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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03268

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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

His Post-Traumatic Stress Disorder (PTSD) was not recognized at the time of discharge. His PTSD went untreated.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Nov 05, the applicant turned in his weapon to the armory before the off-going flight finished conducting guard mount. For this misconduct, he received a Letter of Counseling (LOC), dated 6 Nov 05. On this same date, the applicant acknowledged receipt and understanding of the LOC and elected not to comment on the allegations or provide written comments.

On 3 Jul 06, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ) for:

Violation of Article 92, UCMJ – [the applicant] did, at or near Ali Air Base, Iraq, on divers occasions, between on or about 1 Mar 06 and 15 Mar 06, fail to obey a lawful general regulation, to wit: AFI 31-207, *Arming and Use of Force by Air Force Personnel*, dated 1 Sep 99, by wrongfully removing his weapon from his holster.

Violation of Article 134, UCMJ – [the applicant] did, at or near Ali Air Base, Iraq, on or about 28 May 06, wrongfully and recklessly engage in conduct, to wit: removed his weapon from his holster and began to wave it in the air, and that his conduct was likely to cause death or grievous bodily harm to [three other airmen]. For this misconduct the applicant was reduced in grade to airman (E-2) with a new date of rank of 3 Jul 06.

On 26 Sep 07, according to AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru TSgt)*, the applicant was issued NJP, under Article 15, UCMJ for:

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Violation of Article 121, UCMJ – [the applicant] did, at or near Kaiserslautern, Germany, on or about 10 Jul 07, steal a silver chain, of a value of 120 Euro, the property of [another individual].

Violation of Article 128, UCMJ – [the applicant] did, at or near Kaiserslautern, Germany, on or about 10 Jul 07, assault [another individual] by pulling his chain off his neck with his hand.

Violation of Article 134, UCMJ – [the applicant] was, at or near Kaiserslautern, Germany, on or about 10 Jul 07, was disorderly, which conduct was of a nature to bring discredit upon the Armed Forces.

The applicant was reduced in grade to airman basic (E-1), with a new date of rank of 26 Sep 07, and forfeited \$650.00 pay per month for 2 months.

On 18 Oct 07, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The specific reasons for the action were:

a. On or about 10 Jul 07, [the applicant] stole a silver chain, of a value of 120 Euro, the property of [another individual], assaulted [the same other individual] by pulling his chain off his neck with [the applicant's hand], and was disorderly, which conduct was of a nature to bring discredit upon the Armed Forces. For this misconduct, [the applicant] received an Article 15, dated 26 Sep 07.

b. On divers occasions between on or about 1 Mar 06 and on or about 15 Mar 06, [the applicant] failed to obey a lawful general regulation to wit: AFI 31-207, *Arming and Use of Force by Air Force Personnel*, dated 1 Sep 99, by wrongfully removing his weapon from his holster. Additionally, on or about 28 May 06, [the applicant] wrongfully and recklessly engaged in conduct by removing his weapon from his holster and began waving it in the air and this conduct was likely to cause death or grievous bodily harm to [three other airmen]. For this misconduct, [the applicant] received an Article 15, dated 3 Jul 06.

c. On 5 Nov 05, [the applicant] turned in his weapon into the armory before the off-going flight finished conducting guard-mount. For this misconduct, [the applicant] received an LOC, dated 8 Nov 05¹.

On 18 Oct 07, the Staff Judge Advocate found the discharge action legally sufficient.

On 23 Oct 07, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.49. *Minor Disciplinary Infractions*, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 5 Nov 07, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 2 years, 8 months, and 20 days of total active service.

On 12 Jun 10, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

¹ The LOC presented by the commander was dated 6 Nov 05.

On 12 Jan 12, 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 (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 (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 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.

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.

The applicant contends his PTSD was not recognized at the time of his discharge and it went untreated. While the applicant was diagnosed with service-connected PTSD, his misconduct is not mitigated or excused by his mental health condition as his behaviors are not part of the sequelae of symptoms associated with PTSD. Stealing, assault, disorderly conduct, failure to obey a lawful general regulation by wrongfully removing his weapon from his holster, wrongfully and recklessly engaging in conduct by removing his weapon from his holster and waving it in the air, and turning in his weapon into the armory before the off-going flight finished conducting guard-mount have no nexus with the symptoms of PTSD. Additionally, the applicant's explanation at the time of the misconduct has no relationship to PTSD symptomology. For yanking and breaking a necklace off a stranger and leaving the scene, the applicant responded it was a joke that got out of hand. For

drawing his weapon, he reported it was to place his weapon on safe. Finally, for falling asleep², he responded it was due to shift changes. None of these reasons for his misconduct have a nexus with PTSD. This Psychological Advisor concludes the applicant's mental health condition (PTSD) does not mitigate or excuse his misconduct.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends his PTSD was not recognized at the time of his discharge and it went untreated.

2. Did the condition exist, or experience occur, during military service?
The applicant was diagnosed with service-connected PTSD.

3. Does the condition or experience excuse or mitigate the discharge?
While the applicant was diagnosed with service-connected PTSD, his misconduct is not mitigated or excused by his mental health condition as his behaviors are not part of the sequelae of symptoms associated with PTSD. Stealing, assault, disorderly conduct, failure to obey a lawful general regulation by wrongfully removing his weapon from his holster, wrongfully and recklessly engaging in conduct by removing his weapon from his holster and waving it in the air, and turning in his weapon into the armory before the off-going flight finished conducting guard-mount have no nexus with the symptoms of PTSD. Additionally, the applicant's explanation at the time of the misconduct has no relationship to PTSD symptomology. For yanking and breaking a necklace off a stranger and leaving the scene, the applicant responded it was a joke that got out of hand. For drawing his weapon, he reported it was to place his weapon on safe. Finally, for falling asleep³, he responded it was due to shift changes. None of these reasons for his misconduct has a nexus with PTSD. This psychological advisor concludes the applicant's mental health condition (PTSD) does not mitigate or excuse his misconduct.

4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the 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 6 May 24 for comment (Exhibit E) but has received no response.

² While the applicant referred to an incident of sleeping while on post, which resulted in an Unfavorable Information File, this misconduct was not included in the commander's discharge recommendation.

³ Ibid.

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 Title 10, United States Code § 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's behaviors are not part of the sequelae of symptoms associated with PTSD. Furthermore, the applicant's explanation at the time of the misconduct has no relationship to PTSD symptomology.

Additionally, 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. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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-2023-03268 in Executive Session on 9 Jul 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, dated 3 Oct 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 8 Mar 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 May 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 6 May 24.

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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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