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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01219

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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 was discharged for failing to progress in his career field; specifically, because he failed his career advancement tests. Both times he took the career advancement tests, he was under the care of a primary care doctor for an injury sustained while at work. Later, the injury led him to be diagnosed with post-traumatic stress disorder (PTSD) along with many other medical problems. He is classified by the Department of Veterans Affairs (DVA) as 100 percent disabled with a 70 percent rating for his PTSD. He served honorably.

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 6 Sep 96, 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 5.26.3, for unsatisfactory performance, specifically, failure to progress in on-the-job training (OJT). The specific reasons for the action were:

- a. On 16 May 95, he received a counseling for failure to meet a financial obligation by issuing a check with insufficient funds.
- b. On 4 Aug 05, he received counseling for failure to meet a financial obligation by issuing a check with insufficient funds.
- c. On 7 Sep 95, he received a Letter of Reprimand (LOR) for failure to meet a financial obligation by issuing a check with insufficient funds.
- d. On 5 Jun 96, he failed his Career Development Course (CDC) Exam.

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e. On 10 Aug 96, he failed his CDC Exam for the second time.

f. On 23 Aug 96, he received a LOR for writing a check on base when his check writing privileges were suspended and failing to return Morale, Welfare, and Recreation (MWR) equipment on the due date.

On 13 Sep 96, the Staff Judge Advocate found the discharge action legally sufficient.

On 17 Sep 96, the discharge authority directed the applicant be discharged for failure to progress in OJT, with a general (under than honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 24 Sep 96 the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsatisfactory Performance" and he was credited with two years, four months, and six 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 6 Oct 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 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 6 Oct 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 considered the applicant's entire record and contention and finds insufficient evidence to support the applicant's claim he had PTSD or any other mental health condition during his military service which would mitigate his misconduct or that an error or injustice occurred during his discharge process. While the applicant is service-connected for

major depressive disorder, he was diagnosed with PTSD post-service. His PTSD was diagnosed in 2010, approximately 14 years after his discharge. His PTSD was diagnosed directly as a result of his pulmonary embolism (PE) which occurred 4 years prior, and approximately 10 years after his military service. His mental health encounters note he had no depression or anxiety symptoms prior to his PE. The applicant indicated his PTSD symptoms stem from his PE 4 years ago. His service connection for PTSD has an original effective date of 16 Dec 10, 14 years after discharge from the military.

The applicant's military record also appears to indicate he was administratively discharged for more than failure to progress in his career field. His unsatisfactory performance (failing Air Force Standards) includes numerous instances of writing checks with insufficient funds, along with failing his CDC exams.

The applicant does not appear to have any mental health condition, including PTSD during his time in service or at discharge. Therefore, his unsatisfactory performance, including failing exams and writing checks with insufficient funds, is not mitigated by a mental health diagnosis as there is insufficient evidence the applicant had any mental health issues during his time in service.

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 that an injury he sustained at work, later led to a diagnosis of PTSD, and it was for this reason he failed his career advancement tests, which led to his discharge for failing to progress in his career field.

2. Did the condition exist or experience occur during military service?
The applicant is service-connected for major depressive disorder, and he was diagnosed with PTSD post-service, approximately 14 years after his discharge. His PTSD was diagnosed directly as a result of his PE occurring 4 years prior, approximately 10 years after his military service.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant does not appear to have any mental health condition, including PTSD during his time in service or at discharge. Therefore, his unsatisfactory performance, including failing exams and writing checks with insufficient funds, is not mitigated by a mental health diagnosis as there is insufficient evidence the applicant had any mental health issues during his time in service.

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 16 Nov 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 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation 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 a mental health condition; however, the Board found insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. His Unsatisfactory Performance, including failing exams and writing checks with insufficient funds, is not mitigated by a mental health diagnosis as there is insufficient evidence the applicant had any mental health issues during his time in service. Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition does not outweigh the original discharge. The burden of proof is placed on the applicant to submit the necessary documents to support his request and contentions. As a result, presumption of regularity is applied and there is no evidence of any error or injustice with his discharge.

Nonetheless, 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 substantial 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.

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-2023-01219 in Executive Session on 20 Mar 24:

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Panel Chair
, 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 11 Apr 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 6 Oct 23.
- Exhibit D: Advisory Opinion, AFRBA MH, dated 13 Nov 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Nov 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.

4/2/2024

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Board Operations Manager, AFBCMR
Signed by: USAF