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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01899

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His narrative reason for separation of "Unsatisfactory Performance" be changed to "Voluntary Release due to Personal Reasons," "Secretarial Authority" or some neutral reason.
3. His separation code "JHJ" be updated to reflect an honorable discharge.
4. His Reentry (RE) Code "2B" denoting separated with a general or under other than honorable conditions discharge be changed to reflect an honorable discharge.
5. His noncommissioned officer (NCO) status be reinstated.
6. He be awarded the Air Force Good Conduct Medal (AFGCM).

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends he suffered from traumatic experiences and post-traumatic stress disorder (PTSD) at the time of his discharge, which excuses and mitigates the minor misconduct he committed per the Hagel and Kurta Memos.

He requests the Board consider his meritorious service, positive post-discharge conduct and the legal arguments which warrant clemency in accordance with the Wilkie Memo.

He served honorably for five years until his release in the grade of senior airman (E-4) due to allegations of a decline in his performance as well as accumulation of debt and misleading statements to his commander. However, at the time he was suffering from an abusive spouse. His ex-wife sexually assaulted and beat him at home and took money out of his account without his knowledge. His commander demanded he handle his spouse and not let his personal life influence his military duties. His commander stigmatized him. If he was serving in the Air Force today, he would have received a more favorable outcome based upon evidence of PTSD and sexual assault.

After his discharge and annulment from his ex-wife, he obtained employment as a commercial airline pilot with a major airline. He was awarded multiple awards for his meritorious service with them. He happily remarried and they raised two children. However, his past continues to haunt

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him. He is now permanently disabled and suffers from nightmares related to the trauma he endured. His experience and PTSD are mitigating factors towards his misconduct.

In a personal statement, he states he has over 16,000 accident and incident free flight hours having flown all over the world. He has trained hundreds of pilots and taught aviation ground school for two major airlines. However, due to health issues, he had to medically retire. He is currently unemployed and unable to fly as a pilot due to his disabilities. He has a criminal free background for his entire life. He holds a Bachelor of Science degree and a Master of Public Administration specializing in emergency management and homeland security. He is a member of professional veterans' organizations.

In 1990 and 1991, while in service, he began having serious marital issues that became volatile. She was violent and physically and sexually assaulted him. He notified his superiors. At one point, his supervisor asked what happened to him when he reported for duty with bruises and scratches on his face and body. It was recommended he discuss the situation with his chain of command. He met with his commander and informed him his then wife was threatening to kill him and was hitting him daily. He begged for assistance but was only told to not allow his personal life to interfere with his military duties. Although he had numerous discussions with his superiors about the ongoing abuse, he was not allowed to seek mental health counseling or receive any assistance. He was instead told he lacked integrity and motivation and his claims of abuse were excuses for his behavior.

He takes full responsibility for his actions. However, he would not have performed so poorly had he not been under the extreme stress, physical and sexual abuse and hardship. Each medical professional he has spoken to has told him that anyone under these circumstances would have had a decline in performance.

His general discharge prevented him from reaching his goal and dream to fly fighter jets for the Air Force. He was also rejected and not selected for federal government and civilian sector positions due to his general discharge and reason for separation. He would like to still be able to work in the federal government and perhaps use his language fluency in the intelligence community. It has been 33 years since he endured the terrible assaults. A review of his performance from 1986 up until the horrific time in 1990 to 1991 demonstrate his desire to succeed.

The applicant provides a Department of Veterans Affairs (DVA) Summary of Benefits Letter dated 17 Apr 24, which shows his service connected disability rating is 100 percent.

In support of his request, he provides a personal statement, letters of support, character reference letters, resume, college transcript, Federal Bureau of Investigation (FBI) certificate for completion of the FBI Citizens' Academy Program, and a scholarship award from his commercial airline employer.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

The applicant was promoted to the grade of E-4 on 27 Jun 88. He completed the NCO Preparatory Course in Oct 88 and was appointed his NCO status on 1 Jul 89.

On 24 Jan 91, his commander denied the applicant award of the AFGCM for the period of 15 Jul 89 through 20 Dec 90. The applicant received a letter of reprimand (LOR) and his NCO status was vacated.

Per the AF Form 418, *Selective Reenlist/Noncommissioned Officer Status Consideration*, dated 28 Jan 91, the applicant's NCO status was vacated. His commander indicated an investigation established he traveled to the Continental United States (CONUS) from 10 to 14 Dec 90 while on break from his assigned duty shift without sufficient funds to ensure his return on time for his next shift. He also had no utility uniforms, despite the requirement per AFR 35-10, *Dress and Personal Appearance Standards*. The two infractions reflect serious immaturity and irresponsibility and vacation of his NCO status was appropriate until such time as he was ready for the responsibilities.

The applicant received a referral Enlisted Performance Report (EPR) for the reporting period ending 2 Jul 91. His rater stated he displayed repeated behavioral problems, along with a significant drop in motivation and initiative. The declining trend in his bearing and behavior led to three LORs, vacation of his NCO status, denial of the AFGCM and numerous verbal counselings. The additional evaluator stated the applicant had serious flaws in judgment, conduct and integrity over the past several months. His attitude and motivation had taken a downturn and he seemed unable to keep his personal problems and priorities separate from his military duty requirements.

On 3 Jul 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. Unfavorable feedback from the Strategic Debriefing Course concerning his bearing, behavior and security consciousness during his attendance at the course in May to Jun 90.
- b. A declining trend in his supervisors' evaluations of his bearing and behavior spanning his last three enlisted performance reports (EPR).
- c. A LOR for failure to repair and dereliction of duty based on his late return to detail on 13 Dec 90 and subsequent discovery he possessed no utility uniforms prescribed by Air Force regulations.
- d. He made a false statement to his commander on 16 Feb 91 concerning verification of an emergency leave situation.
- e. He made a false statement to his commander on 20 Feb 91 regarding whether he had taken the proper steps to resolve a dishonored check.
- f. A LOR for writing a series of checks during Dec 90 and Jan and Feb 91, which were returned for insufficient funds.

- g. A LOR for withholding significant information concerning financial problems, failing to report on time for duty on 28 May 91 and making misleading statements to superiors regarding authorization for his absence.

On 19 Jul 91, the Staff Judge Advocate found the discharge action legally sufficient.

On 8 Aug 91, the discharge authority directed the applicant be discharged with a general discharge. Probation and rehabilitation were considered but not offered.

On 16 Aug 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsatisfactory Performance," corresponding separation code is "JHJ" and RE Code is "2B." He was credited with 5 years, 1 month, and 2 days of total active service.

On 13 Jan 94, the Air Force Discharge Review Board (AFDRB) denied the applicant's request for upgrade of his discharge to honorable and change of reason for separation. The applicant contended personal problems, to include marital discord over finances, pending divorce and his sister's illness impaired his duty performance. 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 that the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 1 Aug 24, the Board staff sent the applicant a standard request for post-service information. The applicant provides an FBI history report dated 2 Aug 24, which shows he has no arrest data at the FBI.

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 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 1 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.

DAFMAN, 36-2806, *Military Awards: Criteria and Procedures*, The Air Force Good Conduct Medal (AFGCM) is awarded to Air Force enlisted personnel for exemplary conduct during a three year period of active military service (or for a one year period of service during a time of war). Persons awarded the AFGCM must have had character and efficiency ratings of excellent or higher throughout the qualifying period, including time spent in attendance at services schools, and there must have been no convictions of court martial during the period.

NCO Appointment Program. From 1976 to 1991, the Air Force had a dual rank structure for the grade of E-4, with senior airman being a non-supervisory rank and "sergeant" being the NCO rank.

To become an E-4 sergeant, senior airmen had to meet certain criteria, including 12 months of time in grade, completion of the NCO Preparatory Course and be recommended for NCO status by their commander.

AIR FORCE EVALUATION

AFRBA Psychological Advisor finds sufficient evidence to support the applicant's request for an upgrade of his discharge and recommends making the appropriate changes to his discharge.

The applicant has no available mental health encounters while he was in service. The applicant's post-service treatment records maintained by the DVA show the applicant is 30 percent service connected for anxiety disorder with an original effective date of 2 Dec 22 and a nervous tic disorder with an original effective date of 2 Jun 10. On 27 Feb 24, during his initial mental health evaluation, he was diagnosed with anxiety disorder, unspecified; rule out PTSD chronic. When his doctor talked to him about health issues, the applicant discussed his military history to include his months of abuse by his ex-wife. He shared his symptoms were relatively consistent over the years since the MST; however, worsened after having to stop working as a pilot due to hearing issues, tinnitus and Meniere's disease. On 12 Mar 24, he was diagnosed with reaction to severe stress, unspecified. On 26 Mar 24, the applicant was diagnosed with PTSD, chronic.

There is sufficient evidence the applicant was physically and sexually abused (MST) by his ex-wife during his military service. The mental health encounters and character statements both support his self-statement of physical and sexual abuse. While he is not service connected for PTSD, he was diagnosed with PTSD post-service stemming from his MST experiences that occurred during his military service.

Based on his complete record, it is likely the applicant was experiencing PTSD symptoms during his service. Regardless of his diagnosis of PTSD, his MST experiences mitigate and excuse the substantive degree of his misconduct. His decline in performance is part of the sequelae of symptoms associated with MST and physical abuse. Records indicate his ex-wife drained his bank account and placed him in debt, explaining his financial difficulties. Similarly, records indicate she destroyed his uniforms causing him to be without them. Symptoms of MST (including PTSD related symptoms) can cause avoidance behavior (failure to report and reporting late for detail). His misconduct of making false and misleading statements may not be directly linked to his MST experiences but may account for his behavior given the additional component of physical abuse. The AFDRB denied his upgrade on 13 Jan 94; however, they did not know the full scope of his experiences and his ex-wife's physical and sexual abuse towards him.

Liberal consideration is applied due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memo:

1. Did the applicant have a condition or experience that may excuse or mitigate the discharge? The applicant check marked "PTSD" and "Sexual Assault/Harassment" on his AFBCMR application. Counsel contends he suffered from traumatic experiences and PTSD and his ex-wife beat him and sexually assaulted him at home at the time of his discharge, which excuses and mitigates his minor misconduct (unsatisfactory performance).
2. Did the condition exist or experience occur during military service? The Psychological Advisor concludes there is sufficient evidence the applicant was physically and sexually abused (MST) by his ex-wife during his military service. While he is not service connected

for PTSD, he was diagnosed with PTSD post-service, stemming from his MST experiences that occurred during his military service. Based on his complete records, it is likely he was experiencing PTSD symptoms during his service.

3. Does the condition or experience excuse or mitigate the discharge? Regardless of his diagnosis of PTSD, his MST experiences mitigate and excuse the substantive degree of his misconduct. His decline in performance is part of the sequelae of symptoms associated with MST and physical abuse. Records indicate his ex-wife drained his bank account and placed him in debt, explaining his financial difficulties. Similarly, records indicate she destroyed his uniforms causing him to be without them. Symptoms of MST (including PTSD related symptoms) can cause avoidance behavior (failure to report and return later for detail). His misconduct of making false and misleading statements may not be directly linked to his MST experiences, but the additional component of physical abuse may account for this behavior.
4. Does the condition or experience outweigh the discharge? As the applicant's mental health condition does excuse and mitigate the discharge from a psychological perspective, the applicant's condition also outweighs the original discharge.

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 19 Feb 25 for comment (Exhibit F), and the counsel replied on 20 Feb 25. It is counsel's position the Board adopt the advisory opinion and grant the applicant full relief.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was timely filed. It would be illogical to deny a discharge upgrade application as untimely, since the Board typically looks for over 15 years of good post-service conduct. 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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of his request. While the Board finds no error in the original discharge process, the Board recommends partial relief based on liberal consideration and fundamental fairness. The Board applied liberal consideration to the applicant's request due to his contention of PTSD due to MST and physical abuse and finds his PTSD mitigates his misconduct, which led to his discharge. The Board finds the evidence, to include his personal testimony and post-service DVA records, sufficient to form a basis of fact that the applicant suffered from undiagnosed PTSD due to MST and physical abuse while in service and his mental health condition (PTSD) was a nexus to his discharge. Accordingly, the Board finds his mental health condition excuses and mitigates his discharge and his condition outweighs his original discharge. Furthermore, it has been more than 33 years since his discharge. The Wilkie Memo advises the Board to favor second chances in situations in which individuals have

paid for their misdeeds. In this respect, the applicant has provided an FBI History Report, which shows no arrests since his discharge. He has also demonstrated exceptional academic, professional and personal accomplishments since his discharge to warrant upgrading his discharge, change of narrative reason for separation and RE code on the basis of fundamental fairness. However, the Board finds insufficient evidence to warrant restoring the applicant’s NCO status and award him the AFGCM. The Board notes liberal consideration does not apply to these requests and the evidence substantiates the applicant committed the misconduct for which his NCO status was vacated and he was denied the AFGCM. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 16 Aug 91, he was discharged with service characterized as honorable, narrative reason for separation of “Secretarial Authority,” a separation code of “JFF” (Secretarial Authority) and Reentry (RE) Code of “1J.”

However, regarding the remainder of the applicant’s request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2024-01899 in Executive Session on 10 Apr 25:

- 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, w/atchs, dated 23 Apr 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 1 Aug 24.
- Exhibit D: FBI Report, dated 2 Aug 24.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Jan 25.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Feb 25.
- Exhibit G: Counsel’s Response, dated 20 Feb 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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Associate Director, AFBCMR

Signed by: USAF

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