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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02040

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He was told not to speak about his mental health condition during service because it would affect his deployment status. He should have been diagnosed with post-traumatic stress disorder (PTSD) so he could have understood why he was feeling and thinking the way he did. Doing so would have helped him in so many aspects of life. He requires an honorable discharge in order to receive education benefits.

In support of his request for clemency, the applicant provides a Department of Veterans Affairs (DVA) Rating Decision Letter.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 7 May 08, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The specific reasons for the action were:

a. On 29 Jan 07, the applicant received a Letter of Reprimand (LOR) for the offense of failing to obey a lawful order by leaving the installation after he was restricted to the installation on or about 26 Jan 07.

b. On 14 Apr 07, he received an Article 15 for the offense of using provoking words and pushing another airman's chest on 1 Apr 07, in violation of Article 117 and 128 of the Uniform Code of Military Justice (UCMJ). He received a reduction in grade to airman, suspended until 17 Oct 07, and 15 days of extra duty.

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CUI Categories: Work-Product  
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c. On 21 Feb 08, he received an Article 15 for the offenses of without proper authority, through neglect, caused damage to military property on or about 14 Oct 07 and again on or about 29 Jan 08, stealing two bottles of liquor on 29 Jan 08, and on or about 14 Oct 07 unlawfully entered the property of another airman, in violation of Articles 108, 121, and 134 of the UCMJ. He received a reduction in grade to airman basic, forfeiture of \$670.00 in pay per month for two months, forfeitures in excess of \$442.00 in pay per month for two months suspended until 30 Sep 08, and 15 days of extra duty.

On 12 May 08, the applicant provided a response to the discharge notification. The response included a personal statement and five letters of support.

On 14 May 08, the discharge authority directed the applicant be discharged for minor disciplinary actions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 16 May 08, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 3 years, 11 months, and 29 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 3 Oct 23, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a FBI Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 19 Oct 23 and provided an FBI report. According to the report, the applicant was arrested on 29 Oct 13 for aggregated assault, 3 Mar 14 for resisting arrest, and again on 19 Aug 14 for assault and disorderly conduct. The applicant did not provide any additional post-service documentation.

The applicant's complete response is at Exhibit D.

## **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 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 3 Oct 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 all available records and finds no evidence his mental health condition including PTSD with depressed mood, anxiety, and sleep disturbance had a direct impact or was a contributing factor to his discharge. The applicant was discharged from service for engaging in a pattern of minor disciplinary infractions consisting of failing to obey a lawful order, unlawfully pushed and used provoking words towards a senior airman, unlawfully entered the garage of another senior airman and stole two bottles of liquor from this senior airman, damaged and ripped off 18 street signs on military property, and damaged the security forces' patrol vehicle. The applicant had submitted statements to explain his behaviors at the time of service. He explained he did disobey a direct order by leaving the installation to get pizza during his re-deployment training and felt it was okay because he was under the supervision of his team leader, he had a contentious relationship with the airmen at the main gate, things got heated between them with words exchanged, and another airman wanted to fight him by sticking his chest against his and he pushed the airman back, he denied damaging signs, stealing liquor, and breaking into another airman's house, and stated it was an accident when he damaged the security forces' patrol car—the ball of his truck ripped off the hitch and damaged the back window of the patrol car when he tried to pull the car out of the mud with his truck. All of these explanations do not demonstrate his mental health condition caused any of these misconducts and in fact, he was aware of his behaviors at the time. For the misconduct he denied committing, it is not possible his mental health condition caused these behaviors because he claimed he did not commit them. There is no evidence he had a mental health condition impairing his judgment at the time of any of his documented misconduct. The applicant did not discuss any of his misconduct in his petition and how his mental health condition may have caused his misconduct.

The applicant contends he was misdiagnosed during service. There is no evidence to support his contention. He was evaluated by Alcohol and Drug Abuse Prevention and Treatment (ADAPT) on 24 Oct 07 for unknown reasons and attended two alcohol education classes thereafter. He was not given any alcohol use or mental disorder diagnosis by ADAPT. He was then evaluated by his Primary Care Manager (PCM) for a Physical Health Assessment (PHA) on 1 Feb 08 and denied having any current depression and made no reports of any mental health concerns. He received a separation physical examination with another PCM on 30 Apr 08 and denied having alcohol problems, depression, anhedonia, and suicidal ideation. There were no complaints of any mental health issues at this time. There is no evidence he was misdiagnosed because he never received a mental disorder diagnosis during service, and he never reported having any mental health symptoms for him to get a potential diagnosis. He claims he was told to not speak about his mental status and no evidence this incident occurred. There are no records he received any regular or recurring mental health treatment during service. There is no evidence he had PTSD or a similar condition during service. The applicant was given a diagnosis of PTSD from his compensation and pension (C&P) exam on 24 Nov 15, seven years after discharge, based on his deployment experiences in Iraq. He endorsed several PTSD symptoms during the C&P exam such as

avoidance of thoughts, memories, and reminders of the traumatic event(s), sleep disturbances, distressing dreams, diminished interest, poor concentration, irritable mood and anger outbursts, and self-destructive behaviors. There is no evidence or records he had or experienced any of these PTSD symptoms during service. He did have some anger outbursts and self-destructive behavior problems during service, but the available records do not suggest these behaviors were related to or caused by PTSD. There is evidence he had deployed to Iraq during his military service but no records he developed PTSD from his deployment during service. It appeared he had developed the aforementioned reported PTSD symptoms several years after service eventually meeting the diagnostic criteria for PTSD at a later time. Delayed onset of PTSD is not an uncommon occurrence, and this may have been his circumstance. There is no evidence his condition of PTSD had a direct impact on his misconduct and subsequent discharge from service.

The applicant was never diagnosed with PTSD by his past or present DVA providers. His diagnosis of PTSD was given by a C&P examiner who had met him and evaluated him one time. It is reminded the purpose of a C&P exam is for disability purposes and not for treatment purposes. The applicant began to receive mental health/substance abuse treatment from the DVA on 6 May 15, about seven years after discharge, after he presented to the Emergency Department (ED) for opiate/meth withdrawal. He entered the DVA's substance abuse treatment program after the ED visit in May 15 and continues presently to receive medication management treatment for his conditions of Opioid Use Disorder and Anxiety Disorder – not otherwise specified (NOS). He was seen or interacted with his mental health providers including psychiatrists, mental health nurses, psychologists, and social workers, at the DVA for about 100 times or more over the years and none of them had given him a diagnosis of PTSD. He did discuss his military and deployment experiences with his providers, but no diagnosis of PTSD was yielded from his reports. His treatment was focused on his drug abuse, anxiety, and marital problems developed after his military service and from his post-service stressors. An evaluation with a psychiatrist on 14 May 15 uncovered his opioid use started in 08 while he was working in a pharmacy and stole medications (pain pills) for his broken wrist. His service treatment records did report he had fractured his left wrist when he fell at a wedding sometime in Feb 08 or Mar 08, but there are no records reporting he began to have opioid abuse problems during service or his opioid abuse problems caused his behavioral problems in service. He was working at the pharmacy after his discharge from the military in 08 and this is when he began to develop substance abuse problems. There is no evidence his substance abuse problems caused his acts of misconduct or discharge. His condition of Anxiety Disorder NOS was developed from his post-service stressors of family and school stress and not related to his military service. He was receiving couple's counseling at the DVA from Feb 23 to Oct 23 and his marital problems were also his post-service stressors. He was service-connected for PTSD with depressed mood, anxiety, and sleep disturbance by the DVA but service connection does not establish mitigation or causation of his discharge. The applicant also did not offer an explanation for how his mental health condition of PTSD had caused his misconduct and discharge.

An extensive review of the available records finds insufficient evidence has been presented to demonstrate a nexus had existed between the applicant's mental health condition including PTSD and his reason for discharge of misconduct (minor infractions). There is no evidence his mental

health condition was a mitigating factor to his discharge, and there is no error or injustice identified with his discharge from a mental health perspective.

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 is requesting an upgrade of his discharge due to a misdiagnosis of PTSD. He was told not to speak about his mental status due to it affecting his deployment status. He believed if he understood why he was feeling and thinking the way he did, it would have helped him in so many aspects of his life. He did not discuss how his mental health condition or PTSD may excuse or mitigate his discharge.

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

There is no evidence the applicant's mental health condition of PTSD had existed or occurred during his military service. There is evidence he deployed to Iraq but no evidence he had developed PTSD or experienced PTSD symptoms from this deployment experience during service. He was evaluated by ADAPT and no mental disorder diagnosis was given to him. His PCM evaluated him for a PHA and separation physical examination and he denied experiencing depression and did not report having any mental health concerns or symptoms. He was never given any mental disorder diagnosis during service and so there is no evidence he was misdiagnosed as alleged. He was diagnosed with PTSD from his deployment experiences in Iraq in Nov 15, seven years after discharge, from his C&P exam for disability purposes. He was never given a diagnosis of PTSD or treated for PTSD by his treatment mental health providers at the DVA, past or present. His post-service treatment at the DVA is/was focused on his opioid abuse problems, anxiety, and marital problems were developed post-service or by his post-service stressors and not from his military experiences.

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

The applicant did not adequately or compellingly explain how his mental health condition/PTSD had caused his pattern of minor misconduct leading to his discharge from service. There is no evidence or records his mental health condition including PTSD had a direct impact or was a mitigating factor to his discharge based on the available records for review. Thus, his mental health condition from his deployment experiences 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 E.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Nov 23 for comment (Exhibit F), 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, the Board finds insufficient evidence has been presented to demonstrate a nexus existed between the applicant's mental health condition (including PTSD) and his reason for discharge of misconduct (minor infractions). There is no evidence his mental health condition had a direct impact or was a mitigating factor to his discharge. Therefore, his mental health condition from his deployment experiences did not excuse or mitigate his 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 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, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

## 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-2023-02040 in Executive Session on 20 Mar 24:

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Panel Chair  
, Panel Member  
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atch, dated 6 Jun 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 3 Oct 23.
- Exhibit D: FBI Report, dated, 19 Oct 23.
- Exhibit E: Advisory Opinion, AFRBA MH, dated 7 Nov 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Nov 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

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