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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01268

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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 served in the Air Force honorably to the best of his ability being stationed in Alaska and assigned to the flightline in Fuels. He also represented the Alaskan Air Command in the World-Wide Talent Competition in 1982 in the dance category, winning first place and Best of Show. Unfortunately, during his active duty service, he suffered from undiagnosed Post-Traumatic Stress Disorder (PTSD) due to his active duty service.

In 1981, he was a young, talented 18-year-old dancer recruited into the Air Force by a very impressionable recruiter that sold him a dream. The recruiter told him he could serve his country by dancing around the world and be paid for it. He did not share the turmoil that comes with active military duty. He was a kid that simply wanted to make his mother proud, and he did. Unfortunately, the consequence of active duty has caused him permanent mental and physical damage. For close to 40 years, he has struggled undiagnosed and unaware of resources available to him as a veteran, which is the reason for such a long delay in his outreach to the Air Force Board for Correction of Military Records (AFBCMR).

In support of his request for clemency, the applicant provides two letters of support/character references.

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 17 Nov 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, Chapter 5, Section H, paragraph 5-46. The specific reasons for the action were:

- a. Article 15, Uniform Code of Military Justice (UCMJ), dated 14 Nov 83, failure to obey a lawful order.
- b. Letter of Reprimand (LOR), dated 29 Mar 83, violation of AFR 35-10, *Dress and Personal Appearance of Air Force Personnel*.

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- c. LOR, dated 5 Mar 83, violation of Articles 91 and 134, UCMJ.
- d. LOR, dated 23 Dec 81, government vehicle accident.
- e. AAC Form 82, *Individual Counseling Record*, dated 5 Feb 83, failure to go.
- f. AAC Form 82, dated 22 Dec 82, failure to go.
- g. AAC Form 82, dated 18 Jul 82, late for work.
- h. AAC Form 82, dated 27 Feb 82, late for work.
- i. AAC Form 82, dated 21 Jan 82, violation of a technical order.
- j. AAC Form 82, dated 13 Oct 81, government vehicle accident.

Other derogatory data:

- (1) Incident Complaint Report, dated 4 Aug 83.
- (2) Referred Airman Performance Report letter, dated 15 Aug 83.
- (3) Memo for Record, dated 3 Aug 83.
- (4) Control Roster Action, dated 28 Jul 83.
- (5) Traffic Citation, dated 18 Jun 82.
- (6) Traffic Citation, dated 15 Dec 81.
- (7) No-Show Appointment Letter, dated 20 Oct 81.

On 18 Nov 83, the Staff Judge Advocate found the discharge action legally sufficient.

The discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 21 Nov 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Minor Disciplinary Infractions" and he was credited with 2 years, 7 months, and 5 days of total active service.

According to a Veterans Evaluation letter from the Veterans Service Outreach Program (VSOP) to the Compensatory and Benefits, Los Angeles Regional Office of Veterans Administration, dated 16 Oct 21, provided by the applicant, he was referred to the VSOP to be assessed for his PTSD and other psychological services, since 29 Aug 21.

According to an undated letter from a Licensed Clinical Professional Counselor-Intern (LCPC-I), Desert Behavioral Health, to the Department of Veterans Affairs (DVA), provided by the applicant, he was seen at this office from 22 Dec 20, and by this LCPC-I since 14 May 21, until the time the letter was written.

According to an excerpt from a DVA letter, dated 12 Apr 23, provided by the applicant, he received a summary of benefits which reflected 100 percent service-connected disability, effective 9 Nov 21.

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

## POST-SERVICE INFORMATION

On 17 Jan 24, 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 (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 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 Jan 24, 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

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade to his discharge.

There is insufficient evidence to suggest the applicant had PTSD during his time in service or at discharge. The applicant did not engage in any mental health treatment while he was in service, nor was he ever placed on a profile or duty-limiting condition for mental health reasons. Further, the applicant was evaluated at discharge and was found not to have any mental health symptoms. The applicant on two occasions was found fit for duty from a psychological perspective. To date, the applicant is not service-connected for any mental health condition, including PTSD. In the applicant's military personnel record, there is a contemporaneous letter written on 5 Sep 83 that stated a psychological evaluation was needed. It is unclear in what capacity this letter was written. It indicated the author knew the applicant personally rather than professionally. This may indicate it may be a character reference or a recommendation from a layperson, rather than a medical document. It is also noted the author of the letter is a gynecologist, not a mental health professional, and is not qualified to determine if a psychological evaluation is required. Additionally, following this letter, dated 5 Sep 83, the applicant was determined not to have any mental health issues according to a Report of Medical History & Examination, dated 18 Nov 83.

The applicant submitted two letters, written years after his discharge, which contend his mental health condition is related to his service. They note:

- Undated (based on treatment, the letter was written after 14 May 21 or approximately 38 years after discharge from the military) - Desert Behavioral Health from an LCPC-I. It noted mental health diagnoses of delusional disorder, paranoid personality disorder, and agoraphobia with panic disorder. The counselor also noted that in his opinion, it is more likely than not, the illness or disability started during the applicant's active duty service.

- 16 Oct 21 - (approximately 38 years after discharge from the military) – Veterans Service Outreach Program - It noted: “In keeping with the criteria set by the DSM V, diagnosing his military-related post-traumatic stress disorders AXIS I (PTSD; delayed, chronic; 309.81, (F43.10) with constellated features (Panic Attacks (f40.01), (Agoraphobia (f400), all veterans psychometric test, i.e., Mississippi Trauma scale, PCL - Trauma Scale, and the BECK Depression scale in relationship to other military personnel who have taken these tests all show positive correlates of veteran’s disorders with significant amounts of PTSD with other constellated concerns... It is becoming a greater challenge for veteran to function in a productive manner because of his PTSD, and his other physical impairments, and with his emotional challenges... Veteran is to be assisted in learning to develop some coping skills that will help veteran manage those symptoms which are associated with post-traumatic stress disorder (PTSD), in hopes of reducing said symptoms.”

It is clear from both of these documents that the applicant’s mental health symptoms increased over the years. One indicated that his symptoms started during his military career and the other noted that his symptoms are becoming a greater challenge. As mentioned above, there is insufficient evidence to suggest the applicant met the criteria for PTSD during his service or at discharge. His mental health symptoms appear to have worsened over the intervening 38 years. The military’s Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member’s fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. It would appear that the applicant’s symptoms may have worsened over the years.

Despite the potential that his mental health condition has worsened over the years, the DVA has not recognized that his mental health deterioration was caused or exacerbated by his military service, as he is not service-connected for any mental health condition.

As indicated above, there is no evidence the applicant was not fit for duty. All of his military evaluations demonstrate at least adequate performance. The applicant had overall ratings of 8, 8, 7, and 5 out of a possible 9. While his overall evaluation on his most recent evaluation was a 5, his rating on his Performance of Duty was a 6, with his rater commenting that he performed his assigned duties in a satisfactory manner. He remained World-Wide Qualified/deployable with no mental health profiles/duty-limiting conditions. There is insufficient evidence that any mental health condition impacted his ability to perform the duties of his office, grade, rank, or rating.

Even if the applicant had PTSD from an experience in the military, his misconduct does not appear to be related to any mental health condition, and is therefore, not mitigated or excused. While his substantive misconduct (Article 15) related to his Failure to Report (avoidance/failure to obey an order) can be part of the sequelae of symptoms associated with PTSD, in the applicant’s case, his refusal to accept his shift at work, is related to his religious beliefs, rather than any mental health condition, and is not mitigated. His other areas of misconduct (inattention to safety standards which resulted in damaging a government vehicle, traffic citations, and grooming out of regulation), likewise do not have any nexus with PTSD and are not mitigated.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. 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 he had undiagnosed PTSD while in the military.

2. Did the condition exist or experience occur during military service?  
The applicant was diagnosed post-service, approximately 38 years after service, with agoraphobia, paranoid personality disorder, and PTSD. There is insufficient evidence to suggest the applicant had PTSD during his time in service or at discharge. The applicant did not engage in any mental health treatment while he was in service and was never placed on a profile or duty-limiting condition for mental health reasons. The applicant was evaluated at discharge and was found not to have any mental health symptoms. The applicant on two occasions was found fit for duty from a psychological perspective. To date, the applicant is not service-connected for any mental health condition, including PTSD.

3. Does the condition or experience excuse or mitigate the discharge?  
As there is insufficient evidence the applicant had any mental health condition while in service or at discharge, his misconduct is not mitigated by psychological reasons. Even if the applicant had PTSD from an experience in the military, his misconduct does not appear to be related to any mental health condition, and is therefore, not mitigated or excused. While his substantive misconduct (Article 15) related to his Failure to Report (avoidance/failure to obey an order) can be part of the sequelae of symptoms associated with PTSD, in the applicant's case, his refusal to accept his shift at work is related to his religious beliefs, rather than any mental health condition, and is not mitigated. His other areas of misconduct (inattention to safety standards which resulted in damaging a government vehicle, traffic citations, and grooming out of regulation), likewise do not have any nexus with PTSD and are not mitigated.

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 17 Jan 24 for comment (Exhibit E), and the applicant replied on 8 Feb 24. In his response, the applicant contends the advisory makes several mentions regarding the 38 years that have passed since his discharge until the time of his first DVA claim in 2020 and diagnosis in 2021. It took 38 years because he simply did not know. It took 38 years for him to become aware that the severe foot, ankle, leg, and hip pain that he suffers with to this day were caused by his time in the service and are recognized as disabilities that have medical terms associated with them. Forty years later, he is 100 percent service-connected for all of them. When he entered the military in 1981, his medical records stated he had bilateral pes planus with plantar fasciitis and his lower extremities were normal. Upon his discharge, his lower extremities were abnormal, yet no one from the Air Force, medical staff or otherwise informed him of these disabilities, nor did he know pes planus means flat feet. He

blindly lived in pain for over 40 years. Though he was in pain while in the service, he was warned not to complain, so he did not.

The advisory stated it was unclear in what capacity the 5 Sep 83 letter stating a psychological evaluation was needed was written, and that the author was a gynecologist, not a mental health professional; therefore, not qualified to determine if a psychological evaluation was required. The author clearly stated in his letter that he knew the applicant personally and recognized notable behavioral changes in him during his time in service. In an attempt to help, he suggested an organized professional evaluation and treatment were required. He never stated he was qualified. The author also stated he was hoping the letter would help facilitate this therapy. The applicant is offended and finds it dismissive for the advisory to find it unclear in what capacity the letter was written. It was written from a genuine place of care and concern.

Further, the advisory states the applicant was evaluated at discharge and was found not to have any mental health symptoms. To the contrary, according to his military records, no mental evaluation was done at the time of his discharge. The consultation report noted he was never seen in the Mental Health Clinic as far as they know, and an evaluation was needed to confirm their diagnosis. On 18 Nov 83, the physical exam noted psychiatric evaluation was not done but was checked as a necessary evaluation. Additionally, the commander's letter states there is an opportunity for probation and rehabilitation, but they were not considered in the best interest of the military service.

Additionally, the advisory noted the two letters submitted, written years after his discharge, contended his mental health condition is related to his service. In response, the advisor stated one letter indicated his symptoms started during his military career, while the other letter noted his symptoms are becoming a greater challenge. To the contrary, both letters submitted contend his current diagnosis began during his time in service. His military records show he was counseled for his military appearance, and he improved in that area. The letter from the LCPC-I reflects his difficulty with dress code and other write ups, along with vivid dreams of his tanker accident, are symptoms of PTSD. He currently has a claim for PTSD with the Board of Veterans Affairs. He was a good kid, afraid of his surroundings in Alaska, and panicked driving fuel trucks thinking they would explode. After having an accident in a fuel truck, symptoms of PTSD began to show as demonstrated by his behavior. He did not know what PTSD was or what was happening to him.

In closing, the applicant provided a chronology of his employment since discharge. He contends he would have made better decisions by communicating his experiences to medical and psychological staff if he knew then what he knows today. He was discharged for minor disciplinary infractions. He never did drugs, drank alcohol, or hurt anyone physically. He asks for relief at this time in an effort to move forward.

The applicant's complete response is at Exhibit F.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests under fundamental fairness or clemency 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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. 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. There is no evidence of a mental health condition or mental health treatment during the applicant's military service. To date, the applicant is not service-connected for any mental health condition, including PTSD. Additionally, 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. Liberal consideration has been appropriately applied by the AFRBA Psychological Advisor and the Board agrees with their finding that the applicant's mental health conditions do not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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-2023-01268 in Executive Session on 23 May 24 and 30 May 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 13 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 17 Jan 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Jan 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Jan 24.
- Exhibit F: Applicant's Response, w/atchs, dated 8 Feb 24.



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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.

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