



**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01918

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His narrative reason for separation be changed to "Secretarial Authority."
3. He be given a medical retirement, effective 30 Jan 23.

APPLICANT'S CONTENTIONS

On 9 Dec 19, he attempted suicide by overdosing on drugs and alcohol and was involuntarily admitted to the hospital. His commander proceeded to initiated court-martial proceedings against him for drug use, but he accepted an Article 15 and waived his rights to a hearing. On 8 Mar 22, the Physical Evaluation Board (PEB) found him unfit for three medical conditions and recommended he be placed on the Temporary Disability Retired List (TDRL) with a disability rating of 90 percent. Instead of being medically retired, he was processed for an administrative discharge. A legal error occurred but was later corrected as the initial officer elimination action against him was made without the consideration of the PEB; however, he suspects everyone already made up their minds about his situation. Prior to his deployment to [REDACTED] in 2012, he was happy, outgoing, and enjoyed life. After his deployments, he was withdrawn and isolated. He volunteered to deploy to [REDACTED] in 2020 and started to have nightmares after he received his deployment orders in Nov 19. His mental health was bad, and he started to use alcohol to cope. In Dec 19, his long-time girlfriend broke up with him and he unknowingly used cocaine during a period of extreme mental distress while he tried to kill himself. During this mental health crisis, he was accused of using cocaine and disobeying three orders to report. While he states his actions were inexcusable, he finds it unjust and unfair the Air Force used his toxicology report from his attempted suicide as an attempt to separate him. Other than the above, he has no other misconduct. Before his service in the Air Force, he served on active duty in the Navy for four years and in the Navy Reserve for almost 10 years. He goes on to outline his stellar military performance before his misconduct to which he submitted his Office Performance Reports (OPR), character reference letters, and other military accomplishments. He continues to struggle with Post-Traumatic Stress Disorder (PTSD) to which he is rated by the Department of Veterans Affairs (DVA) at 70 percent.

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Work-Product

In support of his request, the applicant provides a personal statement, copies of military kudos, letters of support, his DVA disability ratings and other medical records, a letter from a private investigator confirming the applicant has no criminal arrests or convictions, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force first lieutenant (O-2).

On 12 Apr 21, the applicant's commander initiated a notification of show cause action against the applicant, under the provisions of AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, paragraphs 3.6.3 for drug abuse and 3.6.4 for serious or recurring misconduct punishable by military or civilian authorities. Specifically, for wrongfully using cocaine, a Schedule I controlled substance on or about 6 and 8 Dec 19 and for disobeying a direct command to report to base on three separate occasions between on or about 7 and 8 Dec 19. For this misconduct, the applicant received non-judicial punishment (NJP).

On 13 Jun 21, the applicant's commander recommended the applicant be administratively separated with a general (under honorable conditions) discharge, drug abuse being the primary basis for this action. It is noted his commander reviewed the applicant's show cause of why he should not be discharged; however, found the applicant's continued presence in the military was not consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale.

On 8 Dec 21, DAF Form 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for bulimia nervosa administrative and general anxiety disorder (GAD).

On 2 Jun 21, the DVA proposed a disability rating for his unfit medical conditions of bulimia nervosa at 0 percent, PTSD with unspecified anxiety disorder at 50 percent, and gastric ulcer gastritis, gastroesophageal reflux disease and irritable bowel syndrome (IBS) at 60 percent. He also received ratings for several other service-connected disabilities with a combined overall rating of 90 percent.

On 13 Jan 22, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical conditions of GAD with PTSD and panic disorder, rated at 50 percent and bulimia nervosa, rated at 0 percent with a recommendation of "Temporary Retirement." It is noted his medical condition of alcohol use disorder was found as a Category III condition which was not unfitting, compensable, or ratable.

On 27 Jan 22, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings and recommended disposition of the IPEB and requested a formal hearing.

On 9 Feb 22, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical conditions of GAD with PTSD and panic disorder, rated at 50 percent, bulimia nervosa, rated at 0 percent and irritable bowel syndrome at 60 percent with an overall combined rating of 80 percent with a recommendation of "Temporary Retirement."

On 22 Feb 22, AF Form 1180 indicates the applicant requested a one-time reconsideration of the DVA disability ratings for the conditions found unfit by the PEB. He petitioned the DVA to change his GAD with PTSD to a 70 percent rating disability rating.

On 2 Mar 22, the DVA changed his unfit medical condition to PTSD with GAD and alcohol use disorder with a disability rating increase of 70 percent.

On 8 Mar 22, AF Form 356 indicates the applicant was found unfit due to his medical conditions of GAD with PTSD and panic disorder, rated at 70 percent, bulimia nervosa, rated at 0 percent and irritable bowel syndrome at 60 percent with an overall combined rating of 90 percent with a recommendation of "Temporary Retirement." Alcohol use disorder was still noted as not unfitting, compensable, or ratable.

On 23 Sep 22, the Air Force Personnel Board (AFPB) considered the applicant's case under dual action and found no correlation between his cocaine usage and his medical conditions of bulimia nervosa, GAD, PTSD, panic disorder, gastric ulcer, gastritis, and IBS. The board noted the psychiatrist did not report any cognitive decline, poor coping skills, or manic disorder; and therefore, found the applicant was responsible for his decision to use cocaine with no medical evidence to suggest he was unaware of his actions. Hence, the board recommended the applicant be administratively separated with a general (under honorable conditions) discharge.

On 30 Jan 23, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unacceptable Conduct" and he was credited with 5 years, 10 months, and 7 days of active service for this period.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, D, and E.

POST-SERVICE INFORMATION

On 4 Feb 25, 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 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department determination regarding whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(l) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 4 Feb 25, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

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

SAF/MRBP recommends denying the application. The applicant had a dual action case that was sent to the Secretary of the Air Force Personnel Council (SAFPC) for processing. A dual action case is when a service member is concurrently processed for both involuntary administrative discharge under DAFI 36-3211 and disability discharge under DAFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*. Both processes run independently and, once both the disability and administrative discharge cases are completed, a final disposition decision is made by the dual action decision authority, in this case SAFPC, to determine whether the involuntary administrative discharge or disability discharge/retirement will be executed. These cases are boarded by SAFPC's AFBP who makes a recommendation on the disposition. The AFBP consists of five voting members: three GS-14/O-5 or higher representatives, one legal representative, and one medical representative.

Late evening on 6 Dec 19, the applicant's girlfriend walked into his off-base apartment and found him with another woman and saw a white powdery substance on a counter that she believed to be cocaine. Subsequently, she called the base command post to report this to the applicant's command chain and stated she did not witness the applicant ingesting cocaine; however, she believed he was with the other female because she was willing to do drugs. The next morning, the applicant's first sergeant contacted him and relayed he needed to report to the unit. The applicant asked if the first sergeant had spoken to his girlfriend which the first sergeant stated he did not want to discuss over the phone. The applicant then indicated he was not well enough to drive but he would ask a friend whom he was with to take him. When the applicant failed to report, his First Sergeant left him a voicemail relaying that the squadron commander had ordered him to report to the unit. Based on calls from the applicant's girlfriend regarding his welfare, the First Sergeant and another squadron member met the applicant's girlfriend outside his residence early that afternoon. The applicant's girlfriend ran into the apartment ahead of the first sergeant and other person and closed the door. Neither she nor the applicant answered the door when the First Sergeant knocked. After several minutes, the applicant's girlfriend relayed by text to the First Sergeant, the applicant was stressed but was calming down. Around 1530 that day, local authorities also conducted a welfare check but received no response at the residence. The applicant also failed to respond to several messages from his commander to contact him and orders to report to base for a urinalysis. That evening, in the presence of his girlfriend, he became agitated when he discovered the base chaplain and others were leaving him messages and likely were aware of his incident from the previous night. He stated to his girlfriend he did not want to go back and was not able to face anyone. The applicant ingested some pills and was taken to the hospital. The applicant's command was notified of his hospitalization the following day around 1930 on 8 Dec 19. His urine sample was tested and was positive for Benzoylcegonine (a metabolite of cocaine) and Oxymorphone. A review of his medical records to include medications and off base notes found no medical justification that would account for his positive test of Benzoylcegonine or

Oxymorphone. He also tested positive for Librium and Demoxepam (metabolite of Librium) but had prescriptions for that medication.

On 5 Aug 20, the applicant's command-initiated court-martial proceedings due to his misconduct and the applicant voluntarily offered an alternative disposition to the court-martial agreeing to accept non-judicial punishment and waive discharge board proceedings under the condition he be discharged with no worse than a general (under honorable conditions) service characterization to which his command accepted the offer, imposed non-judicial punishment and initiated administrative discharge proceedings. On 22 Apr 21, the applicant received notification of Show Cause Action (SCA) informing him of the initiation of discharge action for drug abuse. On 5 May 21, the applicant submitted a response to the notification of discharge requesting to be retained believing he met retention criteria for drug use. In his response, he stated on the night of the misconduct he was fighting with his girlfriend, he then went to a bar and met a stranger. In a blackout, he invited her back to his home. The stranger brought the substance with her, and he had no recollection of doing the drugs. After a review of his entire response, it was recommended he be discharged with a general service characterization for drug abuse and failure to obey three lawful orders. Since officer administrative discharge cases are boarded by the AFPB, on 1 Jun 22, the AFPB boarded the applicant's administrative discharge case and found a basis for drug abuse and serious or recurring misconduct were present based on the evidence provided and further determined drug abuse should be the primary basis, given the Air Force's zero tolerance policy. Next, the AFPB found a general service characterization was appropriate because his service has been honest and faithful but negative aspects of his conduct outweighed positive aspects of his military record. The execution of the administrative discharge action was held pending review of his disability case which found the applicant unfit rating him at 90 percent and placing him on TDRL. On 23 Sept 22, a new AFPB boarded the applicant's dual action case reviewing both his administrative discharge and disability discharge cases and in a unanimous vote, concluded there was no correlation between any of the applicant's unfitting conditions and his use of cocaine which was the basis of his administrative discharge. Given that his psychiatrist did not report any cognitive decline, poor coping skills, or manic disorder during his time in service, the applicant was found to be responsible for his decision to use cocaine with a stranger he described as a female friend. There are no medical records that suggests the applicant was unaware of his actions when he took the friend to his apartment and used the drug. Therefore, the AFPB concluded the administrative discharge action was the appropriate action to execute.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request to overturn SAFPC's decision. The applicant's mental health conditions of GAD with PTSD and panic disorder were already determined to be unfitting by the IPEB and Formal Physical Evaluation Board (FPEB) and these Boards' decisions are not disputed. The main issue is whether the applicant should have received a medical discharge in lieu of an administrative discharge. This decision was determined by SAFPC/AFPB that the administrative discharge for his cocaine use had outweighed his medical discharge, and this decision was certainly within SAFPC's board authority. There is evidence the

applicant had an extensive mental health treatment history during service, however, the timeline of when his mental health issues and treatment began needs consideration. The applicant's mental health treatment began on 8 Dec 19 when he was escorted to the emergency room (ER) for a suicide attempt. Two days prior to his suicide attempt on 6 Dec 19, he was reported to be in possession of cocaine by his girlfriend. His girlfriend informed his first sergeant of this incident, and this incident set off a series of events leading up to his ER/hospital admission. Per the Office of Special Investigations (OSI) report, the applicant became upset, panicky, paranoid, and agitated when he learned his girlfriend had contacted his first sergeant about the incident. He blamed her for ruining his career and when his leadership attempted to contact him, he panicked some more and refused to answer their calls believing that he would be in serious trouble. He became suicidal believing that his military career was over and the ramifications of his misconduct. The applicant was not suicidal at this time because of his past traumatic deployment experiences in a combat zone as he alleged in his petition but because of his potential occupational and legal problems developed from his own misconduct or the incident. His Medical Evaluation Board (MEB) narrative summary (NARSUM) reported the triggers for his suicide attempt included relationship discord, occupational, financial, and gambling problems, in context of consuming excessive quantities of alcohol days prior (and during) to this incident. The OSI report from his girlfriend's witness account of the incident found no complaints of any financial or gambling problems at the time of his suicide attempt. Again, he was concerned about being in trouble with his leadership, the consequences of his military career, and being fearful of facing others. He explained in his response to his discharge action he was suffering from mental health issues and drank in excess to compensate. He had no recollection of using drugs and said he would never knowingly ingest any illicit or illegal drugs. From his statement, he may have drunk alcohol to cope with his mental health condition, but he did not use drugs including cocaine to cope with his mental health condition because he was unaware, he used drugs. If he was unaware of using drugs or had no recollection of using drugs, then it could not be confirmed he used drugs to cope with his mental health condition. It is acknowledged, his military mental health provider wrote a memorandum for the applicant dated 25 Jan 21 about his mental health treatment and conditions reporting, "he reported his drinking exacerbated and during an alcohol induced blackout experimented with cocaine, combined with having relationship issues is when he attempted suicide." This report is inconsistent with his statement in response to his discharge action. His provider's statement stated he experimented with cocaine. How could he have experimented with cocaine if he stated he had no recollection of using cocaine? Experimenting with cocaine would be an acknowledgment/remembering the incident did happen whereas having no recollection of the incident indicated he did not remember using cocaine.

While he claimed he was in a poor mental state at the time of the incident, his service treatment records also contrasted his reports. The applicant received at least six Physical Health Assessments (PHA) from his primary care manager (PCM) from the period of 16 Aug 17 to 25 Nov 19. In all these PHAs including PHAs completed on 21 and 25 Nov 19, which was about a week or two before the incident, he denied having any mental health issues including anxiety, depression, PTSD, and alcohol abuse issues. His reports were inconsistent again. There were no records he had any mental health issues prior to the incident and no report his mental health condition had interfered with his ability to perform his military duties. He met all standards on his OPRs prior

to his misconduct/the incident as well. It was not until his leadership was informed of the incident that his mental health condition had decompensated necessitating mental health treatment and higher levels of care thereafter. His service treatment records and records from civilian treatment facilities also reported he was having ongoing suicidal ideation because of the demise of his military career and his stressors increased when he was informed, he was being court martialled. The applicant's mental health condition eventually became unfit and this all occurred after the incident/misconduct was uncovered. It is not certain if his mental health condition would decompensate or would become unfit if it were not for his occupational and legal problems. The applicant's military and service treatment records find no evidence his mental health condition including GAD, PTSD, panic disorder, or major depressive disorder (MDD) had impaired his judgment causing him to use cocaine. He was diagnosed with these conditions after the incident complicated by his occupational and legal stressors. The Psychological Advisor concurs with SAFPC's assessment there is no correlation between any of his unfitting mental health conditions and his use of cocaine. The applicant's misconduct or reason for discharge was not solely for cocaine use but also for disobeying direct orders issued by a superior commissioned officer to make contact with his commander and First Sergeant, failure to submit to a urinalysis, and failure to report to base. The OSI report stated he refused to pick up and ignored phone calls from his leadership and told his girlfriend he never wanted to go back to base again and was not able to face anyone. He was observed to be intoxicated at the time, but his actions also indicated his behaviors of disobeying orders may have been deliberate. He also did not allow the First Sergeant and the other service member into his home when they arrived at his apartment. His intoxicated state may explain his behaviors of disobeying orders but does not excuse or mitigate his behaviors. This incident had occurred over several hours in a day and he could have responded to their messages at any of those times. His mental health condition of GAD, PTSD, panic disorder, or MDD also did not cause him to disobey orders. The Psychological Advisor also finds there is no evidence he had any cognitive decline or manic disorder causing impulsive behaviors at the time of any of his misconduct and concurs with the SAFPC's decision his administrative discharge outweighs his medical discharge and finds insufficient evidence to support his request to overturn SAFPC's decision. Since there is no evidence his mental health condition caused his cocaine use and disobeying orders, his request for an upgrade to honorable and change his narrative reason to "Secretarial Authority" is also not supported.

Lastly, for awareness since the applicant had received service connection for his mental health condition from the DVA: The military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the

lifetime of the veteran. Receiving service connection does not indicate causation or mitigation of the discharge but merely suggests that the condition was somehow related to or connected to his military service and not necessarily the cause of his discharge.

Liberal consideration is not applied to the applicant's request for a medical discharge because the updated clarifying guidance, the Vazirani Memorandum, published in Apr 24, clearly states liberal consideration does not apply to fitness determinations requests, which includes medical discharge, disability, and retirement. The updated clarifying guidance also instructed a bifurcate review should be performed when a mental health condition such as PTSD or TBI potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change the narrative reason is appropriate. Thus, liberal consideration is applied to his request for an upgrade of his discharge and a change in the narrative reason for separation. It is reminded, liberal consideration does not mandate an upgrade or a change to the records. The following are responses to the four questions from the Kurta Memorandum, published in Aug 17, 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 believed his discharge from the Air Force was unjust because the misconduct he had committed occurred during a mental health crisis and was the direct result of his serious mental health condition, specifically PTSD, developed from his deployment experiences in a combat zone. He said his misconduct was an isolated incident.

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

There is evidence the applicant had an extensive mental health treatment history and was diagnosed with PTSD caused by his past traumatic deployment experiences and childhood trauma during service. He was also diagnosed with GAD, panic disorder, MDD, adjustment disorder, alcohol use disorder (AUD), and bulimia nervosa caused by his traumatic experiences, occupational problems, and legal stressors during service. He had received inpatient, residential, Partial Hospitalization Program (PHP), Intensive Outpatient Program (IOP), and outpatient medication management, substance abuse, and individual psychotherapy treatment services for these conditions during service.

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

There is no evidence that the applicant used cocaine to cope with his mental health condition or his mental health conditions including PTSD, GAD, panic disorder, etc. had caused him to use cocaine and fail to obey direct orders. There is no correlation between any of his unfitting conditions and these misconducts. He most likely was intoxicated at the time of these misconducts but no evidence he had PTSD, GAD, panic disorder, etc. at the time he used drugs. He claimed he had no recollection of the incident/drug use so there is no evidence any of these mental health conditions caused him to use drugs. He was reported to be stressed by the consequences of the incident/drug use which led him to disobey orders and engage in a suicide attempt resulting in his mental health treatment and hospitalization. His intoxicated state may explain his behaviors but does not excuse or mitigate his behaviors and misconduct. The stressors of his occupational problems and military career caused the decompensation of his mental health resulting in him

receiving mental health treatment and mental disorder diagnoses. 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 original discharge.

The complete advisory opinion is at Exhibit D.

AF/JAJI recommends denying the application finding insufficient evidence to recommend relief on the basis of legal error. Because the applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice, the AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision for an abuse of discretion. A rational factfinder could conclude administrative discharge with a general (under honorable conditions) service characterization was appropriate in the applicant's case. AFPB, acting on behalf of the Secretary of the Air Force, determines and directs final disposition of the dual disability and administrative discharge actions. Per AFI 36-3206, paragraph 4.17.3.2.2, characterization of service as general (under honorable conditions) is warranted when the negative aspects of the Service member's conduct or performance of duty outweigh positive aspects of the Service member's conduct or performance of duty as documented in their service record. Every reasonable inference from the evidence supports the decisions of the principals who resolved questions of fact and took the actions at issue. All procedural and due process requirements were complied with. The applicant's command was going to court-martial him, which may have resulted in a federal conviction and punitive discharge; however, they accepted the applicant's proposed alternative disposition of NJP and administrative discharge. After considering all evidence of record including the applicant's submissions, AFPB determined administrative separation was more appropriate than medical retirement in his case. Consistent with the recommendation of his command, he was separated with a general (under honorable conditions) service characterization. The procedural error resulting in his separation on 28 Jul 22 was corrected.

The Hagel Memo and Kurta Memo outline liberal consideration guidance concerning discharge upgrade requests from member's diagnosed with PTSD and/or mental health conditions. In accordance with the Hagel Memo, PTSD is not a likely cause of premeditated misconduct. Corrections Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship. Per the Kurta Memo, paragraph 19, premeditated misconduct is not generally excused by mental health conditions, including PTSD. The applicant's case involves premeditated misconduct. His girlfriend discovered him with suspected cocaine in his apartment and he had a positive urinalysis for the same. Preparatory steps would have been taken to use cocaine. The applicant repeatedly disobeyed multiple lawful orders to report to base over the course of two consecutive days. AFPB found no correlation between his mental health disorders and his cocaine use.

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 4 Feb 25 for comment (Exhibit F) and the applicant replied on 2 Mar 25. In his response, the applicant contends, through counsel, the mental health advisory opines the applicant was not suicidal because of his past deployment experiences but was suicidal because of his legal problems. This is a ridiculous and dangerous position to take as suicide is an irrational action which could have many contributing causes. He has diagnosed PTSD from combat and self-medicated using drugs and alcohol. He also received orders to deploy back to Afghanistan which also triggered his PTSD driven suicide attempt. Furthermore, the mental health advisory opines he had no recollection of using drugs; therefore, he did not use drugs as a coping mechanism. This is nonsensical as intoxication through alcohol can cause memory loss and it is absurd to state because he did not remember using cocaine because of intoxication, it was not done with the intent to cope with his PTSD. Additionally, just because he did not report his PTSD on his PHAs, does not mean he did not suffer from PTSD. Being afraid to report PTSD is common in the military due to fear of losing one's job and/or security clearance. Members with PTSD are often in denial and think they can manage the symptoms without help. Lastly, the legal advisory opined no correlation was found between his mental health disorders and his cocaine use. However, this argument ignores a common correlation in the military of the use of mind-altering substances to self-medicate the symptoms of combat PTSD. His admitted misconduct is related to his combat PTSD.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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 SAF/MRBP and finds a preponderance of the evidence does not substantiate the applicant's contention he should have been medically retired. Specifically, the Board finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. 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. The Board further agrees with the dual-action decision finding no nexus between the applicant's mental health conditions and his misconduct, his use of cocaine and his refusal to report to base. Therefore, the Board does not recommend the applicant be granted a medical retirement in lieu of an administrative discharge. As for the applicant's request for a discharge upgrade, the Board applied liberal consideration; but finds his misconduct is not excused or mitigated by any of his mental health

conditions to include PTSD. His intoxicated state may explain his behavior but does not excuse or mitigate his misconduct. The Board notes the applicant's DVA ratings and the PEB findings; however, finds his PTSD and other mental health diagnoses were not due to his past traumatic deployment experiences but rather were from his potential career-ending misconduct. He was not diagnosed with PTSD or GAD until after his misconduct and legal stressors. Additionally, the Board concurs with AF/JAJI and finds the applicant's request for a discharge upgrade is not warranted and finds his misconduct was premeditated. Nevertheless, and 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 post-service information and a criminal history report, the Board finds no basis to do so. In support of his request for an upgrade, the applicant has provided a letter from a private investigator attesting to no criminal activity since his discharge and a personal statement. He also provided copies of his character reference statements he obtained prior to his discharge. However, the evidence he provides lacks references to demonstrate his successful transition to civilian life, post-service rehabilitation, or service to the community since his discharge. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness but determined relief is not warranted under fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

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-2024-01918 in Executive Session on 19 Mar 25:

[REDACTED] Panel Chair

[REDACTED], Panel Member

[REDACTED], Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 29 Apr 24.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, SAF/MRBP, dated 4 Dec 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Jan 25.

Exhibit E: Advisory Opinion, AF/JAJI, dated 31 Jan 25.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Feb 25.

Exhibit G: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration

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Guidance), dated 4 Feb 25.
Exhibit H: Applicant's Response, dated 2 Mar 25.

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.

4/4/2025

Board Operations Manager, AFBCMR
Signed by: USAF

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