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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01224

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COUNSEL: NONE

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HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her under honorable conditions (general) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

She respectfully requests reconsideration of the terms and character of her separation; due to the emotional duress she had been experiencing in which it was not common to seek treatment for at that time. She has lived an honorable life outside the military. She has graduated from college, purchased a home, had children, been with the same company for 24 years, and volunteer regularly with Food for Others and her church. If she had felt she could have accessed mental health support and counseling, she would likely have not buckled under the pressures of her life.

Her marriage was failing in a very ugly presentation, and she was under extreme unmanageable stress. Her husband was dealing with alcohol abuse and was not working full time or contributing much financially. She was working a part-time job (around 30 hours per week) to try and manage the very tenuous financial situation but was quickly running up debt. After the divorce she had to file for bankruptcy. When a fight turned physical one night, she moved back into the dorm, which enraged her husband who campaigned to ruin her reputation and made things very difficult for her at work. In a moment of irresponsible weakness, she said yes, when someone offered Ecstasy/methylenedioxymethamphetamine (MDMA) to help. She cooperated fully with Office of Special Investigation (OSI), never tried to lie about the situation, accepted her demotion and transfer from assignment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Apr 99, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD 36-32, *Military Retirements and Separations*, paragraph 5.54 for Drug Abuse. The specific reason for the action was on 15 Mar 99, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongfully using 3-4 Ecstasy/MDMA on or about 1 Nov and 30 Nov 98. She

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received a reduction to the grade of airman basic (E-1) with a new date of rank of 15 Mar 99, forfeiture of \$663.00 pay per month for two months, and 15 days of extra duty.

On 21 Apr 99, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant to be discharged with a general discharge, without probation and rehabilitation. On the same day, the convening authority found the applicant did not meet all seven criteria for retention and directed a general discharge without probation and rehabilitation.

On 23 Apr 99, the applicant received a general discharge. Her narrative reason for separation is "Misconduct" and she was credited with 3 years, 5 months and 23 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 8 Oct 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 8 Oct 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds no error or injustice with her discharge from a mental health perspective, and her request for an upgrade of her discharge based on her mental health condition is not supported. A review of the applicant's available records finds her contentions plausible but were not quite fully supported by her objective military records. She had consistently reported she used Ecstasy/methylenedioxymethamphetamine (MDMA), because of her distress from her marital problems. However, she was inconsistent with her report, her drug use was a one mistake indicating it was a one-time use. She wrote in her response to her discharge action she earned an honorable discharge, and one mistake was not enough to take that honor away. In her statement to OSI, she reported at least two separate incidents of using Ecstasy/MDMA. Her discharge paperwork also identified her drug use was on divers occasions, signifying she used drugs on more than one occasion and not one time. She contended in her petition she used Ecstasy/MDMA during a moment of weakness when someone offered it to her to help her, and this contention is corroborated by her statement to the OSI about her first Ecstasy/MDMA use.

However, her description to OSI about her second use of Ecstasy/MDMA does not support this impression. For her second use of Ecstasy/MDMA, she said her life did not get better after her first use but all she could think about was the fun she had the other night when she used it. She was afraid to use the drug again but wanted to do it at the same time. It appeared she may have developed a bit craving for the drug. She initiated and approached her two friends to procure the drug for her again and they were able to supply the drug to her—they crushed it into some fruit juice for her which she said, “I drank right away”. This second explanation for her drug use did not suggest or demonstrate she was in emotional distress from her marital problems or that she used it in a moment of weakness because of her marital problems. She liked the feeling of the drug and wanted that feeling again. Her activity of procuring the drug for her second use demonstrated some element of planning on her part to obtain and use the drug again. Although the original intent of her drug use was to cope with her emotional distress from her marital problems, the Psychological Advisor opines her use of an illicit drug of Ecstasy/MDMA could not excuse or mitigate her behaviors. Ecstasy/MDMA is a controlled I substance and is considered a hard drug with a high potential for abuse according to the United States Drug Enforcement Administration. This is an illicit drug, and there is no indication the applicant was unaware of the Air Force’s zero-tolerance policy for drug use especially for a drug like Ecstasy when she decided to use this drug on at least two occasions. Illicit drug use is an unsuiting condition for continued military service. The stressors or her marital problems may explain and have caused her drug use, but they do not excuse or mitigate her discharge for this reason. Therefore, the Psychological Advisor finds no error or injustice with the applicant’s discharge from a mental health perspective.

Liberal consideration is applied to the applicant’s request due to her contention of having a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. The following are responses 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 “OTHER MENTAL HEALTH” on her application to the AFBCMR and explained she was having marital problems at the time and in a moment of weakness, she said “Yes” when someone offered her MDMA for help.

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

The applicant’s full service treatment records are not available or submitted for review, but the existing records find the applicant did report in her response to her discharge action and in her statement to OSI she was having marital problems at the time that led to her drug use. Her statement to OSI reported her second drug use was more related to craving the drug because of its effects and not because she was in a moment of weakness as she claimed. She actively sought to use the drug from her friends so she could feel the same effects again.

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

Although there is evidence the applicant used Ecstasy/MDMA to cope with her marital problems during service, her use of an illicit drug of Ecstasy/MDMA could not excuse or mitigate her behaviors even with her mental health condition. Ecstasy/MDMA is a controlled I substance and is considered a hard drug with a high potential for abuse. This is an illicit drug, and there is no indication that the applicant was unaware of the Air Force’s zero-tolerance policy for drug use

when she decided to use Ecstasy/MDMA on at least two occasions. Illicit drug use is an unsuiting condition for continued military service. The stressors or her marital problems may explain and have caused her first drug use, but her mental health condition developed from her marital problems does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate her discharge, her mental health condition also does not outweigh her original discharge to support her request for an upgrade of her 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 16 Oct 24 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. 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 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. Although there is evidence that the applicant used Ecstasy/MDMA to cope with her marital problems during service, her use of an illicit drug of Ecstasy/MDMA could not excuse or mitigate her behaviors even with her mental health condition. Ecstasy/MDMA is a controlled I substance and is considered a hard drug with a high potential for abuse. This is an illicit drug, and there is no indication that the applicant was unaware of the Air Force's zero-tolerance policy for drug use when she decided to use Ecstasy/MDMA on at least two occasions. Illicit drug use is an unsuiting condition for continued military service. The stressors or her marital problems may explain and have caused her first drug use, but her mental health condition developed from her marital problems does not excuse or mitigate her discharge. The burden of proof is placed on the applicant to submit evidence to support her claim. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. However, the Board finds no basis for granting the applicant's request based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown that 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 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-2024-01224 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, dated 30 Mar 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 8 Oct 24.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 15 Oct 24.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 16 Oct 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.

6/26/2025

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