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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03606

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His character of service be changed to honorable.
2. His narrative reason for separation be corrected to remove "Misconduct."

APPLICANT'S CONTENTIONS

During service he struggled with undiagnosed Bipolar Disorder and addiction. He is now under proper medication to manage his condition, which has allowed him to become a more stable and responsible individual. He is determined to make amends for his past wrongdoings and genuinely transform into a different person.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 24 Apr 95, 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 minor disciplinary infractions. The specific reasons for the action were:

- a. On 9 Feb 95, he received an Article 15 for consuming alcohol under the age of 21 and assaulting and threatening another Air Force member. He received a reduction in grade to airman (E-2) and 30 days of correctional custody.
- b. On or about 15 Feb 95, he used inappropriate language when addressing an officer and was counseled.
- c. On or about 16 Feb 95, he did not report for rounds and was counseled.

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d. On or about 23 Feb 95 to 23 Mar 95, he failed on numerous occasions to demonstrate proper behaviors while in correctional custody. He was evaluated daily and documented accordingly for his unsatisfactory performance due to repeated non-conformance to Air Force standards while he was in correctional custody. He received a Letter of Reprimand (LOR) that was added to his existing Unfavorable Information File (UIF). His confinement records reported his poor behaviors during confinement included having a poor attitude, being frustrated, acting like a child, not paying attention to instructions or orders, performing tasks with as little effort as possible, working slowly, lacking discipline, not being motivated in a positive direction and lax on his responsibilities, appearing trying to game the system, and usually being late to the day as some examples of his behaviors.

On 12 Apr 95, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On 27 Apr 95, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 3 May 95, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with one year, two months, and three 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 3 Jun 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 3 Jun 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 from a mental health perspective. The applicant's service treatment records are not available or submitted by the applicant for review so there are no records he had any mental health conditions including bipolar disorder or addiction problems during service. There is no evidence he experienced bipolar symptoms such as manic or hypomanic episodes of unstable or fluctuating mood, heightened energy, decreased need for sleep, reckless or impulsive behaviors, restlessness, irritability or anger, anxiety, or depressive episodes to name a few. He was documented to have assaulted and threatened another airman and this could be considered as anger, irritability, and/or reckless or impulsive behaviors, but he was also noted to have been drinking underage near or around the time of this incident. His behaviors could have been caused by intoxication and not from bipolar disorder. Moreover, a statement presumably by the victim stated he would get angry and behave inappropriately towards her and other people at work (not in an intoxicated state) so they could be character or personality traits. The same may apply to his displayed poor attitudes and behaviors while he was in confinement. His described attitudes and behaviors from numerous individuals during his service are not indicative of, or consistent with bipolar disorder. The applicant did not discuss when he was diagnosed with bipolar disorder, when he began to experience symptoms of this condition, and did not clearly describe how his mental health condition caused his acts of misconduct resulting in his discharge from service. Bipolar disorder and its symptoms may take time to develop to become clear, so it is not certain if he had bipolar disorder or experienced early onset of this condition during service. The applicant stated he had problems with addiction; however, there is no evidence he had addiction or dependency problems with alcohol or other substances during service. He did drink underage and was involved in an alcohol-related incident, but this does not indicate he had an addiction problem. This was his only documented alcohol-related incident during service and appeared to be an isolated incident. There are no records he experienced withdrawal symptoms when he stopped using alcohol/substances, continuously needed to consume alcohol or use substances to achieve the same effect, had increased tolerance, blacked out from drinking, repeated problems at work due to alcohol/substance use, etc. that would suggest he had an addiction or dependency problems. If he had addiction problems, this would be an unsuitable condition for military service. There is no evidence he used alcohol/substances to cope with his mental health condition or bipolar disorder. He may have developed an addiction after his military service. The available and existing records find no evidence or records his mental health condition had a direct impact or was a contributing factor to his discharge. The applicant provided no explanations for how his bipolar disorder and addiction had caused or could mitigate his numerous acts of misconduct of drinking underage, assaulting and threatening another airman, using inappropriate language when addressing an officer, not reporting to rounds, and his improper behaviors during confinement. Hypothetically if his mental health condition had existed during service and may cause some or all his misconduct, his behavior of assaulting and threatening another service member is inappropriate and unacceptable behavior and could not be excused. His offense was too serious to be outweighed even by his mental health condition. The Psychological Advisor finds his testimony for this petition as not compelling nor sufficient 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 having 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 struggled with undiagnosed bipolar disorder and addiction during service. He did not discuss when he was diagnosed with bipolar disorder, describe clearly how his mental health condition caused his numerous acts of misconduct resulting in his discharge, or discuss how his mental health condition may excuse or mitigate his discharge. He submitted no records for review.

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

The applicant's service treatment records are not available or submitted by the applicant for review. There is no evidence his mental health condition of bipolar disorder or addiction had existed or occurred during his military service. There is no evidence he had any bipolar disorder symptoms including hypomanic or manic episodes or that he had addiction problems 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 bipolar disorder or addiction had caused, had a direct impact, or was a contributing factor to his misconduct resulting in his discharge. Some of his misconducts were serious and inappropriate and could be not excused or mitigated even if he had a mental health condition. Thus, his mental health 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 3 Jul 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 bipolar symptoms during service nor was there any evidence he was diagnosed with any mental health disorder since his service treatment records were not available for review. 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 finds the majority of his misconduct does not warrant a change to his discharge, especially since some of his misconduct is considered egregious. 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-2023-03606 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 3 Nov 23.

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

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Exhibit C: Letter, SAF/MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 3 Jun 24.

Exhibit D: Advisory, AFRBA Psychological Advisor, dated 13 Jun 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Jul 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

X

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Board Operations Manager, AFBCMR

Signed by: USAF