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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02053

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

During his time in the service he was under marital stress, facing a divorce with two young children. Instead of seeking proper medical treatment, he made a mistake and used a controlled substance to relieve his stress, which was wrong. Before making this mistake, he had an excellent service record to include a below the zone promotion and the awarding of two medals.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 25 Jun 96, the convening authority published Special Court-Martial Order (SCMO) number [redacted]. The Order stated the applicant pled guilty and was found guilty of one charge and one specification of wrongfully using marijuana between on or about 29 Dec 95 and 17 Feb 96 (Article 112a). The applicant was sentenced to confinement for 45 days, reduction to the grade of airman first class, and discharge from the service with a BCD.

On 21 Oct 98, the convening authority published SCMO number [redacted]. The Order stated the sentence as promulgated in SCMO number [redacted] was affirmed with the BCD being executed.

On 3 Jun 04, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge and submitted two character statements from his commander and flight chief.

AFBCMR Docket Number BC-2024-02053

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Controlled by: SAF/MRB

[redacted] Categories: Work-Product

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

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On 16 Aug 04, the applicant received a BCD. His narrative reason for separation is “Court Martial” and he was credited with 16 years, 7 months, and 13 days of total active service.

On 1 Dec 04, the AFDRB concluded the applicant’s punitive discharge was appropriate under the facts and circumstances of the case and found insufficient evidence to support a change based on clemency.

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

POST-SERVICE INFORMATION

On 13 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 post-traumatic stress disorder (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 13 Feb 25, 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.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.

- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's contention his mental health condition developed from his marital/family problems had a direct impact or was a contributing factor to his misconduct of using marijuana resulting in his special court-martial conviction and BCD. While it is plausible he was under duress from his marital problems, there is no actual report he had marital problems during service. Furthermore, marital problem is not a mental health condition. His service treatment records are not available or submitted by the applicant, so there is no evidence or records he received any mental health evaluation, treatment, or a mental disorder diagnosis including PTSD during service or in his lifetime. There is no evidence he experienced a traumatic event which would meet the diagnostic criteria for PTSD during service. A traumatic event consists of exposure to death, serious injury, or sexual violence and his marital problems did not meet this traumatic experience criteria. He did not discuss the PTSD symptoms he had as well, and more importantly, there are no records to substantiate any of his contentions. There are no records he was ever evaluated and diagnosed with PTSD by a duly qualified medical or mental health provider. It is possible he did smoke marijuana to cope with his stress as he contended, but there is no evidence he had a bona fide mental health condition that impaired judgment causing him to use an illicit substance. The applicant was in the service for 16 years and was well aware of the Air Force's and Department of Defense's zero-tolerance drug policy. His decision to use marijuana to cope with his stress was a poor decision he made of his own volition but was not caused by having a mental health condition based on the available records for review. He claimed he made a mistake, but his special court-martial records indicated he used marijuana on diverse occasions from on or about 29 Dec 95 and on or about 17 Feb 96. This timeline and language used did not indicate his marijuana use was a one-time or impulsive occurrence. It appeared he used marijuana many times and it was just not a (one) mistake as he alleged. Therefore, the Psychological Advisor finds no error or injustice with the applicant's discharge from a mental health perspective. His contention is found to be not sufficient or compelling enough to support his request.

Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. It is reminded that liberal consideration does not mandate an upgrade or a change to the record 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 marked "PTSD" on his application and contended he was under stress in a very young marriage and faced divorce with two young children. He made the mistake of taking a controlled substance to ease his stress and mental relief. He did not submit any medical records for review, did not identify having a traumatic experience such as being exposed to death, serious

injury, or sexual violence, did not identify when he was diagnosed with PTSD, and did not discuss the trauma or PTSD symptoms he developed or had during service.

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

The applicant's service treatment is unavailable for review and the applicant also did not submit any medical records for review thus, there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis including PTSD during service or in his lifetime. There is no evidence that his mental health condition of PTSD had existed or occurred during his military service. There is no evidence he experienced a traumatic event such as exposure to death, serious injury, or sexual violence that would cause him to meet the diagnostic criteria of PTSD. He reported feeling stressed from his marital problems, but this description does indicate he had a mental health condition. There are no records he had marital problems during service.

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

There is no evidence or records that the applicant's mental health condition including PTSD was a contributing factor or had a direct impact on his special court-martial conviction and BCD for marijuana use on diverse occasions. It is possible that he coped with his stress, but this is a poor decision on his part and not caused by having a genuine mental health condition. For these reasons, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his 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 E.

AF/JAJI recommends denying the application finding insufficient evidence to recommend relief on the basis of a legal error. In accordance with 10 U.S.C. Section 1552(f), because the applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and sentence, the AFBCMR can only take two types of action: (1) correction of a record to reflect an action taken by reviewing authorities under the Uniform Code of Military Justice (UCMJ) e.g. convening authority clemency or appellate corrections; or (2) action on the sentence of a court-martial for purposes of clemency. The applicant has provided no evidence of an error in any record of action taken by a reviewing authority of his court-martial. Therefore, the only correction for consideration is action on the applicant's court-martial sentence for purposes of clemency. The Board may determine clemency is warranted or appropriate in the applicant's case; or there is a basis for relief under the equity, injustice, or clemency considerations pursuant to the Wilkie Memorandum, or the guidance for liberal consideration of mental health issues pursuant to the Kurta Memorandum. Nevertheless, the Board should consider important factors to the contrary. First, the Psychological Advisor determined there was insufficient evidence to support the applicant's request based on his mental health condition. Second, in accordance with paragraph 19 of the attachment to the Kurta Memorandum, premediated misconduct is not generally excused

by mental health conditions. The applicant's offenses involved premeditated misconduct, specifically the offenses of drug use on divers occasions.

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 27 May 25 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 1552(b).
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. Even though the Board finds no evidence the sentence of the military court was improper or it exceeded the limitations set forth in the UCMJ, the Board finds his conviction by court-martial for marijuana usage excessive when viewing the applicant's case for clemency based on fundamental fairness. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, the Board found no evidence he had a mental health condition during service and using marijuana to cope with his marital problems on several occasions does not excuse, mitigate, or outweigh his discharge. The applicant retains the right to request reconsideration of this decision. If the applicant provides post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization to honorable, the Board would reconsider his request. Therefore, the Board recommends correcting the applicant's record 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 04, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2024-02053 in Executive Session on 11 Jul 25:

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Panel Chair
Panel Member

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Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, dated 13 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 13 Feb 25.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Mar 25.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 19 May 25.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 May 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.

7/29/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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