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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03733

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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

His ability to make decisions and positively serve his country was impacted by his addiction that was promoted within the ranks of the military during the Persian Gulf era. At the time of his service, he did not recognize how much he needed to mature and the impact his alcohol abuse was having on his life. He continued to have alcohol problems until 28 Feb 05, when he was able to get sober. He now works with men who are turning their lives around. He believes, had he not suffered from mental health issues and addiction, he may have been able to make better decisions and not be discharged. He has worked to better himself and give back to his community.

In support of his request for a discharge upgrade, the applicant provides certificates for certification as a Peer Recovery Specialist, character reference letters from peers and friends, and his DD Form 214 for review and consideration.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Oct 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-49c for misconduct. The specific reasons for the action were:

- a. On 23 Apr 90, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongfully possessed another's military identification card, knowing it was not authorized. He received 30 days of correctional custody.

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b. On 17 Sep 91, AF Form 3070 indicates the applicant received nonjudicial punishment (NJP), Article 15 for stealing approximately 50 compact discs (CD), a value of about \$600.00. He received a reduction in grade to airman basic.

On 22 Oct 91, the Staff Judge Advocate found the discharge action legally sufficient.

On 25 Oct 91, the discharge authority directed the applicant be discharged for Commission of a Serious Offense - Other Serious Offenses, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 29 Oct 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Other Serious Offenses)" and he was credited with 3 years, 4 months, and 29 days of total active service.

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

POST-SERVICE INFORMATION

On 4 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 4 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his records based on his mental health condition. A review of the available records finds no evidence or records the applicant's mental health condition had a direct impact or was a contributing factor to his discharge. He did not clarify the mental health conditions he allegedly had such as anxiety, depression, etc. during service nor did he discuss how his mental health condition caused him to wrongfully procure about 50 CDs, the property of a fellow service

member, that resulted in his discharge. There is evidence he had alcohol abuse problems as he was decertified from Personnel Reliability Program (PRP) due to having a diagnosis of alcohol abuse. This PRP certification confirms he had received a mental health evaluation that resulted in this diagnosis during service. Since he was evaluated, his contention he had an undiagnosed mental health condition is not corroborated by his records. There are no records he had any other mental health conditions besides alcohol abuse causing his poor impulse control. It is possible his poor impulse control could have caused his poor judgment leading to his misconduct of theft, but his alcohol abuse causing his poor impulse control behavior is an unsuiting condition for continued military service. If this was the situation, his alcohol abuse and impulse control problems may explain his behavior/misconduct but do not excuse or mitigate his misconduct or discharge. There is no evidence or records he had any other mental health conditions such as anxiety, depression, etc. impairing his judgment or he was in emotional distress causing his misconduct. There is also no evidence he coped with his mental health condition with alcohol. Alcohol abuse problems are different mental health conditions than conditions of anxiety, depression, psychosis, PTSD, etc. The Psychological Advisor finds his testimony for this petition was too vague and not compelling nor sufficient enough to support his request for an upgrade of his discharge based on his mental health condition. Therefore, the Psychological Advisor finds there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to the contention of 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 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 had an undiagnosed mental health condition and alcohol abuse problems that impacted his poor decision causing his discharge. He did not clarify his undiagnosed mental health condition and submitted no medical or mental health treatment records for review.

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

There is evidence the applicant was diagnosed with alcohol abuse indicating poor impulse control causing his PRP decertification during service. There is no evidence he was diagnosed with any other mental health condition such as anxiety, depression, etc. during service.

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

There is no evidence or records that his mental health condition of anxiety, depression, etc. had caused or was a contributing factor to his misconduct resulting in his discharge. It is possible his alcohol abuse problems indicating poor impulse control may have caused his misconduct of theft, but this is an unsuiting mental health condition for continued military service. While his unsuiting mental health condition may explain his behavior/misconduct, his unsuiting condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's 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 20 Aug 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. § 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. Specifically, the Board finds the preponderance of evidence does not support the applicant had any mental health disorder during service nor was there any evidence he was diagnosed with any mental health disorder. His alcohol use may have contributed to his poor behavior and misconduct, but this does not excuse or mitigate his misconduct. Nevertheless, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. Giving the applicant the benefit of doubt he experienced mental health symptoms which may have possibly caused some of his misconduct resulting with his discharge; the Board does not find his use of alcohol excuses his misconduct. Therefore, his mental health condition does not mitigate or excuse 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.
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 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-2023-03733 in Executive Session on 20 Nov 24:

Work-Product, Panel Chair

Work-Product Panel Member

Work-Product, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 8 Nov 23.

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

Exhibit C: Letter, SAF MRBC, (Post-Service Request and Liberal Consideration Guidance), dated 4 Apr 24.

Exhibit D: Advisory, AFRBA Psychological Advisor, dated 9 Jun 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Aug 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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