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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-02008

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

At the time of his discharge he had an undiagnosed mental health condition that contributed to the non-military factors that led to his discharge. By all accounts, he was a good Airman who enjoyed his job and did the work. However, his mental health condition, which led to his financial and weight issues, was left untreated until just several years ago. He is an upstanding citizen, has earned a college degree, and has a 20-year career as a senior executive in the Information Technology industry. Had his mental health condition been diagnosed and treated, he would have been able to serve without any issues and with honor.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 27 Apr 98, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, Section H, *Misconduct*, paragraph 5.49, *Minor Disciplinary Actions*, and Section K, *Failure in the Weight Management Program*, paragraph, 5.65, *Exceeding Body Fat Standards*. The specific reasons for the action were:

a. From 19 Nov 96 to 28 Feb 98, for failure to meet/maintain Air Force Weight Management Standards, the applicant received two Letters of Reprimand (LOR), one Letter of Counseling (LOC), and two verbal counselings.

b. From 5 Dec 96 to 10 Mar 98, for offenses of writing bad checks/insufficient funds, dereliction of duty, making false official statements, failure to go, and failure to comply with minimum dormitory standards, the applicant received three LORs, four LOCs, and one Memorandum for Record.

c. On 2 Apr 98, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for violation of Article 92, for failure to obey a lawful order and violation of Article 134, for writing 10 bad checks/insufficient funds to one business during the

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period of 21 Jan 98 – 7 Mar 98. For these offenses he received a reduction in grade to Airman with a new date of rank of 9 Apr 98.

On 1 May 98, the Staff Judge Advocate found the discharge action legally sufficient.

On 5 May 98, the discharge authority directed the applicant be discharged for minor disciplinary infractions with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 8 May 98, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct” and he was credited with 3 years, 5 months, and 22 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 1 Nov 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 1 Nov 23, 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

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request.

After review of the available records, the psychological advisor finds the applicant's available objective military records does not support his contention. He contended he had an undiagnosed mental health condition during service and did not specify the type of mental health condition he had, the trigger or cause of his undiagnosed mental health condition, and when he began to develop a mental health condition. He also did not submit any records to confirm he was diagnosed with

a mental disorder by a duly qualified mental health provider. His service treatment records are not available or submitted by the applicant for review, but the available records find no documentation he received any mental health evaluation, treatment, or mental health diagnosis during service. He also claims his financial problems and weight issues were caused by his mental health condition which was untreated until several years ago and there is no evidence to support this claim. The applicant had submitted a few statements in response to his disciplinary actions at the time of service, however, none of his explanations/statements demonstrated his misconduct was caused by his undiagnosed mental health condition or any mental health condition. He discussed his financial debt and weight issues in his petition but did not address his other misconduct issues of failing to obey a lawful order, making false official statements on several occasions, and failing to go to his appointed place of duty. These misconducts do not appear to be caused by his mental health condition based on the nature of the misconducts as detailed in his military records. There is no evidence or records he had a mental health condition, whether diagnosed or undiagnosed, or he was in emotional distress impairing his judgment at the time of any of his misconduct that led to his discharge. The burden of proof is placed on the applicant to submit the necessary records to support his contention. His personal testimony was determined to be insufficient and not compelling enough to demonstrate a nexus had existed between his mental health condition and his numerous acts of misconduct. There is no evidence his undiagnosed and unspecified mental health condition had a direct impact or was a contributing factor to his misconduct and discharge, and thus, there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to his request due to the contention of a mental health condition. It is reminded that 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 contends at the time of his discharge, he had an undiagnosed mental health condition that contributed to the non-military factors that led to his discharge. He claims his financial problems and weight issues were derived from his mental health condition which was untreated until several years ago. He marked "Other Mental Health" on his application to the BCMR and did not specify the type of mental health condition he had, and how he incurred his mental health condition. No records were submitted to confirm he was diagnosed with a mental disorder by a duly qualified provider.

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

The applicant's service treatment records are not available or submitted by the applicant for review. From the available records, there is no evidence, or record, that he received any mental health evaluation, treatment, or mental disorder diagnosis during his service. There is no evidence he had a mental health condition, diagnosed or undiagnosed, during service.

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

There is no evidence or record that the applicant's undiagnosed and unspecified mental health condition had a direct impact or was a contributing factor to his numerous misconducts and subsequent discharge based on the available records for review. Thus, his mental health condition does not actually 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 E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 Jan 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. In his application, the applicant did not identify the undiagnosed medical condition or the cause of his undiagnosed medical condition which led to his discharge. In fact, there is no evidence or records that indicate the applicant had a mental health condition, whether diagnosed or undiagnosed or he was in emotional distress impairing his judgement at the time of any of his misconduct and the burden of proof is placed on the applicant to submit the necessary records to support his contention. Further, the Board determines his personal testimony to be insufficient and not compelling to demonstrate a nexus existed between his undiagnosed, and unspecified mental health condition to his numerous acts of misconduct. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. The Board determines the discharge was not unduly harsh or disproportionate to the offenses committed and the commander's decision was well within his authority and discretion. Finally, in the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and the lack 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 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.

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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-2023-02008 in Executive Session on 17 Apr 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, dated 8 Jul 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 1 Nov 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Dec 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Jan 24.

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.

5/10/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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