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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02976

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her uncharacterized entry level separation be upgraded to honorable.

APPLICANT'S CONTENTIONS

The Department of Veterans Affairs (DVA) granted her service connection for anxiety during basic training. She is receiving 100 percent disability and needs her DD Form 214, *Certificate of Release or Discharge from Active Duty*, corrected and updated to honorable. In support of her request, the applicant provides a copy of the first page of her DVA decision letter, dated 15 Aug 23.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Oct 03, the applicant received an uncharacterized entry level separation. Her narrative reason for separation is "Miscellaneous, General Reasons" and she was credited with 18 days of total active service.

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

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.

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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 (MH) 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 MH 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 MH 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 USD P&R 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 13 Mar 24, Board staff provided the applicant a copy of the clemency and liberal consideration guidance (Exhibit C).

Air Force Instruction 36-3208, *Administrative Separation of Airmen*, dated 28 May 03, describes the authorized service characterizations that were applicable at the time of the applicant's separation.

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

Under Other than Honorable Conditions. 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 airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service. Based on review of the applicant's request, there is no error or injustice with the discharge processing. To grant relief would be contrary to the criteria established by DoD Instruction 1332.14, *Enlisted Administrative Separations*.

The complete advisory opinion is at Exhibit D.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence presented to support the applicant's request for a discharge upgrade. Service treatment records and discharge paperwork are not available or submitted by the applicant for review, so it could not be determined whether her MH condition had a direct impact or was a contributing factor to her discharge. From the limited available records, there is no evidence or record showing she received any MH evaluation, treatment, or a mental disorder diagnosis including anxiety or generalized anxiety disorder (GAD) during service. Her DD Form 214 currently lists "Miscellaneous/General Reasons" as the narrative reason for separation, but there

are no records clarifying these reasons. The applicant also did not discuss how her anxiety or GAD caused her discharge. The only available MH evaluation/treatment record was from her visit to the DVA's emergency department (ED) on 1 Jul 23, which occurred about 20 years after her service discharge. The ED note reported she had anxiety because she was unable to sleep due to tinnitus. Her reported anxiety at the ED visit was not caused or related to her military service according to treatment notes. The applicant received service connection for GAD by the DVA, but provided no information about how this condition was connected to her service and more importantly, her discharge. Service connection does not indicate mitigation of her discharge. Additionally, the applicant's request for an honorable character of service could not be supported because she served less than 180 days of continuous active military service, and her "uncharacterized" service for entry level separation is in accordance with past and present regulations. Her personal testimony was not sufficient or compelling to support her request for a discharge upgrade. The burden of proof is on the applicant to submit the necessary records to support her request and demonstrate an error or injustice with her discharge. Thus, the presumption of regularity is applied, and the Psychological Advisor finds no error or injustice with her discharge from a MH perspective.

Liberal consideration was applied to the applicant's petition due to her contention of a MH condition. Of note, liberal consideration does not mandate an upgrade per policy guidance. The following are responses to the four questions from the Kurta Memorandum based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends she is currently receiving 100 percent disability from the DVA for anxiety/GAD from basic military training. She did not discuss how her MH condition may excuse or mitigate her discharge.
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. There is no evidence from the available records her MH condition including anxiety or GAD had existed or occurred during her military service. She was seen at the DVA's ED on 1 Jul 23, about 20 years after her military service, for complaints of anxiety caused by an inability to sleep from her physical condition of tinnitus. Her anxiety was not reported to be related to her military service or discharge.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant's MH condition, including anxiety or GAD, had a direct impact or was a contributing factor to her discharge for miscellaneous/general reasons. Her discharge paperwork is not available for review to assess the actual reason(s) for her discharge. Due to the missing paperwork, the presumption of regularity is applied and there is no evidence of an error or injustice with her discharge. Therefore, her MH condition does not excuse or mitigate her discharge.
4. Does the condition or experience outweigh the discharge?

Since the applicant's MH condition does not excuse or mitigate her discharge, her condition also does not outweigh her original discharge.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 13 Mar 24 for comment (Exhibit F), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
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 AFPC/DP2SSR and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the applicant's official military personnel record did not include discharge process documentation or service treatment records for the Board to consider. Also, her submitted evidence did not show how any MH conditions directly impacted or contributed to her reason for discharge. 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 Department of the Air Force (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-02976 in Executive Session on 18 Jun 24:

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Panel Chair

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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, w/atchs, dated 17 Aug 23.

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

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Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance),
dated 13 Mar 23.

Exhibit D: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, 7 Mar 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Mar 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.

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Board Operations Manager, AFBCMR
Signed by: USAF

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