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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02781

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions discharge be upgraded.

APPLICANT'S CONTENTIONS

He would like to ensure he receives all his benefits.

In support of his request, the applicant provides copies of a psychiatric evaluation dated 11 Mar 69, a letter from counsel dated 20 Mar 69, the Staff Judge Advocate Review dated 4 Apr 69, a psychiatric evaluation dated 20 Mar 69, and a Report of Medical Examination dated 30 Jun 67.

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 Mar 69, the convening authority published Special Court-Martial Order Number [REDACTED] The Order stated the applicant was found guilty of one charge and one specification of being absent without authority on or about 14 Feb 69 to 27 Feb 69 (Article 86). The applicant was sentenced to confinement at hard labor for six months.

In addition to this convicted offense, he was also reported to have been Absent Without Leave (AWOL) from 8 Oct 68 to 14 Oct 68. He was AWOL again from 30 Jan 69 to 12 Feb 69 and AWOL from 14 Feb 69 to 27 Feb 69. He was also dropped from rolls for one day from 14 to 15 Mar 69.

On 4 Apr 69, the Staff Judge Advocate recommended the request for discharge be accepted.

On 20 May 69, the applicant received an under other than honorable conditions discharge, and he was credited with 1 year, 9 months, and 11 days of total active service.

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

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

POST-SERVICE INFORMATION

On 5 Apr 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 (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 5 Apr 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 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 for an upgrade of his discharge based on his mental health condition. A review of the applicant's available records finds he was assessed to have a passive-aggressive personality, and this personality trait/structure had caused him to be AWOL and escape from confinement twice according to his second mental health evaluation performed during service. He was noted to be

recently married and was dependent on his wife. He went AWOL because he was fearful of his wife leaving him or being unfaithful to him most likely causing him to feel depressed. While there is evidence his personality disorder or traits had caused and were a contributing factor to his maladaptive behavioral problems and misconducts resulting in his court-martial conviction and discharge, his disorder or condition is unsuited for continued military service. Thus, his personality disorder may explain his behaviors and misconduct but does not excuse or mitigate his behaviors, misconduct, and discharge. His military duties or service itself did not cause him to be AWOL and escape from confinement. Furthermore, his misconduct of being AWOL and escaping from confinement on numerous occasions are serious offenses and could not be excused or disregarded even by his mental health condition. Therefore, the Psychological Advisor finds no error or injustice with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his contention of having 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 based on information presented from the available records:

1. Did the applicant have a condition or experience that may excuse or mitigate the discharge?

The applicant marked "OTHER MENTAL HEALTH" on his application to the AFBCMR and submitted mental health evaluation reports performed during service to reflect he was assessed to have a passive-aggressive personality that caused him to go AWOL and escape from confinement twice because he was dependent on his wife and was fearful, she would leave him or be unfaithful to him and most likely caused him to feel depressed.

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

The applicant was assessed to have a severe character problem identified as a passive-aggressive personality from his second mental health evaluation performed on 19 Mar 69 during service.

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

While there is evidence the applicant's passive-aggressive personality disorder, structure, or traits had caused and was a contributing factor to his maladaptive behavioral problems and misconducts resulting in his court-martial conviction and discharge, his disorder, structure, or condition is unsuited for continued military service. His misconduct of being AWOL and escaping confinement on numerous occasions are serious offenses and could not be excused by his mental health condition. His personality disorder may explain his behaviors and misconduct but does not excuse or mitigate discharge.

4. Does the condition or experience outweigh the discharge?

Since his 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 2 Jul 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 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. Section 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Furthermore, the Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. His mental health conditions were found to have influenced his AWOL misconduct but were considered as unsuiting for military service meeting criteria for an administrative discharge. However, he did not have any unfitting mental health conditions to be referred to the Medical Evaluation Board (MEB) for a medical discharge. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. His mental health condition may have possibly caused his misconduct resulting with his discharge; however, the Board finds his misconduct of AWOL and escaping from confinement on numerous occasions egregious in nature and could not be excused by his mental health condition. Therefore, his mental health condition does not excuse or mitigate his misconduct or outweigh his discharge. 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.

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-2023-02781 in Executive Session on 20 Nov 24:

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Panel Chair

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Panel Member
Panel Member

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

Exhibit A: DD Form 149, w/atchs, dated 22 Aug 23.

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

Exhibit C: Letter, SAF/MRBC (FBI Bulletin with Liberal Consideration Guidance), dated
5 Apr 24.

Exhibit D: Advisory, AFRBA Psychological Advisor, dated 12 Jun 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jul 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.

12/9/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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