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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01414

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He had unaddressed mental health issues and challenges during service.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 16 Apr 73, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section B, paragraph 2-15a. The specific reasons for the action were:

a. On or about 23 Jun 72, he committed larceny as evidenced in Disciplinary Punishment, dated 10 Jul 72, where he received an Article 15 under the provisions of the Uniform Code of Military Justice (UCMJ).

b. On 19 Jul 72, he failed to report to his appointed place of duty at the prescribed time and place as evidenced in a Vacation of Suspension, dated 24 Jul 72, where he received a reduction in rank to airman.

c. On or about 21 Dec 72 through 2 Jan 73, he was absent without authority (AWOL) as evidenced in Disciplinary Punishment, dated 19 Jan 73, where he received an Article 15 under the provisions of the UCMJ.

d. On or about 26 Mar 73, he stole government property as evidenced in Disciplinary Punishment, dated 3 Apr 73, where he received an Article 15 under the provisions of the UCMJ.

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 31 Jul 73, the discharge authority directed the applicant be discharged and furnished an undesirable discharge certificate. Probation and rehabilitation was considered, but not offered.

On 8 Aug 73, the applicant received a UOTHC discharge. His narrative reason for separation is "Special Designator Number (SDN) 28B" which denotes unfitness, frequent involvement in incidents of a discreditable nature with civilian or military authorities and he was credited with 1 years, 11 months, and 21 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 20 Feb 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 post-traumatic stress disorder (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 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 20 Feb 24, 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 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 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 AFRB Psychological Advisor finds no error or injustice identified with the applicant's discharge from a mental health perspective. The applicant was evaluated three times by three different individuals during service: a psychiatrist, Drug Abuse Control Officer, and his Primary Care Manager (PCM). None of these evaluations resulted in him being diagnosed with PTSD. It is acknowledged PTSD was not a formal mental disorder at the time of his military service, however there is also no evidence or reports he had a similar condition existing at the time or experienced any PTSD symptoms at the time of service. He was assessed during his separation physical examination, and he denied having any mental health concerns such as anxiety, depression, sleep problems, memory issues, etc. There is no evidence his condition of PTSD had existed or occurred during his military service and there are no records he was ever diagnosed with PTSD developed from his military duties by a duly qualified mental health professional in his lifetime. He was diagnosed with having an inadequate personality from his psychiatric evaluation and while this condition may have been a contributing factor or could explain his maladaptive behavioral and misconduct problems of larceny/theft on two occasions, being AWOL for about two weeks, and failure to report resulting in three Article 15s and a vacation of suspended sentence, this is an unsuiting condition for military service and does not excuse or mitigate his discharge. His misconducts are rather serious and could not be disregarded or outweighed by his unsuiting mental health condition. The applicant had provided a statement in response to his discharge action at the time of service and his explanations for his behaviors/misconduct were not demonstrated to be caused by having a mental health condition such as PTSD, anxiety, depression, etc. However, they were consistent to his unsuiting personality disorder/traits. These are different types of mental health conditions. There is no evidence or records he was in emotional distress or had PTSD, anxiety, depression, etc. impairing his judgment at the time of any of his documented misconduct. The applicant contended he had mental health challenges during service which were not addressed; however, this contention is not supported by his records. Although not part of his reason for discharge, the applicant admitted to experimenting with marijuana on several occasions and was supposedly entered into a rehabilitation program. The Drug Abuse Control Officer reported he did not cooperate with the rehabilitation program, did not avail himself of the opportunity to receive individual and group counseling services which could have helped alleviate some of his behavioral problems, and failed to participate in urinalysis testing as it was part of the program. He was offered help but was not receptive to the assistance which disputes his contention.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. It is reminded liberal consideration does not mandate an upgrade per policy guidance. 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 marked "PTSD" and "Other Mental Health" on his application to the Board; however, did not explain how he developed PTSD, when his traumatic experience(s) occurred, how his traumatic experience(s) was related to or caused by his military duties, when he was diagnosed with this condition and did not clarify his "Other Mental Health" condition. He contended he had mental health issues and challenges which were not addressed during service.

2. Did the condition exist or experience occur during military service?

There is no evidence or record of his mental health condition including PTSD or a similar condition occurred or existed during his military service. There are no records he was ever diagnosed with PTSD developed from his military duties by a duly qualified mental health professional in his lifetime. He received a psychiatric evaluation during service and was assessed and diagnosed with having an inadequate personality. He received a substance evaluation after he admitted to experimenting with marijuana on several occasions and did not participate in the rehabilitation program when it was offered to him. He was not given any substance use disorder diagnosis.

3. Does the condition or experience actually excuse or mitigate the discharge?

There is no evidence his mental health condition of PTSD or a similar condition had caused or was a contributing factor to his acts of misconduct. There is no evidence or records he was in emotional distress or had PTSD or a similar condition impairing his judgment at the time of any of his documented misconduct. He had a mental health condition of inadequate personality, which is an unsuiting condition for military service, may have caused or could explain maladaptive behaviors and misconduct but 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 mental health condition also does not outweigh his 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 22 Feb 24 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 a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's submission was vague in nature and the Board finds no evidence to suggest he was misdiagnosed with an unsuiting mental health diagnosis of personality disorder and further finds no evidence he was in emotional distress or had PTSD during service. Liberal

consideration was applied to the applicant's request due to the contention of a mental health condition and the Board finds his mental health condition may have had an impact on his behaviors and misconduct resulting with his discharge; however, his condition does not excuse, mitigate or outweigh his discharge as the Board finds his misconduct of a serious nature. 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 his 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-2023-01414 in Executive Session on 23 May 24:

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Panel Chair

, Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 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 20 Feb 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Feb 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 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.

10/2/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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