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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00270

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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 has been diagnosed with Post Traumatic Stress Disorder (PTSD) by Department of Veterans Affairs (DVA) doctors. At the time of his discharge, he was undergoing mental health conditions. He was unaware his PTSD symptoms caused him too much distress and problems. He was having problems coping and seeking help. This caused him to receive an under honorable conditions discharge and have substance abuse symptoms. He is now seeking help from mental health providers at the DVA. He asked for a reconsideration of his discharge based on the mental health condition.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 16 Dec 81, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Section A, paragraph 2-4c for unsuitability. The specific reasons for the action were:

- a. On 2 Mar 81, a Letter of Reprimand (LOR) was issued for suspected marijuana possession on or about 15 Feb 81.
- b. On 12 May 81, a LOR was issued for leaving his place of duty without authority on or about 9 May 81.
- c. On 18 Jun 81 a LOR was issued for failing to report to his place of duty on or about 5 Jun 81.

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- d. On 21 Aug 81, he was placed on the control roster due to below standard duty performance on or about 9 May 81.
- e. On 7 Dec 81, an AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for possession of marijuana on or about 24 Nov 81. He was reduced to the grade of airman (E-2) and ordered to forfeit \$275.00 of pay for one month, but \$200.00 in pay be suspended until 6 Jun 82, unless sooner vacated, will be remitted without further action.

On 5 Jan 82, the discharge authority directed the applicant be discharged for unsuitability, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 7 Jan 82, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, provided by the applicant, indicates he received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitability-Apathy, Defective Attitude" and he was credited with 2 years, 4 months, and 25 days of total active service.

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

POST-SERVICE INFORMATION

On 19 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 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 27 Aug 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

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. There is insufficient evidence to support the applicant had any mental health condition, including PTSD, during his time in the military or at discharge. While a performance evaluation and a letter written by the applicant note some personal problems, there is no indication he had any mental health condition. The applicant contends he was undergoing mental health conditions (PTSD) at the time he was discharged, which caused him distress and personal problems. As mentioned above there is insufficient evidence to support he had any mental health condition during his service. While the applicant reported he had PTSD during service, he was not diagnosed with PTSD until 24 May 21, thirty-nine years after military service. Additionally, his PTSD appears to stem from the death of his daughter in 2021, and the death of his son in 2019. He is also reported to have a depressive disorder related to losing his job in 2018 and has anxiety when he sees a fire truck. A mental health note from 2017 noted he had been employed with the fire department for eighteen years, indicating he had been employed since around 1999 or approximately seventeen years after his military discharge. The applicant's PTSD and other mental health diagnoses have their etiology and onset from events that occurred well after his discharge from the military. The applicant is not service connected for any mental health condition. Additionally, the applicant indicated in a mental health encounter in 2014, he had been using marijuana for forty years, or since 1974, which is five years before his military service. It is unclear if the applicant's other drug usage (heroin and cocaine) began before his military service. The Psychological Advisor concludes the applicant did not have any mental health condition during his military service or at discharge that would excuse or mitigate his misconduct. After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request.

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 veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant reported that he has been diagnosed with PTSD.

2. Did the condition exist or experience occur during military service?
There is insufficient evidence to support the applicant had any mental health condition, including PTSD, during his time in the military or at discharge. While a performance evaluation and a letter written by the applicant note some personal problems, there is no indication that he had any mental health condition.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant's PTSD and other mental health diagnoses have their etiology and onset from events that occurred well after his discharge from the military. The applicant is not service-connected for any mental health condition. Additionally, the applicant indicated in a mental health encounter in 2014 that he had been using marijuana for forty years, or since 1974, which is five years before his military service. It is unclear if the applicant's other drug usage (heroin and cocaine) began

before his military service. The Psychological Advisor concludes the applicant did not have any mental health condition during his military service or at discharge that would excuse or mitigate his misconduct.

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.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Aug 24 for comment (Exhibit F) 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 finds a preponderance of the evidence does not substantiate the applicant's contentions. The evidence indicates the applicant's PTSD and other mental health conditions stem from experiences many years post-service. Furthermore, the applicant is not currently service connected for any mental health condition. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there is no evidence of a mental health condition during his military service or at the time of discharge that would excuse or mitigate the applicant's misconduct. The Board noted the applicant used marijuana before and after his service with no indication of a mental health disorder. 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 criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of an FBI criminal history report, a personal statement, character statements, and/or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. 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.

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-2024-00270 in Executive Session on 15 Jan 25:

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 4 Dec 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 Apr 24.
- Exhibit D: Letter, SAF MRBC (Liberal Consideration), date 27 Aug 24.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Aug 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 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.

1/23/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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