[redacted]

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: [redacted]

DOCKET NUMBER: BC-2024-01909

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He is seeking relief in order to qualify for GI Bill benefits. His intent is to use the benefits to further his education and continue his journey toward rehabilitation and self-improvement. The Air Force police report of investigation contained information regarding his conduct written by witnesses, and he wishes to provide context and further explanation. His misconduct was significantly influenced by undiagnosed bipolar disorder, which was only discovered at discharge. The bipolar episodes he experienced led to behaviors which were out of his character and resulted in the actions detailed in the report. Post-discharge, he was diagnosed with bipolar disorder. The diagnosis has been crucial in understanding the root cause of his actions.

Medical professionals overseeing his treatment have indicated his behavior during service was likely exacerbated by his untreated mental health condition. He deeply regrets his actions and the impact they had on his unit, friends, and career. He has lost significant friendships due to the situation, which has been a source of profound personal sorrow. Recognizing the consequences of his actions, he has committed himself to a path of personal betterment. Therapy and treatment have been instrumental in this journey, and he has made substantial progress managing his bipolar disorder.

He respectfully asks the Board to consider the undiagnosed medical condition at the time of service, his subsequent diagnosis and treatment, and his sincere remorse for his past actions. He has taken significant steps to better himself for the past years and is committed to continuing this path. He is requesting the upgrade just now, because his mental health is more stable than in previous years. An upgrade of the discharge and restoration of the GI Bill benefits would be instrumental in his continued rehabilitation and personal development.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 19 May 08, 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 reason was between 1 Jan 08 and 17 Jan 08, he misused an over-the-counter medication. He overdosed on an over-the-counter cough medicine for recreational purposes on divers occasions. Additionally, he misused a prescription drug for a purpose beyond its intent. Specifically, he crushed and snorted Percocet for recreational purposes. For this misconduct, he received a Letter of Reprimand (LOR) dated 17 Apr 08.

On 30 May 08, the Staff Judge Advocate found the discharge action legally sufficient. On the same date, the discharge authority directed the applicant be discharged for misconduct: drug abuse with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 5 Jun 08, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Drug Abuse)" and he was credited with two years, nine months, and six 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 18 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, 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 18 Oct 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 completed a review of all available records and finds insufficient evidence to support the applicant's request. A review of the available records finds no

evidence or records the applicant had bipolar disorder during service. He received brief individual and group therapy treatment during service from Nov to Dec 06. His treatment notes were vague and did not state the reasons for his visits/treatment. For historical reference, this was the period when the military transitioned from paper to electronic medical records, and not all records were transferred. This was most likely the reason for his vague and limited notes. His available records reported he was given a diagnosis of adjustment disorder with depressed mood by his individual and group therapy providers in Nov 06 and Dec 06 as well as from his evaluation by the substance abuse clinic in Feb 07. No rationale was provided for this diagnosis; however, his mental status exam (MSE) was consistently assessed during each session by these providers and was determined to be within normal limits. There was no report of any depressed mood or symptoms in his MSE, so it is not certain why or how he was diagnosed with adjustment disorder with depressed mood. The applicant did not address the cause of his depression in his petition, but based on his diagnosis, his depressed mood was in reaction to adjusting to an unidentified situational stressor. It appeared his adjustment disorder had resolved because when he was evaluated by the substance abuse clinic and alcohol and drug abuse prevention and treatment (ADAPT) program the following year on 7 and 12 May 08 most likely following his drug use incident, he was not given any mental or substance use disorder diagnosis or did not meet the diagnostic criteria for any mental disorder diagnosis. He was reported to have psychosocial stressors from his substance abuse evaluation on 7 May 08, but this could have been related to his occupational problems as he had been under investigation by the office of special investigations (OSI) in Jan 08, given a LOR in Apr 08 for his drug use, and he was notified of discharge action about a couple of weeks after the evaluation was completed. These are highly stressful events which could be his psychosocial stressors. There is no evidence the applicant's adjustment disorder with depressed mood was a precursor diagnosis to his bipolar disorder, which was diagnosed in 2010, two years after his discharge from service. He reported to his psychiatrist at the DVA on 9 Jul 24 he had been overwhelmed, manic–with manic episodes of racing thoughts, trouble organizing thoughts, periods of highs and lows, insomnia, anxiety, periods of feeling depressed, and feeling depressed with passive suicidal ideation. There is no evidence or records he had any of these symptoms or problems during service. He may have had a depressed mood from adjusting to a situational stressor, but there is no evidence he had periods of feeling depressed or had passive suicidal ideation when depressed. He contended medical professionals had opined his behaviors during service were likely exacerbated by his untreated mental health condition. With all due respect to these professionals/providers, their opinions are purely speculative with no evidence or records to corroborate their opinions. These providers did not evaluate the applicant at the time of service to be able to make a definitive opinion. The existing records find no evidence he had an untreated mental health condition including bipolar disorder or experienced any hypomanic or manic episodes at the time of service. His mental health history was unremarkable for at least two years after his discharge from the Air Force until he sought treatment at kaiser in 2010 and was diagnosed with bipolar disorder at this time. It appeared he developed bipolar disorder after service and was diagnosed with this condition accordingly at this time. The applicant's reporting of his drug use has been inconsistent. During service, he denied in both of his responses to his LOR and discharge action, he never used or abused any drugs. In fact, he claimed he was on leave and out of the area when the alleged drug use took place and even attached his leave authorization to his LOR response to substantiate his claim. Since he denied using drugs during service, then it is not possible his mental health condition caused his misconduct and discharge for drug use since he denied

engaging in this activity. The applicant also denied to the psychiatrist at the DVA he used drugs when the psychiatrist was reviewing his military records. The applicant is now claiming in his petition his bipolar episodes led to behaviors which were out of his character and resulted in the actions detailed in the investigation report. His inconsistent reporting suggested he may not be a reliable historian or reporter. Whether he used or did not use drugs during service, there is no evidence his bipolar disorder or mental health condition caused him to use drugs. There is no evidence he had a mental health condition including bipolar disorder or bipolar/manic episodes or was in emotional distress, impairing his judgment at the time of his repeated drug use. There is no evidence he used drugs to cope with his mental health condition. There is no evidence or records he continued to abuse the same or similar types of drugs after his drug use was revealed so there is no indication he used drugs to cope. It is reminded, when he was evaluated by ADAPT and the substance abuse clinic, he was assessed to not have any mental disorders. He also denied having any psychological symptoms to his primary care manager (PCM) during his separation physical examination. The available records find no evidence his mental health condition including bipolar disorder, adjustment disorder, or depression had a direct impact or was a contributing factor to his misconduct and discharge. It is acknowledged the applicant had been service-connected by the DVA. Receiving service connection does not indicate causation or mitigation of the misconduct or discharge, but merely to suggest the condition was somehow related to his service and not necessarily the cause of his discharge. Based on an exhaustive review of the available records, there is no error or injustice identified 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.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's request for an upgrade of his discharge 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 contended he had undiagnosed bipolar disorder and/or untreated mental health condition which led to behaviors which were out of character for him and resulted in the actions (drug use) detailed in his investigation report.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant's mental health conditions including bipolar disorder had existed or occurred during his military service. There is no evidence he had an untreated mental health condition as claimed. He received brief individual and group therapy treatment from Nov 06 to Dec 06 and attended the substance abuse awareness seminar (SAAS) education course in Feb 07 during service and was given a diagnosis of adjustment disorder with depressed mood from these encounters. There was no rationale provided for this diagnosis; however, his MSE was consistently assessed during each session by his providers and was determined to be within normal limits. There was no report of any complaints of depressed mood or depressive symptoms in his treatment notes. He was evaluated by the substance abuse clinic and ADAPT in May 08 and was not given any mental or substance use disorder diagnosis. He received a separation physical examination from his PCM also in May 08 and denied having any psychological symptoms. He

was diagnosed with bipolar disorder in 2010, two years after his discharge from service, by his psychiatrist at kaiser. He reported to his psychiatrist at the DVA on 9 Jul 24 he had been overwhelmed, manic with manic episodes of racing thoughts, trouble organizing thoughts, periods of highs and lows, insomnia, anxiety, periods of feeling depressed, and feeling depressed with passive suicidal ideation. There is no evidence or records he had any of these symptoms or problems during service.

3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence or records the applicant's mental health condition including bipolar disorder, adjustment disorder, or depression had a direct impact or was a contributing factor to his drug use and subsequent discharge for this reason. Therefore, his mental health 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 mental health condition also does not outweigh his 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 24 Oct 24 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade 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 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. There is no evidence the applicant's contended mental health conditions contributed to the misuse of drugs. Furthermore, there is no evidence the applicant had any untreated mental health conditions or symptoms at the time of the misconduct or at discharge. Therefore, his contended mental health condition does not excuse or mitigate his discharge. 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, particularly the lack of an FBI background check, 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.

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 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-2024-01909 in Executive Session on 5 Mar 24:

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/atchs, dated 23 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 18 Oct 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 22 Oct 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 24 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.

3/13/2025

X Work-Product

Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF