applicant was seen for a mental health evaluation which diagnosed her with an adjustment disorder with depressed mood and noted her psychiatric profile remained at a S-1 level and she was qualified for worldwide duty (WWD).
- b. On or about 6 May 96, she received a traffic violation for operating a motor vehicle with studded tires out of season and received a Letter of Counseling (LOC), dated 3 Oct 96.
- c. On or about 8 May 96, she received a traffic violation by parking a motor vehicle in a no-parking loading zone and received an LOC, dated 3 Oct 96.
- d. On or about 30 May 96, she, with intent to deceive, made official statements to a technical sergeant and a staff sergeant that her brother’s six-month-old baby had died from Sudden Infant Death Syndrome (SIDS), which statement was false because the baby had been

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- stillborn two days prior, then known to her to be false in an attempt to obtain emergency leave. She received an AF Form 174, *Record of Individual Counseling*, dated 30 May 96, for this incident.
- e. On or about 30 Jun 96, she received a traffic violation by failing to stop at a posted stop sign and received an LOC, dated 3 Oct 96.
 - f. On or about 20 Oct 96, she received a traffic violation by failing to park in a designated parking space and by parking on the curb. She received an LOC, dated 16 Jan 97, for this incident.
 - g. On or about 25 Oct 96, her privilege to operate a motor vehicle (including any government vehicle) on any Department of Defense installation was suspended for a period of 60 days due to numerous violations she had received since May 96, as evidenced by a memorandum, dated 31 Oct 96.
 - h. On or about 2 Dec 96, she demonstrated financial irresponsibility by failing to pay her debts incurred on two accounts, which were over 60 days past due, as evidenced by a letter from the Army Air Force Exchange Service (AAFES), dated 16 Jan 97.
 - i. On or about 6 Jan 97, she received a traffic violation by driving too fast for road conditions and causing an accident, as evidenced by DD Form 1408, *Armed Forces Traffic Ticket*, dated 6 Jan 97
 - j. On or about 27 Feb 97, she demonstrated financial irresponsibility by dishonorably failing to pay a just debt on her video rental account, which was over 15 days past due, as evidenced by a letter from AAFES dated 27 Feb 97, and a letter from AAFES dated 2 Dec 96.
 - k. Between on or about 26 Mar 97 and on or about 4 May 97, she wrongfully used marijuana. This is outlined in the Office of Special Investigations (OSI) Report, dated 20 May 97.
 - l. On or about 24 Jun 97, she was seen in the Substance Abuse Recovery Center for a substance abuse evaluation subsequent to the investigation of her marijuana use. The Clinical Director recommended she be placed on Track 5 and be considered for discharge.

On 2 Sep 97, the Staff Judge Advocate found the discharge action legally sufficient.

On 5 Sep 97, the discharge authority directed the applicant be discharged for misconduct with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 10 Sep 97, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a general (under honorable conditions) discharge. Her narrative reason for

separation is “Misconduct” and he was credited with 1 year, 8 months, and 10 days of total active service.

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

POST-SERVICE INFORMATION

On 14 Jul 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, she 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 14 Jul 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 did not specify her mental health issues and did not submit any records to corroborate her contentions. The applicant was not discharged from service for one isolated incident but rather, there were 12 reasons or incidents cited in her discharge notification memorandum as reasons for her discharge. She did not clarify her supposed isolated incident but seemingly implied it was her marijuana use due to her report of having addiction problems. Her wrongful marijuana use was one of the reasons for her discharge. She admitted to using marijuana on more than one occasion to the OSI investigator and to the Clinical Director of the Substance Abuse Recovery Center during her evaluation with this program. In her statement to OSI, she stated she understood the consequences of drug use in the Air Force, admitted to her wrongdoing, and was willing to take responsibility for the consequences of her actions. In her response to her discharge action, she said she understood the reasons for her discharge and the type of discharge she will be receiving. It appeared from her statements she was well aware of her actions and decisions and knew what she was doing at the time. There was no evidence she had a mental health condition or was in emotional distress impairing her judgment when she chose to wrongfully use marijuana.

There is no evidence she used drugs to cope with her mental health condition. There is evidence the applicant reported experiencing depressive symptoms, which were unspecified, during her initial mental health evaluation occurring in Mar 96 and Apr 96 developed in response to her dissatisfaction with being in the military and struggles with adapting to the military. It is noted she was found to not have a thought disorder from the evaluation. This evaluation occurred about a year prior to her drug use. She was given a diagnosis of Adjustment Disorder with Depressed Mood, which was appropriate and consistent with her symptoms and level of functioning at the time. There is no evidence her depressive symptoms from her adjustment problems were persistent or recurrent over time or that her adjustment disorder had elevated to being chronic causing significant impairment to her overall functioning during service. She was offered psychotherapy services to improve her coping skills but declined the offer several times. It is reminded that the applicant had explicitly expressed a desire to be discharged from the Air Force during the evaluation and even attempted to portray herself as psychologically disturbed on her personality test to achieve this goal. Her drug use may possibly be related to this desire as again, she did report to OSI she understood the consequences of doing drugs in the Air Force. Despite her efforts to get discharged, she was not recommended for discharge by the examiner and was determined to be worldwide qualified, indicating her mental health condition did not interfere with her ability to perform her military duties. Her commander did list her mental health evaluation as a reason for her discharge even though it was stated her condition was not of sufficient severity that her ability to function effectively in the Air Force was significantly impaired. It is unsure why the evaluation was included; however, this reason may possibly serve to illustrate her misconduct problems were not caused by her mental health condition. Nevertheless, there is evidence she experienced depressive symptoms at a certain time in her military service but was not sufficient to demonstrate her depressive symptoms caused her numerous acts of misconduct over time leading to her discharge from service.

There is no evidence the applicant developed an addiction or dependency to marijuana and alcohol during service as the applicant contends. She admitted to using marijuana on two separate occasions and this is not enough information to establish she had an addiction to marijuana at that time. Her marijuana use had appeared to have increased over time and after discharge per her personal testimony; however, there is no evidence her addiction or dependency problems were caused by her military service or duties. She may have had drug abuse problems and this problem in addition to her dependency problems is unsuited for military service and would have resulted in an administrative discharge, which she had received. She believes she was in the beginning stages of mental health issues and the disease of addiction and no evidence to support this notion. Her Substance Abuse Recovery Center's evaluation report did not document she had any mental health issues, addiction or dependency issues to drugs or alcohol, and no mental or substance use disorder diagnosis was provided. She was recommended to attend Track 5 at the Substance Abuse Recovery Center and no records are available to confirm her participation in this program. There are no records she engaged in any alcohol-related incidents during service so no evidence she had alcohol abuse or dependency problems during service as well. The applicant reported she got pregnant after the incident and did not continue to drink or do drugs. There are no records of her pregnancy, although she did express appreciation for having an opportunity to have medical care after discharge in her Memo for Understanding. This may be in reference to her pregnancy but

her pregnancy did not cause her discharge from service nor her drug and alcohol problems. To reiterate, her drug use was a reason for her discharge but was not the sole reason for her discharge.

In addition to the applicant's marijuana use, she had engaged in numerous misconducts involving numerous driving violations, failing to pay her just debts, and making a false official statement to her leadership in an attempt to procure emergency leave. She did not address any of these misconducts in her petition. There is no evidence her mental health condition including depressive symptoms from her struggles adjusting to the military caused any of these acts of misconduct. She explained in her response to her Record of Individual Counseling (RIC) there was a misunderstanding with the information she was provided, she apologized for her actions and stated her family needed her. It is comprehensible she was experiencing family grief and loss affecting her judgment and decision, but her dishonesty in an effort to obtain emergency leave does not excuse her behaviors. The applicant was furnished with a general character of service discharge based on the totality of her service. Her commander believed her service merited a general characterization because of her pattern of misconduct, minor and serious, occurring within a relatively short period of time, and her commander had discretion over this matter.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses 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 her discharge was inequitable because it was based on one isolated incident in 21 months of service with no other adverse action. She believes she was in the beginning stages of mental health issues and the disease of addiction. She reports suffering from mental health issues and addiction later on in her life.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant had an addiction or dependence on drugs or alcohol during service. She did wrongfully use marijuana on two occasions and this information is not enough to demonstrate an addiction or dependence on this substance at that time. It appeared she may have had drug abuse problems. There is no evidence she had any alcohol problems during service. She was evaluated by the Substance Abuse Recovery Center on 24 Jun 97 and was never given any alcohol or substance use disorders. She received a prior mental health evaluation on 29 Mar 96 and 04 Apr 96 for experiencing depressive symptoms caused by having difficulties adjusting to the military and being dissatisfied with the military. She was given a diagnosis of Adjustment Disorder with Depressed Mood from the evaluation.
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 or was a contributing factor to her discharge. There is no evidence she had a mental health condition or was in emotional distress that may impair her judgment causing her numerous acts of misconduct and no evidence she used illicit drugs to cope with her mental health condition. Her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence her mental health condition may excuse or mitigate his discharge, her condition also does not outweigh her 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 opinions to the applicant on 3 Oct 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 requests are technically untimely. However, it would be illogical to deny a clemency 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 Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds no evidence her mental health condition including depressive symptoms from her struggles adjusting to the military, caused any of the acts of misconduct which ultimately led to her discharge. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there is no evidence she had a mental health condition or was in emotional distress which impaired her judgment causing her numerous acts of misconduct and no evidence she used illicit drugs to cope with her mental health condition. Therefore, her mental health condition does not excuse or mitigate her 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 her current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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-2023-00468 in Executive Session on 21 Feb 24:

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 30 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 14 Jul 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Oct 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Oct 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.

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