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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02512

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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 unlawfully discharged, and there was a lot of racism and favoritism going on in his squadron at the time. He would like his file to be fully reviewed and corrected.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2). The applicant's discharge paperwork and service treatment records are not available or submitted by the applicant for review, however his DD Form 214 indicated he was discharged under the provisions of AFI 36-3208 for reason of Misconduct.

On 24 Jul 02, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment (NJP) for on or about 2 Jul 02, on diverse occasions, he was derelict in the performance of his duties in that he negligently failed to answer the Squadron's on-call cell phone when it was in his possession as it was his duty to do so.

On 25 Sep 02, according to AF Form 3070, the applicant was issued NJP for having knowledge of a lawful order issued to him by a senior airman to go and pack cargo on the line, and he failed to obey this same order.

On 5 Nov 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 7 months, and 16 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.

AFBCMR Docket Number BC-2023-02512

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

POST-SERVICE INFORMATION

On 30 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 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 [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 30 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor has reviewed the available records and finds no evidence in his objective military records to support his contention. He alleges he was unlawfully discharged because of racism and favoritism that was going on in his squadron, and there is no evidence to support this claim. He also claims he was written up only once but his military records dispute this claim as his available albeit limited records reflected he received at least two Article 15s during service for negligently failing to answer the on-call cell phone that was in his possession and failing to obey an order. It is possible he had other misconduct or disciplinary actions that are not in his military records. The applicant marked "PTSD" and "Other Mental Health" on his application and provided no additional or clarifying information about these conditions such as when he developed these conditions and how they caused his misconduct and discharge. His service treatment records are not available for review and so there are no records confirming he had received any mental health evaluation, treatment, or mental disorder diagnosis during service. From the available records, there is no evidence his mental health condition had caused or was a contributing factor to any of his Article 15s. Additionally, the applicant's discharge paperwork is not available for review so the actual reason(s) for his discharge is unknown. Without the vital records of his discharge paperwork and his service treatment records, it could not be determined with a degree of certainty whether his mental health condition could excuse or mitigate his discharge. His personal testimony was determined to not be sufficient or compelling enough to support his request. The burden of proof is placed on the applicant to submit the necessary records to support his claim and request and therefore, presumption of regularity is applied and there is no error or injustice with this discharge from a mental health perspective. Liberal consideration is applied to the applicant's petition due to his 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 marked “PTSD” and “Other Mental Health” on his application to the AFBCMR and provided no additional or clarifying information about these conditions such as when he developed these conditions and how they caused his misconduct and discharge. The applicant did not discuss how his mental health 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 not available or submitted for review so there are no records or evidence that he had received any mental health evaluation, treatment, or mental disorder diagnosis including PTSD during service. There are no records or evidence his mental health condition of PTSD or other mental health had existed or occurred during his military service.

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

The applicant’s discharge paperwork and service treatment records are not available for review to determine whether his mental health condition may cause, excuse, or mitigate his discharge. From the available records, there is no evidence the applicant’s mental health condition including PTSD had a direct impact on his two Article 15s, for negligently failing to answer his on-call phone and failing to obey an order. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his 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 D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Dec 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 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 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. From the available records, there is no evidence his mental health condition had

caused or was a contributing factor to any of his Article 15s. Additionally, the applicant's discharge paperwork is not available for review so the actual reason(s) for his discharge is unknown. Without the vital records of his discharge paperwork and his service treatment records, it could not be determined with a degree of certainty whether his mental health condition could excuse or mitigate his discharge. His personal testimony was determined to not be sufficient or compelling enough to support his request. From the available records, there is no evidence the applicant's mental health condition, including PTSD, had a direct impact on his two Article 15s of negligently failing to answer his on-call phone and failing to obey an order. The applicant provided no post-separation information or FBI report to support clemency, 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-2023-02512 in Executive Session on 23 May 24 and 30 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, dated 2 Aug 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, (Post-Service Request and Liberal Consideration Guidance), dated 30 Nov 23.

Exhibit D: Advisory, AFRBA Psychological Advisor, dated 7 Dec 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Dec 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.

6/11/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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