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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00328

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His narrative reason for separation and corresponding separation code be changed to a medical separation to incorporate his health issues.

APPLICANT'S CONTENTIONS

He performed to the best of his ability to provide excellent, faithful service to his country. However, his mental health issues and deterioration caused by stress and warfare led him to brokenness and despair with a loss for a military future.

In support of his request for a discharge upgrade, the applicant provides copies of military kudos, Department of Veterans Affairs (DVA) summary of benefits letter, Social Security Administration Benefit Verification Letter, diplomas for Master's and Bachelor's degrees, Sports Awarded Medals & Honors, University, College and High School transcripts, Graduation Certificates, Phi Theta Kappa Honor Society certificate, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Jun 04, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 10 Sep 03, he was smoking cigarettes while at lunch during school hours and received a Letter of Reprimand (LOR).
- b. On 2 Oct 03, he was sleeping in class and when a non-commissioned officer asked him if he was sleeping, he gave an untruthful answer. He received a second LOR for this misconduct.

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c. Between on or about 22 Mar 04 and on or about 2 Apr 04, he failed to hold his weapon at port arms, an order which was his duty to obey. As a result, he received an Article 15.

On 18 Jun 04, the Staff Judge Advocate found the discharge action legally sufficient.

On 18 Jun 04, the discharge authority directed the applicant be discharged for pattern of misconduct, with a general service characterization.

On 28 Jun 04, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 2 months, and 14 days of total active service.

On 28 Sep 04, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 1 Feb 05, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. However, the board further concluded the overall quality of the applicant's service was more accurately reflected by an honorable discharge, and the applicant's characterization should be changed to honorable under the provisions of Title 10, U.S.C. Section 1553.

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

POST-SERVICE INFORMATION

On 29 Mar 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 17 Apr 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant's complete response is at Exhibit D.

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 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 29 Mar 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 completed a review of all available records and finds sufficient evidence to support the applicant's request to change his narrative reason for separation to "Secretarial Authority" and the corresponding separation code based on liberal consideration.

The Psychological Advisor does not have access to his service treatment records; however, the AFDRB, who appeared to have access to and reviewed his entire service treatment records found his mental health condition had contributed to his conduct and his mental health factors were of

sufficient mitigation and extenuation to warrant an upgrade. The applicant received an honorable discharge from the AFDRB and was furnished with an updated DD Form 214 to reflect the change. The AFDRB did not change his narrative reason for separation or separation code and no explanation was provided, although it was mentioned the AFDRB did not condone his misconduct, and this may have been the reason. The Psychological Advisor does not dispute the AFDRB's decision as it appeared there was ample evidence in the records to demonstrate he had some rather serious mental health conditions that affected his functioning causing him to receive a higher level of care through inpatient psychiatric hospitalization twice during service. He received diagnoses of adjustment disorder with Disturbance of Conduct, Psychotic Disorder not otherwise specified (NOS), Bipolar Disorder, and Anti-Social Personality Disorder during service according to the AFDRB. It appeared his primary mental health condition was an adjustment disorder per the memorandums provided by his mental health providers. This is an unsuiting mental health condition meeting the criteria for an administrative separation, which he received but for a different reason. As discussed, the AFDRB upgraded his discharge but did not change his narrative reason for separation. Since the AFDRB's decision, the liberal consideration policy, specifically the Kurta Memorandum, has been enacted to provide discharge upgrade relief to former service members with mental health conditions and certain experiences that could demonstrate a nexus between the mental health condition or experiences with the discharge (AFDRB had identified a nexus had existed or occurred). Changes to the narrative reason and separation code also fall under this category of discharge upgrades. Thus, the Psychological Advisor recommends the Board change his narrative reason for separation to "Secretarial Authority" and the corresponding separation code based on this policy. A different narrative reason that is permitted under this policy of "Condition Not A Disability" is not recommended because he was not originally discharged for having an unsuiting mental health condition, even though he did have this condition during service, but for misconduct. "Secretarial Authority" is the more appropriate narrative reason under this circumstance.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition. The following are answers to the four questions from the Kurta Memorandum 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 his mental health issues and deterioration were caused by stress and warfare. He did not identify his mental health condition.
2. Did that condition exist or experience occur during military service?
According to his military personnel records and the AFDRB's decisional rationale document, the applicant was hospitalized twice during service due to yelling at his roommate for stealing his canteen and flashlight, making a threat to another airman, having safety concerns to self and others, displaying unusual behaviors, hallucinating, assaulting colleagues without reason, and speaking to inanimate objects. Over the course of four months, he was diagnosed with adjustment disorder with Disturbance of Conduct, Psychotic Disorder NOS, Bipolar Disorder, and Anti-Social Personality Disorder during service.
3. Does that condition or experience actually excuse or mitigate the discharge?

The AFDRB cited his mental health providers during service had opined his mental health condition may have contributed to his conduct and his records demonstrated his mental health factors were of sufficient mitigation or extenuation to warrant an upgrade of his discharge. This indicated there is a nexus established between his mental health condition and misconduct that resulted in his discharge from service. Therefore, his mental health condition excuses and mitigates his discharge.

4. Does that condition or experience outweigh the discharge?

Since his mental health condition excuses and mitigates his discharge, his mental health condition also would outweigh his discharge to provide him relief and support his request to change his narrative reason for separation and corresponding separation code.

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 1 Jul 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 clemency requests are technically untimely. However, it would be illogical to deny a clemency 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 the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds sufficient evidence to support the applicant's request to change his narrative reason for separation to "Secretarial Authority" and the corresponding separation code based on liberal consideration. The applicant was diagnosed with Adjustment Disorder with Disturbance of Conduct, Psychotic Disorder NOS, Bipolar Disorder, and Anti-Social Personality Disorder during service. It appeared his primary mental health condition was an Adjustment Disorder per the memorandums provided by his mental health providers. This is an unsuiting mental health condition meeting the criteria for an administrative separation, which he received. The DRB cited his mental health providers during service had opined his mental health condition may have contributed to his conduct and his records demonstrated his mental health factors were of sufficient mitigation or extenuation to warrant an upgrade of his discharge. This indicated there is a nexus established between his mental health condition and misconduct that resulted in his discharge from service. Therefore, his mental health condition excuses and mitigates his discharge. Since his mental health condition excuses and mitigates his discharge, his mental health condition also would outweigh his discharge to provide him relief and support his request to change his narrative reason for separation and

corresponding separation code. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 28 Jun 04, he was discharged with a separation code of JFF and the corresponding narrative reason for separation of Secretarial Authority.

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-2024-00328 in Executive Session on 12 Sep 24:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, atchs, dated 22 Jan 24.

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

Exhibit C: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 29 Mar 24.

Exhibit D: FBI Response to Applicant's Request, dated 17 Apr 24.

Exhibit E: Advisory, AFRBA Psychological Advisor, dated 26 Jun 24.

Exhibit F: Notification of Advisory, SAF_MRBC to App, dated 01 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.

10/3/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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