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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01819

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was diagnosed several years ago with generalized anxiety disorder, which was not a common or treatable diagnosis at the time of his service. During active duty, he was referred to aerospace medicine at Work-Product Air Force Base (AFB) numerous times, and those records would confirm, or at least support his claim the erratic behaviors/misconduct he exhibited as a young 19–20-year-old airman, which ultimately led to his discharge, were in fact due to his disorder. Had this been diagnosed and treated at the time, he would have most likely completed his service term with honor and distinction.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 Feb 01, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.54 for drug abuse. The specific reasons for the action were:

- a. On 12 May 00, a Letter of Counseling (LOC) was issued for failing to report for duty on 12 May 00.
- b. On 11 Sep 00, a Letter of Reprimand (LOR) was issued for not attending a scheduled chemical warfare training on or about 5 Sep 00.

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- c. On 12 Oct 00, an LOR was issued for failing to report for duty on time on or about 8 Oct 00 and on or about 9 Oct 00. On the same date a second LOR was issued for failing to show for a detail on or about 9 Oct 00 and on or about 10 Oct 00.
- d. On 19 Oct 00, an LOR was issued for failing to arrive on time for work on or about 19 Oct 00.
- e. On 24 Oct 00, an LOR was issued for failing to show for an assigned detail on or about 12 Oct 00.
- f. On 14 Dec 00, an LOR was issued for failing to notify the commander of his Article 15 decision on or about 13 Dec 00.
- g. On 15 Dec 00, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates nonjudicial punishment (NJP), Article 15 was issued for consuming alcohol while under the age of 21 on or about 29 Oct 00. Additionally, on the same day, the applicant willfully broke a window in his dormitory by hitting it with his fist, military property of the United States, with the damage being the sum of about \$180.00. The applicant received a reduction to the grade of airman (E-2), forfeiture of \$563.00 pay, suspended, and 45 days of base restriction and extra duty.
- h. On 19 Jan 01, an AF Form 3070 indicates the applicant received NJP, Article 15 for wrongfully using marijuana between on or about 1 Jul 00 and on or about 31 Jul 00. The applicant received a reduction to the grade of airman basic (E-1).
- i. On 24 Jan 01, an AF Form 366, *Record of Proceedings of Vacation of Nonjudicial Punishment*, indicates the applicant failed to go at the time prescribed, to his appointed place of duty on or about 16 Jan 01. The suspended punishment of forfeiture of \$563.00 pay was vacated.

On 14 Feb 01, the Staff Judge Advocate found the discharge action legally sufficient. On the same date, the discharge authority directed the applicant be discharged for drug abuse, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 20 Feb 01, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 2 months, and 27 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

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On 5 Aug 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 5 Aug 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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition. A review of the applicant's available records finds no evidence to substantiate any of the applicant's contentions. His service treatment records are not available or submitted by the applicant for review, so there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis including generalized anxiety disorder (GAD) during service. The referenced aerospace medicine records are also not available for review, and the burden of proof is placed on the applicant to submit these records to corroborate his claim. Contrary to his contention, GAD was a known and treatable mental disorder at the time of his service. There are no records he was ever diagnosed with this condition in his lifetime by a duly qualified mental health provider. From the existing records for review, there is no evidence he had any mental health conditions including GAD or was in emotional distress at the time he used marijuana resulting in his discharge from service. There is also no evidence he used this substance to cope with his mental health condition. Although not the basis for his discharge, there are records he had engaged in several acts of misconduct including failing to report to his appointed place of duty on numerous occasions, consuming alcohol while underage, and breaking a window in his dormitory. He did discuss being physically and mentally exhausted from extra duty in response to his LOC as the reason he failed to report for duty, but his mental exhaustion was not indicative of having a mental health condition or GAD. There is no evidence his mental health condition had a direct impact or was a contributing factor to any of his acts of misconduct including using marijuana during service and his discharge. Therefore, the Psychological Advisor finds no error or injustice with the applicant's discharge from a mental health perspective. His contention was not compelling or sufficient to support his request for an upgrade of his discharge based on his mental health condition.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition. It is reminded liberal consideration does not mandate an upgrade or a change to the records per policy guidance. The following are responses to the four questions from the Kurta Memorandum from the 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 contended he was diagnosed with GAD several years ago. He was referred to aerospace medicine at Work-Product AFB numerous times during service and believed these records would support his claim this condition caused his erratic behaviors/misconduct which led to his discharge. He believed if he would have been diagnosed and treated for this condition during service, he most likely would have completed his service term with honor and distinction.

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

The applicant's service treatment records are not available or submitted by the applicant for review, so there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis including GAD during service. There are no records he was ever diagnosed with GAD or any other mental health conditions in his lifetime by a duly qualified mental health provider.

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

There is no evidence the applicant's mental health condition including GAD had a direct impact or was a contributing factor to his misconduct of using marijuana and other numerous acts of misconduct, leading to his discharge from service. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of this misconduct, nor was there evidence he used marijuana to cope with his GAD/mental health condition. Thus, his mental condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 Dec 24 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 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 Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant's treatment records were not available for review, therefore there is no evidence or records the applicant received mental health treatment or was diagnosed with a mental health condition during service, at discharge, or in his lifetime. Furthermore, there is no evidence the applicant had a mental health condition or was in emotional distress, impairing his judgment at the time of the misconduct, and there is no evidence he used marijuana to cope with a mental health condition or emotional distress. Therefore, his contended mental health condition does not excuse or mitigate his discharge. Additionally, the applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. Nonetheless, 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 a criminal history report and other evidence showing the applicant made a successful post-service transition, 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 applicant did not provide sufficient evidence to show he has made a successful post-service transition. The evidence he provides lacks references that demonstrate his character and service to the community. 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 criminal history background check, 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-2024-01819 in Executive Session on 16 Apr 25:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, dated 17 May 24.

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 5 Aug 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 2 Dec 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Dec 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.

4/29/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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