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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01586

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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 is bipolar and had bad judgment for smoking marijuana. He is trying to receive educational benefits and is unable to with his current discharge status.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1) who entered the regular Air Force on 4 Oct 00.

On 9 Jul 02, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP) and reduction in grade to airman basic for the offense of wrongfully using marijuana between on or about 1 May 02 and on or about 1 Jun 02.

On 27 Aug 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 10 months, and 24 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 12 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, he has not replied.

AFBCMR Docket Number BC-2022-02992

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

## 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 (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 [Post Traumatic Stress Disorder (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 (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 12 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 the available records finds the applicant's contentions were not supported by his objective military records. The applicant's objective military records consisting of his official discharge paperwork and service treatment records were unavailable for review. However, his available records revealed he received at least one Article 15 for wrongful use of marijuana. The applicant contends he used marijuana to cope with his condition of bipolar disorder. While this is a possibility, his service treatment records were not available to determine whether his condition of bipolar disorder had existed or occurred during his military service or had a nexus to his misconduct and subsequent discharge. He was diagnosed with bipolar disorder by his Department of Veterans Affairs (DVA) provider three years post discharge. His DVA treatment notes indicated he began to experience apparent bipolar symptoms post service leading to him being hospitalized in Jun 05. It was reported he had and was treated for depression during service, based on a self-report related to his transition from civilian to military life during his initial evaluation for mental health treatment services. He later reported to another psychiatrist at the DVA in Jun 05 he had been depressed for six years and was diagnosed after his father passed away during his time in service. His report of the timeline of his depression onset would suggest his depression had existed prior to service. Depression is a common precursor condition or symptom of bipolar disorder and so he may have experienced the onset of bipolar disorder prior to service as well and also may have experienced bipolar disorder symptoms during service. It may take time for symptoms of bipolar disorder to become clear and be formally diagnosed with this condition. These impressions, however, are purely speculative at this time since there are no service treatment records to corroborate any of these assumptions. The applicant claimed his condition of bipolar disorder caused him to make a bad judgment of using marijuana. This explanation is plausible but again, there is no evidence to corroborate his claim and no evidence he was in emotional distress or was experiencing a hypomanic episode causing his impaired judgment when he smoked marijuana. Nevertheless, his DVA treatment records reported he had used marijuana regularly from the age of 16 until he entered the Air Force and continued regular marijuana use after his service causing him to seek substance abuse treatment for this substance and others. His marijuana use (and possibly bipolar disorder) had existed prior

to service and no evidence was presented to show his mental health condition was aggravated by his military service and duties.

The applicant's discharge paperwork was also not available for review and so it is possible he may have other misconducts or disciplinary actions in addition to his Article 15 for marijuana use causing his discharge. Without the vital records of his discharge paperwork and service treatment records, it could not be determined with a degree of certainty whether his mental health condition may cause, excuse, mitigate, or outweigh his discharge. His contentions could not be substantiated as well without these records. 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.

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 his bipolar disorder caused him to make a bad judgment for smoking marijuana.
2. Did the condition exist or experience occur during military service?  
There is no evidence the applicant's condition of bipolar disorder had existed or occurred during his military service. His service treatment records are unavailable for review. He was diagnosed with bipolar disorder three years after discharge by the DVA.
3. Does the condition or experience actually excuse or mitigate the discharge?  
The applicant's discharge paperwork and service treatment records are not available for review. Without these records it could not be determined whether his mental health condition had a direct impact to his misconduct and discharge. Based on the available records, his mental health condition or experience does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?  
Since the applicant's condition or experience does not excuse or mitigate his discharge, his condition or experience also does not outweigh his 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 10 Aug 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 AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant's discharge paperwork was not in the available record for review and therefore is possible he may have other misconduct or disciplinary actions in addition to his Article 15 for marijuana use causing his discharge. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, without the vital records of his discharge paperwork and service treatment records, the Board could not determine with a degree of certainty whether his mental health condition may have caused, excused, mitigated, or outweighed his discharge. His contentions could not be substantiated as well without these records. 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.

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.

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-2023-01586 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 3 May 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 12 Jul 23.

Exhibit D: Advisory Opinion, AFRBA MH, dated 14 Jul 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Aug 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.

4/3/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF