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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01988

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His general (under honorable conditions) discharge was due to drug abuse. At the time, there was no available treatment provided, but after discharge, he was able to obtain the proper care and treatment to become sober and maintain sobriety and his mental health. He feels since no treatment was offered and he has since continued his sobriety and mental health treatment through private providers, the Air Force should grant him the honorable discharge he was entitled to. He believes if the crisis hotline had been available during and after the Vietnam era, he would have been able to continue his service.

There was no treatment available nor was any assistance offered while being stationed in Vietnam, or during the time of his discharge. He has had to obtain the treatment and care at his own expense. During his time in service, he maintained his performance and grade, therefore it would be without reproach he receive the honorable discharge which would allow him the opportunity to access the necessary medical care and treatment he feels is deserved and would be entitled to.

In support of his request for a discharge upgrade, the applicant provides a personal statement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force technical sergeant (E-6).

On 21 Apr 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-49c for personal abuse of drugs. The specific reason for the action was the

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admission to his immediate supervisor he had, within the past six months, used marijuana on occasion, dates unknown.

On 7 Jun 83, the applicant offered a conditional waiver, waiving his rights to an administrative discharge board, contingent upon receiving no less than a general (under honorable conditions) discharge.

On 24 Jun 83, the Staff Judge Advocate found the discharge action legally sufficient.

On 28 Jun 83, the discharge authority accepted the conditional waiver and 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 22 Jul 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Drug Abuse" and he was credited with 14 years, 1 month, and 8 days of total active service.

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 84, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did reply to the request for post-service information (Exhibit D), his response did not include an FBI background check or other criminal history data. In his response, the applicant provided a certificate of disposition related to a charge for obtaining property from a worthless check on 1 Aug 88.

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 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge. The applicant is petitioning the Board to change the characterization of his service from general (under honorable conditions) to honorable. The applicant marked "other mental health" on his application. He contends there was no treatment available for his drug/alcohol abuse during his time in the military or at discharge.

There is no indication the applicant had any mental health diagnosis during his time in the military or at the time of discharge. The applicant was seen regularly throughout his military career for drug use (morphine, heroin, marijuana, and alcohol) and was never diagnosed with any mental health condition. He was diagnosed with drug abuse; heroin dependence; alcohol abuse; and alcohol abuse continuous (alcoholism). After his discharge, he was regularly diagnosed with alcohol dependence from 11 Apr 03 through 10 Mar 05, 20-22 years after discharge. The applicant was not diagnosed with any other mental health diagnosis until 24 Oct 22, 39 years after his military discharge. He was diagnosed with major depressive disorder (MDD) and generalized anxiety disorder (GAD) after a recent stroke and getting his leg amputated. He is not service-connected for any mental health condition.

The Psychological Advisor concludes the applicant did not have any mental health condition during his military service or at discharge which would mitigate or excuse his misconduct of drug use. While drug use can be a sign a person is using substances to treat symptoms of a mental health condition, in the applicant's case there is no indication in his records the applicant had any mental health condition. He was evaluated numerous times throughout his military career by the drug and alcohol rehabilitation program and by the mental health clinic. He was not found to have a mental health condition other than drug abuse, heroin dependence, alcohol abuse, and alcohol abuse continuous (alcoholism). The applicant was evaluated at discharge and was found not to have any mental health symptoms (psychiatric-normal), and he denied all mental health symptoms.

The applicant contends there was no treatment available nor was any assistance offered to him during his time in the military. His records indicate he received mental health as well as substance addiction counseling on numerous occasions. He was diagnosed with drug dependence in Jan 74 and attended phase IV substance abuse treatment. He saw mental health in Jan 79 for counseling regarding a personal problem. In Aug 81 he was diagnosed with alcohol abuse and started a local phase of substance abuse treatment. He appears to have completed his second substance abuse treatment and began follow-up care for support, 3 Nov 81 and 17 Aug 82 respectively. He completed this second treatment program for alcohol and rehabilitation in Nov 82. He entered into the local phase of drug and alcohol rehabilitation for the third time around 7 Apr 83. He continued the local phase of substance abuse treatment through 14 Jun 83. He was discharged one month later on 22 Jul 83.

While the applicant stated he has to obtain treatment and care on his own and at his expense, and he needs an honorable discharge to allow him the opportunity to access necessary medical care and treatment, he appears to have adequate access to Department of Veterans Affairs (DVA)

services. The applicant has a general (under honorable conditions) discharge, which allows him access to DVA services. Additionally, his DVA electronic medical records indicate he has approximately 175 medical and mental health encounters.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition which would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant marked "other mental health" on his application.

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

There is no indication the applicant was diagnosed with any mental health condition while in the military or at discharge.

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

The Psychological Advisor concludes the applicant did not have any mental health condition during his military service or at discharge which would mitigate or excuse his misconduct of drug use. While drug use can be a sign a person is using substances to treat symptoms of a mental health condition, in the applicant's case, there is no indication in his records the applicant had any mental health condition. He was evaluated numerous times throughout his military career by the drug and alcohol rehabilitation program and by the mental health clinic. He was not found to have a mental health condition other than drug abuse, heroin dependence, alcohol abuse, and alcohol abuse continuous (alcoholism). The applicant was evaluated at discharge and was found not to have any mental health symptoms (psychiatric-normal), and he denied all mental health symptoms.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate the discharge, the applicant's condition also does not outweigh 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 18 Dec 24 for comment (Exhibit F) 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. During service, the applicant was evaluated numerous times and was diagnosed with drug abuse, heroin dependance, and alcohol abuse; however, he was not diagnosed with any other mental health condition. Furthermore, during the separation exam, he denied any mental health symptoms and was found to not have any mental health condition. 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.

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

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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-2024-01988 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, w/atchs, dated 10 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 1 Aug 24.

Exhibit D: Applicant's Response, w/atchs, dated 3 Aug 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Dec 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 18 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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