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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03581

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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 ordered to climb a pole which was determined to be over trained and would likely result in a fall. He fell from this pole and was injured during a training exercise in technical school which resulted in a compression fracture, bulging discs, pinched nerves, and degenerative arthritis. He also developed Post-Traumatic Stress Disorder (PTSD) for a fear of heights shortly after the fall. Because of his injuries he was unable to pass his physical fitness test and his PTSD contributed to his difficulty with authority. He is now 100 percent service connected by the Department of Veterans Affairs (DVA) which includes 70 percent for chronic PTSD.

In support of his request for a discharge upgrade, the applicant provides his social worker license, a copy of his transcripts, his DVA disability rating and his post-service medical records.

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 27 Jun 06, 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 5.50.2 for a pattern of misconduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 2 Aug 05, a Record of Counseling (ROC) indicates the applicant was counseled for accumulating five housing violation tickets for failing to maintain his quarters to acceptable standards.

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Controlled by: SAF/MRB  
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- b. On 23 Nov 05, a Letter of Reprimand (LOR) was issued for failing to report for duty and disobeying a lawful order on several occasions by failing to maintain his fitness log and completing aerobic activities.
- c. On 10 Jan 06, a ROC indicates the applicant was counseled for failing to properly maintain his base vehicle and state registration.
- d. On 12 Jan 06, a LOR was issued for disobeying a direct order on four separate occasions.
- e. On 19 Apr 06, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failing to go to his place of duty and dereliction of duty. He received a reduction in grade to airman (E-2), suspended until 18 Oct 06, forfeiture of pay of \$200.00 for two months, and 30 days of extra duty.
- f. On 16 Jun 06, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 86 by failing to go to his place of duty. The applicant was reduced to the grade of airman with a new date of rank (DOR) of 19 Apr 06.

Not dated, the Staff Judge Advocate found the discharge action legally sufficient.

On 14 Jul 06, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 18 Jul 06, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 3 months, and 26 days of total active service.

On 5 Jan 11, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge contending his discharge was too harsh. The main reason for his discharge was due to his weight and inability to pass his fitness test. His marital problems and immaturity also contributed to his misconduct.

On 9 Mar 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 advisories at Exhibits E and F.

## **POST-SERVICE INFORMATION**

On 19 Mar 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History

Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 29 Apr 24 and provided proof of federal employment. The applicant also provided a personal statement contending he is disgusted by his actions and asks for a discharge upgrade based on fundamental fairness. He was having marital problems and coupled with his physical injuries, caused his misconduct and his failure to maintain fitness standards. He has had a successful post-service career, obtaining several academic degrees, and is now licensed as a clinical social worker working for the DVA. He is also a member of the Social Work Committee at J----- P----- and the Family Self-Sufficiency Program Coordinating Committee for the O---- F----- Regional Planning Commission. Additionally, he serves as an expect and participates in panel discussions at T---- R---- College during their Social Services Career Day.

The applicant's complete response is at Exhibit D.

### **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 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 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department in determining whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or Military Sexual Assault (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

First, the military corrections boards will apply liberal consideration to the eligible applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 19 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. There is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct and finds no error or injustice with the applicant's discharge.

While the applicant is service-connected for PTSD, there is insufficient evidence to suggest he had PTSD during service or at discharge. There is evidence to suggest his mental health symptoms worsened years after discharge from the military. A Physical Health Assessment (PHA) dated one month before discharge, determined he had no recent emotional stress and was released without limitations. His separation physical found no mental health issues, and assuming regularity, cleared him for separation. A post-service mental health encounter, dated 16 years after discharge, noted his symptoms developed over the last six to nine months and it had begun to affect his functional ability. His Compensation and Pension (C&P) examination noted his symptoms exist at a higher level currently. The Psychological Advisor concludes from this evidence his mental health symptoms worsened after his discharge. The DVA is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran. Even if the applicant had a mental health condition, including PTSD, it would not excuse or mitigate his misconduct as the substantive degree of his misconduct is not part of the sequelae of symptoms associated with PTSD or his other diagnosed mental health conditions (mood disorder and major depressive disorder).

Additionally, the reasons he provided at the time of his misconduct do not include any mental health rationale for his misconduct (including having difficulty with authority). Getting five housing violation tickets, failing to maintain his vehicle base and state registration, and disobeying direct orders on four separate occasions do not have a nexus with his mental health conditions. While failure to go may be a part of the sequela of symptoms associated with PTSD (avoidance), in the applicant's case this does not appear to be the case. As mentioned above, his rationale for

not reporting did not involve mental health reasons. Regardless, the Psychological Advisor concludes the substantive amount of his misconduct is not excused or mitigated by his mental health conditions.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy 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 he developed PTSD after a fall.

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

There is no evidence the applicant had any mental health condition while in the military or at discharge. The applicant was service-connected for PTSD, 16 years after his military service.

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

While the applicant is service-connected for PTSD, there is insufficient evidence to suggest he had PTSD during service or at discharge. His mental health symptoms worsened after his discharge. Even if the applicant had a mental health condition, including PTSD, it would not excuse or mitigate his misconduct as the substantive degree of his misconduct is not part of the sequelae of symptoms associated with PTSD or his other diagnosed mental health conditions (mood disorder and major depressive disorder).

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 E.

The AFBCMR Medical Advisor recommends denying the applicant's request for a discharge upgrade finding insufficient evidence to conclude the applicant had any medical conditions which should or would have mitigated his misconduct. Since significant negative aspects of the applicant's conduct outweigh the positive aspects of his military record, characterization of his service as general is appropriate and a review of the available records finds no error or injustice in that conclusion from the medical perspective.

He presented no evidence, nor could any be found in the available records, that such medical conditions existed at the time of his discharge, or, for that matter, at any time during his military service. Namely, there were no indications from a medical perspective he was unable to carry out his duties fully and productively, albeit hampered by the disciplinary issues he was facing, which resulted in significantly decreased Enlisted Performance Report (EPR) ratings. A PHA performed one month before discharge determined he had no significant medical concerns, and he was released without limitations. His separation exam noted back pain but likewise found no significant, duty-limiting problems and cleared him for separation. To second the AFRBA Mental Health Advisor, even if the applicant had medical concerns such as back pain at the time of his

discharge, possibly related to his fall, these would not have excused his misconduct as it would be difficult to draw a substantive nexus between the reported symptoms of such conditions and his behavior. Also, as noted by the Mental Health Advisor, none of the documents or rationale provided by the applicant in response to the discharge proceedings included any medical mitigating factors.

It should be noted that the applicant submitted documents from the DVA indicating a service-connection and disability ratings for his medical and mental health conditions. However, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran. In short, a finding by the DVA, the applicant's conditions were service connected and compensable does not in itself constitute evidence these conditions would or should have made him eligible for a medical separation or retirement under the DES, or, for that matter, should have impacted any aspect of his discharge proceedings.

The complete advisory opinion is at Exhibit F.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 8 Jul 24 for comment (Exhibit G), 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 the Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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. The Board noted his DVA disability ratings; however, did not find his post-service ratings sufficient to support his request nor did they lend credence to his contention his mental health or medical conditions caused his misconduct. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however given the evidence presented, the Board finds no basis to do so. The applicant's submission lacked references that demonstrated his character and service to the community. Therefore, the Board recommends against correcting the applicant's records. The Board acknowledges the applicant's personal and educational achievements, as well as his work at the DVA and should the applicant provide character reference statements and additional evidence to support his post service accomplishments, the Board would reconsider his request for a discharge upgrade.

## 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-2023-03581 in Executive Session on 22 Aug 24:

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Panel Chair  
Panel Member  
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 27 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 19 Mar 24.
- Exhibit D: Applicant's Response, w/atchs, dated 29 Apr 24.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 1 May 24.
- Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 1 Jul 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Jul 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.

9/11/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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