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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02095

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He feels he made mistakes as a young airman but wishes to upgrade his discharge due to post-service changes.

In support of his request for a discharge upgrade, the applicant provides employment information, post service certificates of achievement, a graduation certificate, civilian memberships, and other documents.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 19 Oct 78, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, paragraph 2-4c for his apathetic and defective attitude as evidenced by his lack of response to rehabilitative efforts. The specific reasons for the action were:

- a. On 14 Feb 77, a Letter of Counseling (LOC) was issued for a traffic violation. His driving privileges were suspended for eight days. Additionally, he needed a haircut, and he had off duty employment without permission.
- b. On 8 Mar 77, an LOC was issued for being asked repeatedly to bring up his appearance standards of Air Force Regulation (AFR) 35-10, *Dress and Personal Appearance of Air Force Personnel*.

AFBCMR Docket Number BC-2024-02095

Work-Product

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Wor...

- c. On 24 Mar 77, an LOC was issued for failing to attend a scheduled training course.
- d. On 6 Apr 77, an LOC was issued for reporting late for duty on 5 Apr 77.
- e. On 13 Apr 77, a Letter of Reprimand (LOR) was issued for failing to report to his duty section on or about 5 April 77.
- f. On 14 Jun 77, an LOR was issued due to being arrested by civil authorities for driving while intoxicated on or about 21 May 77. Additionally, he was found guilty and fined \$150.00 on 24 May 77.
- g. On 22 Jul 77, an AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant receive nonjudicial punishment (NJP), Article 15 for driving his motor vehicle on base after being issued a lawful order by a superior officer to not drive his vehicle on base, on or about 16 Jul 77. The applicant received a reduction to the grade of airman (E-2), suspended, and forfeiture of \$50.00 pay per month for two months.
- h. On 6 Sep 77, an LOC was issued for having his dormitory room in unacceptable order on 1 Sep 77.
- i. On 16 Sep 77, an LOC was issued for being late for duty on 12 Sep 77, which was the second time in a week he was late. Additionally, he was reminded he needed a haircut.
- j. On 28 Oct 77, an LOC was issued for failure to get a haircut to conform to AFR 35-10. He was previously informed to get his haircut on 25, 26, and 27 Oct 77. On 28 Oct 77, he still did not comply with standards.
- k. On 30 Nov 77, an AF Form 3070 indicates the applicant received NJP, Article 15 for failing to go at the time prescribed to his appointed place of duty on or about 11 Nov 77. Additionally, he willfully disobeyed a lawful order from a superior noncommissioned officer (NCO) to return to the office and be seated on the same date. The applicant received a reduction to the grade of airman (E-2) and forfeiture of \$50.00 pay.
- l. On 17 Jul 78, an LOC was issued for his dress and appearance. Specifically, his fatigues were very wrinkled, his shirt sleeves were rolled up, and his shoes were not shined.
- m. On 20 Jul 78, an LOC was issued for his dress and appearance. His fatigues were slightly better but were still not presentable.
- n. On 26 Sep 78, an LOC was issued for failing to attend a scheduled records review on 14 Sep 78. On the same date, a LOC was issued for failing to make a mandatory military formation on 12 and 18 Sep 78.

o. On 29 Sep 78, an LOC was issued for being out of compliance with AFR 35-10 on 29 Sep 78.

p. On 6 Oct 78, an AF Form 3070 indicates the applicant received NJP, Article 15 for failing to obey a lawful general regulation by wearing his hair in a manner which allowed it to touch his ears, and by wearing his mustache in a manner which extended beyond the corner of his mouth on or about 29 Sep 78. The applicant received a reduction to the grade of airman (E-2) and forfeiture of \$50.00 pay.

On 14 Nov 78, the discharge authority directed the applicant be discharged for unsuitability, apathy, defective attitude, or inability to expend effort constructively, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 15 Nov 78, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitability, Apathy, Defective Attitude, or Inability to Expend Effort Constructively" and he was credited with 2 years, 7 months, and 15 days of total active service.

On 20 Apr 83, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge. The applicant contended, due to a personality conflict with his immediate supervisor, he was subject to unusual and unnecessary disciplinary action.

On 3 Nov 83, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. Regarding the applicant's assertion a personality conflict resulting in his discharge, the board found no credible evidence to substantiate the contention and concluded the discharge should not be changed.

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

POST-SERVICE INFORMATION

On 31 Jul 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 31 Jul 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 to support the applicant's request for the desired changes to his records based on his mental health condition. A review of the available records finds no evidence the applicant had any mental health conditions during service or in his lifetime. The only available mental health record was a report from the substance abuse officer dated 22 May 77, reporting he was evaluated following his driving while intoxicated (DWI) incident. At the time of the evaluation, the applicant denied he felt intoxicated at the time of his DWI, reporting he was not experiencing any personal problems and did not feel alcohol was a problem for him. He attended the alcohol awareness seminar, which is an alcohol education course, and no follow-up was necessary. There was no documentation indicating he was diagnosed with any mental, alcohol, or substance use disorder diagnosis. The substance abuse officer assessed he did not have an alcohol problem because if it existed, it would interfere with his free time and there was no evidence of this situation. Furthermore, the substance abuse officer reported he appeared to be a mature young man who manages his life fairly well, which also suggested there was no indication he had a mental health condition or any significant stressors impairing his overall functioning at the time of service. There is no evidence he used alcohol to cope with having a mental health condition or being in emotional distress. There is also no evidence or records reflecting he continued to have alcohol problems after this DWI, and this appears to be a one-time and isolated incident.

The applicant's remaining objective military records found no evidence or record his mental health condition had a direct impact or was a contributing factor to his numerous acts of misconduct resulting in his discharge from service. Documentation and reports by his leadership and supervisors from their numerous counseling sessions and interactions with him, and from the evaluation, indicated he had a disregard for military authority, rules, and regulations, and he had a poor, defective attitude, his duty performance was minimal to get by, he was more focused on his unauthorized off-duty employment and personal goals than in his military duties, and he wanted to get discharged because he felt the American taxpayers were being exploited. He also provided some explanations for his misconduct to his leadership and reported he had an off-duty job and the use of his vehicle was important, causing him to violate his revoked on-base driving privileges; he was late to work on at least two occasions because his alarm clock did not go off; he was late to work another time because the person he rode with had car trouble; he failed to attend a scheduled

records review because he forgot about it; and he informed his supervisor he did not get a haircut because the barbershop was closed, when in fact it was open but was temporarily closed when he arrived. None of the explanations he provided demonstrated his misconduct or behaviors were caused by having a mental health condition. Most of his misconduct appeared to be deliberate and his records suggested he knew what he was doing. His motivation and ambition were not towards the military but to his personal interests. The applicant contended he made mistakes as a young airman and this may be the case, but his mistakes were not caused by having a mental health condition or due to his mental health condition. Again, there is no evidence he had any mental health conditions impairing his judgment and causing any of his numerous acts of misconduct, leading to his discharge from service. Thus, the Psychological Advisor finds no identifiable error or injustice with his discharge from a mental health perspective. His contention and submitted records were determined to not be compelling or sufficient to support his request for an upgrade of his discharge based on his mental health condition.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's request due to designating "other mental health" on his petition to the AFBCMR. It is reminded liberal consideration does not mandate an upgrade or a change to the records per policy guidance. The following are responses to the four questions from the Kurta Memorandum from the information presented in the available records for review:

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

The applicant marked "other mental health" on his petition and contended he felt he made mistakes as a young airman. He did not identify the mental health condition he had or was diagnosed with during service; when and how his mental health condition occurred during his military service; he did not submit any medical records to confirm he had a mental health condition during service; and he did not discuss how his mental health condition may excuse or mitigate his discharge.

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

The applicant's service treatment records are not available or submitted by the applicant for review. There is a mental health-related incident evaluation report dated 22 May 77, authored by a substance abuse officer in his military records, reporting he stated he did not feel he was intoxicated at the time of his DWI, he did not have any personal problems, and he did not believe he had a problem with alcohol, which the substance abuse officer concurred with in his report. He was not given any mental, alcohol, or substance use disorder diagnosis from this evaluation. He attended the alcohol awareness seminar, and no further action was necessary. There are no records confirming he was ever diagnosed with a mental health disorder during service or in his lifetime.

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

There is no evidence the applicant's mental health condition had a direct impact or was a contributing factor to his numerous acts of misconduct, leading to his subsequent administrative discharge. None of the explanations he provided during service in response to some of his misconduct was demonstrated to be caused by his mental health condition or having a mental health condition. Most of his misconduct appeared to be deliberate and his records suggested he was aware of his actions. His motivation and ambition were not towards the military but to his

personal interests and goals. There is no evidence he had any mental health conditions or was in emotional distress impairing his judgment at the time of any of his. 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 original 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 15 Jan 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 injustice. While the Board finds no error in the original discharge process, the majority of the Board recommends full relief based on fundamental fairness in accordance with the Wilkie Memo, with the minority recommending amendment of the applicant's narrative reason for separation and separation code. In particular, the applicant presented supporting evidence indicating he made a successful post-service transition, as indicated on his employment records, post-service certificates, and character reference letters. As a civilian airline pilot for almost forty years, he provided numerous letters throughout the years from passengers who expressed their gratitude for the help he provided and the kindness and professionalism he displayed. Additionally, the applicant shows remorse for his actions and except for the DWI and another traffic violation which occurred almost 50 years ago, the Board finds the remainder of his misconduct minor in nature. Therefore, the majority of the Board recommends the applicant's records be corrected as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 15 Nov 78, he was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2024-02095 in Executive Session on 21 May 25:

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Panel Chair

Work-Product

Panel Member

Work-Product

Panel Member

All members voted to correct the record; however, **Work-Product** voted to provide partial relief and did not provide a minority opinion. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 11 Jun 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 31 Jul 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Dec 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Jan 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.

6/10/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-02095

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