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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01403

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable, and his rank be restored to E-5.

APPLICANT'S CONTENTIONS

At the time of his separation, he had been injured because of faulty avionic equipment. He loved his time in the military and his Air National Guard (ANG) family. He did not have the maturity to ask for help with stress. He served with pride and honor.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former ANG senior airman (E-4).

On 21 Sep 88, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the ANG.

On 4 Feb 96, Special Order (SO) Work-Pro... indicates the applicant was promoted to staff sergeant (E-5)

On 1 Sep 99, SO Work-Pro... indicates the applicant was demoted to senior airman (E-4).

On 24 May 00, the applicant received a general (under honorable conditions) discharge. His pay grade was E-4 and his narrative reason for separation was "Unsat Participation."

The applicant indicated he was a victim of Reprisal/Whistle Blower retribution on his application. However, a query by SAF IG returned no records concerning the applicant.

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

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

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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 11 Sep 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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 has reviewed the available records and finds insufficient evidence has been presented to support the applicant's request for the desired changes to his records and finds there is no nexus between his mental health condition and unsatisfactory performance or discharge. His military records identifying or detailing his unsatisfactory performance were not available or submitted for review. Therefore, it is unknown the cause or reason for his unsatisfactory performance. He claimed not having the maturity to ask for help with stress and was injured by faulty avionic testing equipment. He did not clearly define his stress nor his injury sustained by faulty avionic testing equipment. There is no evidence in his limited available records he was stressed during service and/or was injured while on duty. Moreover, the applicant did not provide any explanation and information about his alleged mental health

condition of PTSD. He did not discuss how he incurred this condition, when and where the condition occurred or began, how his military duties caused him to develop PTSD, and how his mental health condition impacted his unsatisfactory performance causing his subsequent discharge from service. He also did not submit any records or documentation from a duly qualified mental health provider to confirm he was given a diagnosis of PTSD. Complicating matters is his service treatment records were unavailable for review and the applicant also did not submit them. Thus, there is no evidence he had any mental health condition to include PTSD during his military service. The applicant is also requesting to restore his rank to E-5. The reason for his rank reduction was not included in his records. Without this information, the Psychological Advisor could not determine whether his mental health condition was a factor or caused his rank reduction. The burden of proof is placed on the applicant to submit the necessary records and/or paperwork to substantiate his claims and support his request. Based on exhaustive review of the available records, the Psychological Advisor finds there is no evidence his mental health condition had caused his unsatisfactory performance and rank reduction or was a mitigating factor to his discharge. As a result, there is no error or injustice identified with this discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to his designation of a mental health condition on his application to the BCMR. Liberal consideration is not appropriate to be applied to his request for rank restoration as this request is not covered under this policy. The following are responses to the four questions from the Kurta Memorandum from the information presented in the available records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended he was not mature enough to ask for help with stress and was injured by faulty avionics testing equipment. He marked "PTSD" on his application to the BCMR and provided no other information about this condition or how this condition may excuse or mitigate his discharge.
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records are unavailable for review. There is no evidence he was stressed or was injured by faulty avionics testing equipment during service as claimed. There is also no evidence or records to confirm his mental health condition of PTSD had existed or occurred during his military service.
3. Does the condition or experience excuse or mitigate the discharge?
Since there is no evidence the applicant had any mental health condition to include PTSD during service, his mental health condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 6 Sep 23 for comment (Exhibit D) 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 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 Title 10, United States Code § 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence in the applicant's limited available records he was stressed during service and/or was injured while on duty. Further, the applicant did not provide any explanation and information regarding his alleged mental health condition of PTSD. He did not discuss how he incurred this condition, when and where the condition occurred or began, how his military duties caused him to develop PTSD, and how his mental health condition impacted his unsatisfactory performance causing his subsequent discharge from service. The applicant also did not submit any records or documentation from a duly qualified mental health provider to confirm he was given a diagnosis of PTSD. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

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. Given the applicant's mental health condition did not excuse or mitigate his discharge, and applying the presumption of regularity, there is also no reason to restore the applicant's grade to staff sergeant (E-5). 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-2023-1403 in Executive Session on 21 Feb 24:

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Panel Chair

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, Panel Member

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Panel Member

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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, dated 25 Apr 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Jul 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Sep 23.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 11 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.

2/3/2025

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