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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-04033

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her general (under honorable conditions) discharge be upgraded to honorable or be changed to a medical separation.

APPLICANT'S CONTENTIONS

She was misdiagnosed in the military. She had un-medicated bipolar disorder which caused her to act out in ways she would not have, had she been correctly diagnosed, medicated, and treated. Since being diagnosed, she has been taking steps to maintain and take care of her mental health. She believes she should have either been medically discharged or received an honorable discharge. She is also currently pursuing her bachelor's degree in music therapy through vocational rehabilitation and will then pursue her master's degree.

In support of her request, the applicant provides a DD Form 214, a screen shot of her Department of Veterans Affairs (DVA) rated disabilities, and a DVA Benefits Letter dated 11 Dec 23.

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 19 Sep 03, 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. The specific reasons for the action were:

- a. On 20 Dec 02, she received a Record of Individual Counseling (RIC) for failing to go to her appointed place of duty at the proper time.
- b. On 23 Jan 03, she received a RIC for failing to go to her appointed place of duty at the proper time.

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- c. On 28 Jan 03, she received a RIC for failing to go to her appointed place of duty at the proper time.
- d. On 6 Mar 03, she received a RIC for failing to go to her appointed place of duty at the proper time.
- e. On 4 Apr 03, she received a Letter of Reprimand (LOR) for being involved in the alteration of military identification cards between May 02, and on or about Oct 02.
- f. On 9 Jul 03, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for dereliction in the performance of her duties when she willfully failed to maintain her dormitory room in accordance with Air Force standards and failed to refrain from possessing an alcoholic beverage while under the age of 21. She received a reduction to the grade of airman, suspended through 8 Jan 04, at which time will be remitted, unless sooner vacated, forfeiture of \$100.00 in pay, and base restriction for 14 days.
- g. On 8 Aug 03, she received a RIC for an issued traffic citation for driving on an expired vehicle registration/license plates on 5 Jul 03. In addition, an investigation revealed she did not possess the minimum required insurance to operate a vehicle on a military installation.
- h. On 12 Aug 03, she received a LOR for uttering a check in the amount of \$530.47 on 14 Feb 03 and knowingly failing to maintain sufficient funds in her account to pay such check.
- i. On 2 Sep 03, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 92 of the Uniform Code of Military Justice (UCMJ) by willfully failing to refrain from using the alert photographer cellular phone for personal use between on or about 10 Jul 03 and 25 Jul 03. Her suspension of grade to airman was vacated with a new date of rank (DOR) of 9 Jul 03.
- j. On 9 Sep 03, AF Form 3070 indicates the applicant received nonjudicial punishment (NJP), Article 15 for dereliction in the performance of her duties in that she used the alert photographer cellular phone for personal use between on or about 27 Jun 03 and 25 Jul 03. She received a reduction to the grade of airman basic, forfeiture of \$100.00 of pay per month for 2 months, and base restriction 7 days.

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

On 23 Sep 03, the discharge authority directed the applicant be discharged for Misconduct-Pattern of Misconduct with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 26 Sep 03, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is “Misconduct” and she was credited with 2 years, 2 months, and 18 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 16 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, she 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 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 determination regarding 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 trauma (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)(l) 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 16 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 AFBCMR Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of her discharge or a medical retirement from a psychological perspective. The applicant contends she was misdiagnosed in the military and had unmedicated bipolar disorder. There is insufficient evidence to indicate the applicant met the criteria for bipolar disorder during her military service or at discharge. The applicant was seen by mental health providers during her military service and was diagnosed with adjustment disorder. Her first mental health Compensation and Pension (C&P) examination (10 Oct 03), conducted after her discharge, diagnosed her with adjustment disorder. The examiner noted she was seen almost weekly, with her diagnosis of adjustment disorder remaining the same. The examiner specifically determined she did not meet the diagnostic criteria for bipolar disorder. A mental health encounter dated 15 Nov 06, approximately three years after military discharge, did not diagnose her with bipolar disorder. She was diagnosed with major depression and was taking medication for depression symptoms, not medication for bipolar disorder. She responded well to this medication. She was not diagnosed with bipolar disorder by a mental health provider until Jan 07, approximately four years after her military discharge. While she is 100 percent service-connected for bipolar disorder, her electronic medical records indicate she was first service-connected for adjustment disorder at 10 percent immediately after discharge from the military. Her 10 percent service connection for adjustment disorder remained in effect at least until 8 Jun 07, where an encounter noted she was 10 percent service-connected for adjustment disorder. This was increased to 100 percent sometime after 8 Jun 07 when her mental health service connection changed to bipolar disorder, and her symptoms later met the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for bipolar disorder. The first available C&P that diagnosed her with bipolar disorder was on 25 Apr 14, approximately 11 years after military discharge. There is also no indication her mental health condition during her service (adjustment disorder) made her unfit for duty from a psychological perspective.

Being diagnosed with a mental health condition and receiving mental health treatment do not automatically render a condition as unfitting. More information is required to determine unfitness, such as being placed on a permanent Duty Limiting Condition (DLC) profile for a mental health

condition, being deemed not Worldwide Qualified (WWQ) due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating. These designations were absent from her records. There is insufficient evidence she met the criteria during her time in service for bipolar disorder (an unfitting condition). She was evaluated numerous times and was found not to meet the DSM criteria for bipolar disorder. There is no indication her adjustment disorder diagnosis necessitated a DLC or a profile. Her overall performance evaluation was a 4 out of a possible 5, indicating exemplary performance. Additionally, she was promoted to airman first class during her two-year time in service. The Psychological Advisor concludes there is insufficient evidence to support the applicant's mental health condition had an impact on her ability to perform the duties of her office, grade, rank, and rating. The applicant's mental health condition during the time of her service of adjustment disorder with mixed anxiety and depression is not a mitigating factor for her misconduct. Her misconduct of failure to go, alteration of a military identification card, failure to maintain her dormitory room, possessing an alcoholic beverage while she was under 21, driving on an expired vehicle registration/license plates, not having the minimum required insurance to operate a vehicle on a military installation, writing a check with insufficient funds, and using the alert photographer cellular phone for personal use are not part of the sequelae of symptoms associated with adjustment disorder. Even if the applicant had bipolar disorder during her military service, it would not mitigate the substantive degree of her misconduct. Bipolar disorder would potentially mitigate writing a check with insufficient funds (financial difficulties) and alcohol possession (managing symptoms) but would not mitigate or excuse her other misconduct. As mentioned above, there is insufficient evidence the applicant had bipolar disorder during her military service or at discharge. After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate her misconduct.

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 applicant have a condition or experience that may excuse or mitigate the discharge?
The applicant contends that she was misdiagnosed and had bipolar disorder while in service.

2. Did the condition exist or experience occur during military service?
The applicant was diagnosed with adjustment disorder with mixed anxiety and depressed mood. There is insufficient evidence to suggest that she had bipolar disorder during her military service or at discharge.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant's mental health condition during the time of her service of adjustment disorder with mixed anxiety and depression is not a mitigating factor for her misconduct. Her misconduct of failure to go, alteration of a military identification card, failure to maintain her dormitory room, possessing an alcoholic beverage while she was under 21, driving on an expired vehicle registration/license plates, not having the minimum required insurance to operate a vehicle on a military installation, writing a check with insufficient funds, and using the alert photographer

cellular phone for personal use are not part of the sequelae of symptoms associated with adjustment disorder. Even if the applicant had bipolar disorder during her military service, it would not mitigate the substantive degree of her misconduct. Bipolar disorder would potentially mitigate writing a check with insufficient funds (financial difficulties) and alcohol possession (managing symptoms) but would not mitigate or excuse her other misconduct. As mentioned above, there is insufficient evidence the applicant had bipolar disorder during her military service or at discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate her 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 27 Sep 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. Section 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. Additionally, 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 Board finds no evidence the applicant had any mental health disorder to include bipolar disorder during service. Even if the Board believes she exhibited symptoms of bipolar disorder; the majority of her misconduct could not be excused by this mental health condition. Furthermore, the Board finds she did not have any unfitting mental health conditions to be referred to the Medical Evaluation Board (MEB) for a medical discharge. The mere existence of a mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to a mental health condition. A Service member shall be considered unfit when the evidence establishes the member, due to physical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Additionally, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change to a member's separation. The military's 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 near or present at the time of separation and not based on post-service progression of disease or injury. Nevertheless, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. Her mental health conditions may have possibly caused some of her misconduct resulting with her discharge; however, the Board finds the majority of her misconduct is not mitigated by a mental health disorder and therefore, does not outweigh her 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.

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-2023-04033 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 11 Dec 23.

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

Exhibit C: Letter, SAF MRBC, (Post-Service Request and Liberal Consideration Guidance), dated 16 Apr 24.

Exhibit D: Advisory, AFRBA Psychological Advisor, dated 15 Aug 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Sep 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.

12/10/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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