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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03225

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was an outstanding airman until he returned from his Iraq deployment where he suffered from Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) on deployment. It changed him from being a model airman to having problems. He is getting treatment for his PTSD and TBI, and he wants to be able to use his Post-9/11 GI Bill to better himself.

In support of his request, the applicant provides a copy of his Enlisted Performance Report from 11 Nov 05 thru 10 Nov 06, and a Certificate of Completion from the U.S. Small Business Administration.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 17 Apr 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 for misconduct: minor disciplinary infractions. The specific reasons for the action were:

- a. On or about 15 Apr 05, he failed to go to his appointed place of duty, mandatory physical training (PT) conducted by First Term Airmen Center (FTAC) personnel at 0630 hours. As a result, he received a Letter of Reprimand (LOR) on 25 Apr 05.
- b. On 6 Jul 05, he did not report for work until 0857 hours. When questioned, he stated it was a PT day, even though PT had been cancelled for that day due to a change of command. He also stated, although he was confused by the previous questioning

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regarding PT, he knew he should have reported for duty at 0645 hours. As a result, he received an LOR on 6 Jul 05.

- c. On 8 Jul 05, he did [not] report for work at 0730 as scheduled. At 0735 hours, he was contacted to find his whereabouts. He stated he was on his way to PT. He was instructed to report to work to which he replied "why is that?" He had been counseled previously on questioning noncommissioned officers about orders. He still did not show for duty until 0808 hours. As a result, he received an LOR on 8 Jul 05.
- d. On 27 Apr 07, he reported late for duty, with the smell of alcohol on his breath. When questioned, he stated he was late because of car trouble and that he had not had any alcohol since 2000 hours on 26 Apr 07. He was administered a breathalyzer test at approximately 0900 hours, which registered his level at .034, below the legal limit, but unprofessional and unacceptable. As a result, he received an LOR on 7 May 07.
- e. On 29 Jun 07, he reported for duty at 1120 hours even though he was scheduled to arrive at 0645 hours. Once he arrived at work, he admitted to his supervision he drank the previous night from 2100 hours until 0145 hours the next morning. Additionally, he was performing stand-by duty and was not authorized to drink. As a result, he received an LOR and an Unfavorable Information File (UIF) was established.
- f. On 5 Oct 07, he was 15 minutes late for duty. On 21 Oct 07, he was approximately 3 hours late for duty. As a result, he received an LOR on 24 Oct 07, an entry was made in his existing UIF, and he was placed on the control roster.
- g. On 9 Nov 07, he reported for duty non-compliant with vehicle operations flight policy by not wearing the appropriate footwear, steel toed boots. As a result, he received an LOR on 13 Nov 07.
- h. Investigation disclosed he was the victim of a drive-by shooting in Tucson, Arizona, between the dates of 8 and 9 Mar 08. He failed to notify Tucson Police Department and his chain of command of this incident. He also failed to seek medical attention for the injuries he sustained as a result of this incident. As a result, he received an LOR on 20 Mar 08, an entry was made in his existing UIF, he was placed on the control roster, and a Ground Mishap Report was filed.
- i. On 20 Mar 08, he absented himself from his place of duty, and remained absent until approximately 0703 hours on or about 20 Mar 08; on or about 20 Mar 08, he was disrespectful in deportment toward a noncommissioned officer, in the execution of her office, by not exercising proper customs and courtesies when addressing her during a counseling session. As a result, he received punishment under Article 15, Uniform Code of Military Justice (UCMJ), consisting of reduction to the grade of airman first class, with a new date of rank of 1 Apr 08, and 14 days extra duty.

On 23 Apr 08, the Staff Judge Advocate found the discharge action legally sufficient and on that same day, the discharge authority directed the applicant be discharged for Misconduct, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 25 Apr 08, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 4 years, 1 month, and 15 days of total active service.

On 21 Oct 08, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 13 Nov 09, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 8 Mar 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 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 8 Mar 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds sufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition and from liberal consideration. If the Board concurs with the recommendation, it is recommended his narrative reason for separation be changed to "Secretarial Authority" to be consistent with an honorable character of service discharge.

A review of the available records finds there is evidence the applicant was deployed to Iraq and was affected by his experiences during service. The exact dates of when he was deployed to Iraq were not specified in his available records, but his service treatment records indicated it was in 2006 and he reported to his Compensation and Pension (C&P) examiner he was deployed to Iraq for six months in 2006. Using 2006 as the year of his deployment would indicate that he had misconduct problems prior to his deployment. He had about four misconduct infractions in 2005 for failing to go to his appointed place of duty, reporting late to duty twice, and receiving a speeding ticket on base. These misconducts could not have been caused by the trauma developed from his deployment and there is no evidence or records he had any mental health conditions at the time of any of these misconducts. Therefore, these misconducts could not be excused or mitigated by his mental health condition. The majority of his misconduct did occur after 2006, which was also after he returned from his deployment. These misconducts included reporting late to work with alcohol on his breath, reporting late to work and admitting to his supervisor he drank the previous night, did not refrain from drinking while performing standby duty, did not wear appropriate footwear for duty, failing to report he was a victim of a drive by shooting, and he had absented himself from his place of duty and being disrespectful to an noncommissioned officer (NCO). The applicant had provided statements in response to his disciplinary actions to explain his behaviors at the time of service. In his response to LOR, he acknowledged he was drinking the previous night but claimed he reported being late to work because he had car problems and disputed he reported to work intoxicated. In his statement of occurrence, he reported not hearing his alarm clock go off but admitted to being an alcoholic as the reason he was drinking while he was on standby duties. In his response to his Article 15 for showing up late to work and disrespecting an NCO, he discussed experiencing numerous events in the past (he did not clarify) that had affected him emotionally, and had difficulties managing these emotions. He disclosed, ever since his deployment to Iraq in 2006, he had been dealing with and recovering from alcoholism and was a victim of a drive by shooting that almost took his life. He had been under a lot of stress and had a lot on his mind when he was disrespectful to an NCO. Anger and irritability are common symptoms of trauma. Based on these statements, it is compelling to conceive his emotional distress and alcohol problems stemming from his deployment and other traumatic experiences had caused some of his documented misconducts, especially his more serious misconducts. He did not address why he did not wear the appropriate boots to work, but this incident occurred around the time he was having misconduct problems.

The applicant had self-referred to Alcohol and Drug Abuse Prevention and Treatment (ADAPT) on 10 Jul 07 after he had acknowledged he had problems with alcohol and had engaged in three Alcohol Related Incidents (ARI). One of his ARIs occurred in 2005 when he was drinking to celebrate his birthday the night before he had to report to work, which was before his deployment to Iraq and was not caused by his traumatic experiences. He was referred to In Balance's Intensive Out-Patient (IOP) treatment program and his treatment notes from this facility were not available or submitted for review; however, his supervisor/rater had reported in his Enlisted Performance Report (EPR) for the rating period of 11 Nov 06 to 10 Nov 07 he did not meet mandatory ADAPT requirements and did not provide any more information. His service treatment records did not report he had failed ADAPT nor was this one of the reasons for his discharge, but the applicant reported to his psychiatrist he did not attend aftercare because he felt he received all of the help he needed from In Balance. It did appear he benefitted from IOP treatment as reported because his

condition/diagnosis of Alcohol Abuse was eventually determined to be “In Remission” by numerous mental health providers including his psychiatrist, therapist (Clinical Psychologist #1), and intake provider (Clinical Psychologist #2) and did not need additional alcohol/substance abuse treatment. There is evidence his alcohol problems increased or were exacerbated by his deployment experiences and he most likely coped with alcohol. Coping with alcohol due to trauma is not unusual and many people cope with their mental health condition in various ways including alcohol use. Thus, his ARIs of showing up to work with alcohol on his breath and drinking during standby duties could be explained by his mental health condition developed by his traumatic military duties. He did deny he was intoxicated when he arrived at work and while this could be true, his behavior and response could also be reflective of his alcohol abuse problems.

The applicant was escorted to the MHC (Healthcare Clinic) on 12 Mar 08 after he experienced a drive by shooting in which he was identified to be a victim. He was observed to be visibly shaken/tremors, agitated, tearful, and anxious by the incident and he reported feeling anxious, unsafe, and emotionally labile. This experience triggered him to remember a situation in which he came close to death when he was in Iraq being a convoy driver. He met with a psychiatrist on the same day and was prescribed Seroquel for his symptoms. The medication was found to be helpful to him and in follow-up appointments with his psychiatrist and therapist, he reported marked improvement with his anxiety and sleep disruption and no longer needed continued treatment. He was initially given a diagnosis of Acute Reaction to Stress and this condition was “resolving” and later “resolved” with time as he acclimated to his situation. This diagnosis was appropriate and valid based on his clinical presentation at the time. The applicant was given an LOR for not reporting he was a victim of a drive by shooting. However, it is conceivable the reason why he did not report this incident immediately to his leadership. When he presented to the MHC a few days after the incident, he was visibly distraught and was not functioning well. He was experiencing significant emotional distress that affected his judgment as he was fixated on his safety caused by previous traumatic experiences including his time in Iraq. His decision-making was impaired and most likely caused him to not report the incident to his leadership or seek medical attention because of the heightened anxiety surrounding his safety he was experiencing at the time. Hence, his mental health condition had a direct impact on his actions leading to his LOR.

The applicant was diagnosed with PTSD developed from his traumatic experiences in Iraq by his providers at the Department of Veterans Affairs (DVA) in 2012, which was four years after his discharge from the Air Force. He had substance abuse problems and it was implied he used substances to cope with his trauma symptoms. There is no evidence or records he was diagnosed with PTSD during service, but there is evidence he had trauma symptoms, e.g., anxiety, sleep disturbances, emotional labile, and hypervigilance during service when he was evaluated after being involved in a drive by shooting incident. He may have tried to conceal his trauma symptoms prior to and after this incident, but he did cope with his symptoms with alcohol during service. His trauma symptoms may also have taken time to fully develop causing him to meet the diagnostic criteria for PTSD at a later time because when he presented to the DVA four years after service, he reported experiencing anxiety, depression, nightmares, flashbacks, excessive startled responses, hypervigilance, chronic sleep impairment, avoiding reminders or conversations of his traumatic experiences, anhedonia, difficulties in establishing relationships with others, and difficulties in

adapting to stressful circumstances. He experienced some of these symptoms during service, but there is no evidence or records most of these symptoms had existed or occurred during service.

The applicant also contends he had sustained a TBI from his deployment experiences. His service treatment records find no evidence or reports he had a TBI and in fact, during his separation physical examination with his primary care manager (PCM) on 22 Apr 08, he denied having any physical issues. His PCM had performed a physical assessment and reported he had no physical trauma and there was no evidence of a head injury. There is no evidence or reports he had any memory problems, executive functioning issues, or other cognitive impairment problems resulting from a TBI during service. There are no records he was or is being treated for a TBI post-service as he contended as well.

A comprehensive review of the applicant's available military and treatment records finds there is ample evidence to demonstrate he had a mental health condition at the time of service that had affected his functioning, causing some and his more serious misconducts resulting in his discharge from service. Therefore, the Psychological Advisor opines that his request for an upgrade of his discharge to honorable is supported based on liberal consideration. The following are answers 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 he suffered from PTSD and TBI from his deployment and these conditions changed him from being a model airman to having problems.

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

There is no evidence or records the applicant's condition of TBI had existed or occurred during his military service. There are no records he was diagnosed with PTSD during service but was diagnosed with PTSD from his deployment experiences four years after his military discharge from his providers at the DVA. There is evidence and records that he had deployed to Iraq sometime in 2006 and developed a drinking problem after he returned from his deployment. There is evidence when he was a victim in a drive by shooting in March 2008 that this incident triggered him to remember his deployment causing him to experience trauma symptoms of anxiety, sleep problems, and being hypervigilant. He briefly received substance abuse (SA) treatment, psychotherapy, and psychiatry treatment services for his alcohol problems and trauma during service. He was given diagnoses of Acute Reaction to Stress and Alcohol Abuse during service, and these conditions were determined to be "In Remission" by the end of his treatment.

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

There is evidence the applicant's misconduct problems had increased in frequency and severity following his return from deployment from Iraq in 2006. Most of his misconduct problems causing his discharge had occurred after his deployment. There is evidence the applicant reported being affected by his deployment experiences causing him to be an "alcoholic" and having difficulties coping and managing his emotions at the time of service. There is evidence his mental health condition developed from his traumatic deployment experiences had a direct impact or was a contributing factor to some and his more serious misconducts. Therefore, his mental health condition excuses and mitigates his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition excuses and mitigates his discharge, his condition also outweighs his original discharge to support his request for an upgrade of his 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 Apr 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 the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. While the Board finds no error in the original discharge process, the Board recommends relief based on liberal consideration due to the applicant's mental health history. There is evidence his mental health condition developed from his traumatic deployment experiences, and had a direct impact or was a contributing factor to some of his more serious misconducts. As such, the Board believes the applicant's discharge should be upgraded to fully honorable and his records be corrected as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 25 Apr 08, he was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2023-03225 in Executive Session on 17 Jul 24:

Work-Product Panel Chair
s, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: DD Form 149_atchs, 7 Sep 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF MRBC, (Post-Service Request and Liberal Consideration Guidance), 8 Mar 24.
- Exhibit D: Advisory, AFRBA Psychological Advisor, dated 27 March 2024.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant 2 Apr 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.

8/7/2024

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Board Operations Manager, AFBCMR
Signed by: USAF