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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00338

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His reentry (RE) code of "4C" which denotes separated for concealment of juvenile records, minority, failure to meet physical standards for enlistment, failure to attain a 9.0 reading grade level as measured by the Air Force Reading Abilities Test, or void enlistments; be changed to a code that would allow him to reenlist.

APPLICANT'S CONTENTIONS

When he joined the Air Force, he was barely an adult with very little life experience. He was sick with pneumonia and did not know how to handle his situation which caused his depression. He now desires to rejoin the military and eventually retire from the Air Force.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 22 Feb 06, 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 5.11 for conditions that interfere with military service, specifically paragraph 5.11.9, under mental disorders. The specific reason for the action was due to the Mental Health Evaluation on 15 Feb 06 diagnosing the applicant with adjustment disorder with mixed anxiety and depressed mood for which this diagnosis did not meet retention standards for continued military service.

On 25 Feb 06, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 28 Feb 06, the discharge authority directed the applicant receive an entry level separation (ELS) due to his mental health diagnosis, with an uncharacterized service characterization.

AFBCMR Docket Number BC-2024-00338

Work-Product

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POC: SAF.MRBC.Workflow@us.af.mil

On 3 Mar 06, the applicant received an “Uncharacterized” ELS. His narrative reason for separation is “Failed Medical/Physical Procurement Standards” and he was credited with 1 month and 17 days of total active service.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits C and F.

APPLICABLE AUTHORITY/GUIDANCE

Per Air Force Instruction (AFI) 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, paragraph 5.12, RE codes determine whether or not airmen may reenlist, or enlist in a military service at a later time. They are annotated on military discharge documents and documents the airman’s RE code at the time of discharge.

Per Department of the Air Force Manual (DAFMAN) 36-2032, *Military Recruiting and Accession*, paragraph 3.4.1, for enlistment waiver authority, the AETC/SG (or appropriate RegAF major command Surgeon General), ANG Command Surgeon (NGB/SG), or AFRC Command Surgeon (AFRC/SG), as appropriate, is the authority to waive physical standards for enlistment in accordance with AFI 48-123, *Medical Examinations and Standards*. Per paragraph 3.7.1.1, the applicant’s ability to enlist is determined by reviewing prior service reenlistment eligibility code and other factors. Individual components will do a service eligibility determination to determine applicant’s eligibility. Per paragraph 3.7.2, a waiver is a formal request to consider the suitability for service of an applicant who because of inappropriate conduct or morals violations, dependency status, current or past medical conditions may not be qualified to serve. Upon the completion of a thorough examination using a “whole person” review, the applicant may be granted a waiver if the applicant has displayed sufficient mitigating circumstances that clearly justify waiver consideration. For medical conditions, this may require a new physical examination with appropriate medical evaluation to determine medical qualification to enter the Air Force per Department of Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, and AFI 48-123.

AFI 36-3208, *Administrative Separation of Airmen*, dated 9 Jul 04, describes the authorized service characterizations that were applicable at the time of the applicant’s separation.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or

- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

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 23 May 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

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 27 Mar 24 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. According to his objective military records, he clearly had difficulties adjusting to the military causing him to have anxiety and depressive mood symptoms. He informed his mental health provider he was motivated to be discharged from the Air Force in the midst of his distress. He was unable to cope and tolerate with his situational stressor of the military and acknowledged these difficulties in his petition. He was given a diagnosis of adjustment disorder with mixed anxiety and depressed mood which affected his ability to function in a military environment and did not meet retention standards for continued military service. There is no error identified with his mental health diagnosis; it was valid and consistent with his reported symptoms and clinical presentation at the time of service. He is requesting to change his RE code to allow for re-entry. He was discharged from service for having an unsuiting mental health condition and was furnished with an RE code of "4C." His mental health condition was the basis of his discharge and was considered by his commander during his discharge process. His RE code of "4C" was appropriate and consistent with his ELS discharge for serving less than 180 days of continuous active military service. Thus, there is no error or injustice identified with this discharge from a mental health perspective and his request to change his RE code is not supported.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. It is reminded that liberal consideration does not mandate an upgrade. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contends when he joined the Air Force, he was barely an adult and had very little life experience. He came down with pneumonia and sprained his leg which killed his motivation. He did not know how to handle it and became depressed. He is now much older, has more experience, and has achieved a lot including becoming a nurse. He desires to join and eventually retire from the Air Force and requested to have his reentry eligibility changed.

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

The applicant was diagnosed with adjustment disorder with mixed anxiety and depressed mood due to having problems adjusting to the military causing him to have anxiety and depressed mood/symptoms during service.

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

The applicant's diagnosed mental health condition of adjustment disorder with mixed anxiety and depressed mood was the cause and reason for his administrative separation. There is no error identified with his diagnosis and this diagnosis was appropriate and consistent with his reported symptoms and clinical presentation at the time of service. His adjustment disorder is an unsuiting condition for continued military service resulting in his ELS discharge. He was furnished with an RE code of "4C" in accordance with past and present regulations. There is no error or injustice with his discharge and RE code and therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no error identified with the applicant's ELS and resulting RE code, his mental health condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 23 May 24 for comment (Exhibit G) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
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 AFPC/DP2SSR and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Furthermore, they find no error or injustice occurred during the processing of his case. The applicant has provided no evidence which would lead the Board to believe his RE code was

contrary to the provisions of the governing regulation at the time of his separation. The Board understands the applicant's desire to remove the RE code claiming his immaturity caused his depression; however, the RE code annotated on his DD Form 214 represents the condition for which he was separated and is not subject to change unless an error was made in the original annotation. This decision does not preclude the applicant from pursuing a medical waiver through recruiting services for reentry into the military as outlined in DAFMAN 36-2032. Each component can waive the RE code and enlist an individual if they determine the needs of the component outweigh the reason for the RE code condition/risks; the AFBCMR is not the reenlistment waiver authority. Therefore, the Board recommends against correcting the applicant's records. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-00338 in Executive Session on 20 Nov 24:

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Panel Chair

, Panel Member

Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 23 Jan 24.

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

Exhibit C: Master Advisory Opinion, AFPC/DP2SSR, not dated.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Mar 24.

Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 23 May 24.

Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 23 May 24.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 23 May 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.

12/5/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-00338

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