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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-02037

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

His characterization of his service does not adequately reflect his service in the military. He was injured on active duty which caused him to fall into depression. He could not focus on his promotion test and failed by one point on his last attempt before being discharged. After his discharge from the Air Force, he joined the Army National Guard, was a dedicated and hard-working member, and received an honorable discharge. He consistently displayed exceptional leadership, organizational, public speaking, and other essential skills in the line of duty. He had excellent references from his chain of command attesting to his character, integrity, and adherence to regulations. He believes a discharge upgrade to honorable more accurately reflects his character, service record, and leadership and this characterization would allow him to continue his service in future government employment.

In support of his request for an upgrade, the applicant provides a personal statement, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, with honorable character of service, Officer's Commissioning Certificate as a second lieutenant in the National Guard, copies of medical records and his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

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 a 27 Jul 97, AF Form 910, *Enlisted Performance Report*, indicates the applicant's supervisor submitted a referred enlisted performance report describing the applicant's misconduct.

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*Attorney-Client*

*Attorney-Client*

On a 19 Sep 97, AF Form 3219, *Request for Authorization for Separation*, indicates the applicant's discharge was approved with a service characterization of general (under honorable conditions).

On 19 Sep 97, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsatisfactory Performance" and he was credited with 2 years, 9 months, and 28 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 21 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 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?

- [REDACTED]
- 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 21 Mar 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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 Air Force Review Boards Agency (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. The Psychological Advisor has reviewed the available records and finds no evidence from the applicant's objective military records to support his contention. There is evidence per his submitted treatment records he had complaints and was treated for low back pain (LBP) during service; however, there are no records he had depression or was feeling depressed due to his injuries or physical condition. It is possible he may have developed depression from his physical condition, but the records do not support his impression. The applicant contends his depression caused him not to focus on his promotion test and failed the test on his last attempt before being discharged. Again, this is a possibility, but the available records do not support his contention. The applicant's discharge paperwork is not available or submitted for review so the

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actual reason(s) for his discharge is unknown. His enlisted performance report (EPR) for the rating period 22 Jul 96 to 21 Jul 97 confirmed he did fail his Career Development End of Course test but it was due to numerous off-duty distractions. Moreover, he also had problems with not consistently applying himself, he required constant supervision, he failed to follow through and complete projects, he lacked maturity and self-discipline to assume additional responsibilities, and he concentrated more on non-duty-related activities. He also received two letters of reprimand (LORs) for his misconduct and/or performance problems. The applicant submitted a response to his referral EPR at the time of service acknowledging his poor performance and vowed to progress in his job and have a new attitude. He did not mention having any depression and no records from his leadership of any observed mental health problems or emotional distress he may have had that impacted his ability to perform his duties. His identified problems on his EPR appeared to support his unsatisfactory performance and no evidence was caused by his mental health condition or his mental health condition was a contributing factor to these problems. He did not address any of these other problems besides his test failures in his petition. These additional reasons most likely contributed to his discharge for unsatisfactory performance. He may also have other problems causing his discharge that are not known at this time. He was commissioned into the Army National Guard about six years after his discharge from the Air Force and in order to do so, he needed to meet their accession standards. This would indicate he was fit for duty and his depression had either resolved, did not interfere with his overall functioning, or he did not have depression when he entered the Army National Guard. His service with the Army National Guard is separate from his service with the Air Force. Returning to the issue at hand, without the vital records of his discharge paperwork, it could not be determined whether his mental health condition could excuse or mitigate his discharge. His personal testimony was determined to not be sufficient or compelling enough to support his request. The burden of proof is placed on the applicant to submit the necessary records to support his claim and request and therefore, the presumption of regularity is applied and there is no error or injustice with this discharge from a mental health perspective.

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 was injured on active duty which caused him to fall into depression. He could not focus on his promotion test and failed by one point on his last attempt before being discharged.

2. Did the condition exist or experience occur during military service?  
The applicant submitted extracted pages from his service treatment records showing he had complaints and was treated for LBP. There are no records or evidence he received any mental health evaluation, treatment, or a mental disorder diagnosis including depression during service. Although it is possible he was depressed due to his injury as contended, there are no actual records to corroborate his mental health condition of depression had existed or occurred during his military service.

[REDACTED]

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

The applicant's discharge paperwork and full service treatment records are not available for review to determine whether his mental health condition including depression may cause, excuse, or mitigate his discharge. From the available records, there is no evidence his mental health condition had a direct impact or was a contributing factor to his behavioral problems and unsatisfactory performance. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his 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 C.

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

The Board sent a copy of the advisory opinion to the applicant on 21 Mar 24 for comment (Exhibit D) 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 finds 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 and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions as the Board finds no evidence the applicant was diagnosed with a mental health disorder during service. Although he was treated for LBP, there are no records to indicate he received any mental health evaluation, treatment, or a mental disorder diagnosis including depression during service. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, 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



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Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness.

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-2023-02037 in Executive Session on 3 Jul 24:

[REDACTED] Panel Chair  
[REDACTED] Panel Member  
[REDACTED] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 28 Jun 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Mar 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Mar 24.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 21 Mar 24.

[REDACTED]

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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