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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00819

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable condition (UOTHC) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

His two alcohol related incidents within one year which resulted in his other than honorable discharge was from using alcohol to treat his undiagnosed mental health conditions, including post-traumatic stress disorder (PTSD). After years of healing and remaining sober, he determined the discharge should be reviewed and there should have been more support and resource assistance available.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 6 Aug 90, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-47a for a pattern of misconduct, discreditable involvement with military or civilian authorities. The specific reasons for the action were:

- a. On 24 Apr 89, the applicant used provoking actions and words to another service member which escalated into an assault on the service member resulting in a verbal reprimand.
- b. On 9 Feb 90, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for driving while drunk on or about 3 Feb 90. He received a reduction to the grade of airman (E-2) with a new date of rank of 9 Feb 90, forfeiture of \$50.00 pay per month for two months, and 30 days of correctional custody.
- c. On 2 Aug 90, AF Form 3070 indicates the applicant received NJP, Article 15 for driving while drunk and disobeyed the order of a superior commissioned officer; he drove a motor vehicle in a nonemergency and not for a medical appointment after his driving privileges had been revoked and reinstated for limited purposes. He received a reduction to airman basic (E-

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1) with a date of rank of 2 Aug 90, forfeiture of \$168.00 suspended until 2 Feb 91, and 14 days of extra duty.

On 20 Aug 90, the Staff Judge Advocate found the discharge action legally sufficient and recommended accepting the unconditional waiver and directing the applicant to be discharged with an UOTHC discharge, without suspension for parole and rehabilitation.

On 24 Sep 90, the discharge authority accepted the applicant's unconditional waiver of the administrative discharge board and directed the applicant be discharged UOTHC without suspension for parole and rehabilitation.

On 1 Oct 90, the applicant received an UOTHC discharge. His narrative reason for separation is "Misconduct-pattern discreditable involvement with military or civil authorities" and he was credited with two years, 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 13 Mar 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 13 Mar 24, the Board staff provided the applicant a copy of the clarifying 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.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.

- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds no error or injustice with his discharge from a mental health perspective, and his request for an upgrade of his discharge based on his mental health condition is not supported. A review of the applicant's available records finds there is no evidence or records to support the notion his mental health condition including PTSD or any other mental health condition had a direct impact or was a contributing factor to his discharge. The applicant did not clarify his mental health condition of PTSD or his other mental health condition and how he developed these conditions. While it is possible that he had an undiagnosed mental health condition during service, there are no records to substantiate that he had any mental health conditions including PTSD during service. This notion is corroborated by his report of having no mental health issues during his separation physical examination at the time of service. There are no records he had or experienced any trauma symptoms such as nightmares, hypervigilance, avoidance, flashbacks, exaggerated startled responses, depressed mood, anxiety, etc. during service nor did the applicant describe his symptoms in his petition. There are no records to confirm he was ever diagnosed with PTSD or any other mental disorders by a duly qualified mental health provider during his lifetime. His statements at the time of service reflected he was provoked by another airman, he was upset by a comment made about him by a former friend, and he was concerned and stressed over his pregnant wife's well-being. There was no report of any traumatic experiences or trauma symptoms causing him to cope with alcohol leading to his misconduct in his statements. It appeared that he was already drinking and while under the influence of alcohol, he was unable to control his anger and emotions causing him to become aggressive or confrontational and impairing his judgment. He also stated in one of his statements that the alcohol and his emotional state, albeit in combination, impaired his judgment. The applicant was discharged from service for receiving two Driving Under the Influence's (DUI), disobeying an order by driving while restricted, and assaulting a fellow service member. He did not address disobeying the order and the altercation or assault of a service member in his petition. His misconducts were serious offenses and could not be excused or mitigated even by his mental health condition and does not exempt him from taking responsibility for his poor behaviors.

Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. The following are answers 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 marked "PTSD" and "OTHER MENTAL HEALTH" on his application to the AFBCMR and contended he had undiagnosed mental health conditions including PTSD that caused his UOTHC discharge. He did not provide any other clarifying information about his condition of PTSD, his traumatic experience during service, when he was diagnosed with this condition, and did not identify his other mental health condition.

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

The applicant's full service treatment records are not available for review but during his separation physical examination, he denied having any mental health issues or symptoms. There is no evidence or records that his mental health condition including PTSD had existed or occurred during his military service. There are no records reflecting he was ever diagnosed with PTSD or any other mental health conditions by a duly qualified mental health professional in his lifetime.

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

There is no evidence or records that the applicant's mental health condition including PTSD was a contributing factor or had a direct impact on his UOTHC discharge for a pattern of misconduct. Although it is possible he may have had a mental health condition, there is no evidence or records that he coped with his trauma with alcohol or caused him to disobey an order. Moreover, his misconduct of receiving two DUIs, disobeying an order, and assaulting a fellow service member that resulted in his discharge were serious offenses and they do not excuse his poor behaviors or exempt him from taking responsibility for his actions. Therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his 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 EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Oct 24 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. 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 limitations 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. There is no evidence or records that the applicant's mental health condition including PTSD was a contributing factor or had a direct impact on his UOTHC discharge for a pattern of misconduct. Although it is possible he may have had a mental health condition, there is no evidence or records that he coped with his trauma with alcohol or caused him to disobey an order. Moreover,

his misconduct of receiving two DUIs, disobeying an order, and assaulting a fellow service member that resulted in his discharge were serious offenses and they do not excuse his poor behaviors or exempt him from taking responsibility for his actions. Therefore, his mental health condition does not excuse or mitigate his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, the evidence he provides lacks references that demonstrate his character, post-service rehabilitation, service to the community, or any degree of remorse pertaining to his in-service conduct. 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 a personal statement, character statements, 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 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-2024-00819 in Executive Session on 19 Feb 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/atch, dated 23 Feb 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 13 Mar 24.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 8 Aug 24.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 9 Oct 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.

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