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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02144

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His under other than honorable conditions (UOTHC) discharge be upgraded.
2. His narrative reason for separation be changed.

APPLICANT'S CONTENTIONS

The character and narrative reason do not accurately reflect the severity of the incidents or the totality of his service, nor is it consistent with other discharges at the time, both in the Air Force and other branches. He had successful exemplary honorable service and was performing his duties he was assigned and trained to do until he went home, and his father told him he had another son. This created severe depression and impacted his work performance. He only cashed one check at the exchange, which was due to his overdrafted account, due to a reduction of pay. His record of authorized leave previously listed as unauthorized absent (UA), was corrected, but not considered. The document he submitted to verify this, AF Form 2098, *Duty Status Change*, indicates previous 2098s were revoked indicating he was on leave 15 through 16 Jun 81.

In support of his request for a discharge upgrade, the applicant provides a personal statement, a court record search, character statements, and documents from his military personnel file.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 18 Feb 82, 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 2-15a for acts or patterns of misconduct. The specific reasons for the action were:

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- a. On 17 Feb 81, he disobeyed an order to get a haircut.
- b. On 18 Feb 81, a Letter of Reprimand (LOR) was issued for being in violation of Air Force Regulation (AFR) 35-10, *Dress and Personal Appearance of Air Force Personnel*, by being in need of a haircut on 18 Feb 81.
- c. On 10, 11, and 17 Mar 81, he was cited for violating the vehicular parking regulation, resulting in suspension of his on base driving privileges.
- d. On 25 Apr 81, a Letter of Counseling (LOC) was issued for sleeping on duty, on 25 Apr 81.
- e. On 12 Aug 81, an AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for absenting himself from the organization on or about 6 Jul 81, and did remain so absent until on or about 1 Aug 81. The applicant received a reduction to the grade of airman (E-2), forfeiture of \$225.00 pay per month for 2 months, restriction to base for 30 days, and 7 days extra duty.
- f. On 13 Nov 81 an LOC was issued for failing to report for duty at the require time, on 13 Nov 81.
- g. On 24 Dec 81, an LOR was issued for failing to report to work at the prescribed time. On the same date, though not included in the LOR, the applicant was in violation of AFR 35-10 for being unshaven, in need of a haircut, and in a sloppy uniform.
- h. On 25 Dec 81, he was arrested by civil police for possession of marijuana. He failed to appear for court, forfeiting a \$100.00 bond.
- i. On 5,6,7,8, and 11 Jan 82, he failed to meet his scheduled drug rehabilitation appointments.
- j. On 4 Feb 82, he passed a worthless check to the Work-Pro... Air Force Base (AFB) exchange, in the amount of \$50.00.
- k. On 12 Feb 82, during an early morning barracks visit, he had a naked female in his dormitory room, in violation of Work-Pro... AFB regulation 90-2. On this occasion, he was also in possession of some marijuana, in violation of Article 134 of the Uniform Code of Military Justice (UCMJ).

Not included in the reasons for discharge recommendation, the applicant also received NJP, Article 15 on 29 Dec 81 for not maintaining his hair in a trimmed and tapered appearance; not being cleanly shaven; failing to maintain a high standard of dress and personal

appearance; and failing to go at the time prescribed to his appointed place of duty on 24 Dec 81. He received a reduction to the grade of airman basic (E-1), forfeiture of \$75.00 pay per month for 2 months, and restriction to base for 30 days.

On 24 Mar 82, the applicant offered an unconditional waiver, waiving his rights to an administrative discharge board.

On 25 Mar 82, the Staff Judge Advocate found the discharge action legally sufficient.

On 31 Mar 82, the discharge authority directed the applicant be discharged for acts or patterns of misconduct, with an UOTHC service characterization.

On 2 Apr 82, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a UOTHC discharge. His narrative reason for separation is "Misconduct – Frequent Involvement of a Discreditable Nature" and he was credited with 2 years, 6 months, and 17 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 22 Jul 24, the Board sent the applicant a standard request for post-service information. This letter informed the applicant a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process. 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. However, the applicant did provide proof of employment with Work-Product County as of 13 Sep 24, and indicated in his narrative, his positions with the state of Washington required criminal background checks, which reflect he has not had any involvement with authorities at the local, state, and national level. Additionally, he provided a copy of his resume.

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, 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 22 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.

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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition. A review of the applicant's available records finds his contentions are plausible, but his objective military records do not substantiate his claims. The applicant claimed while he was on leave in Jun 81, he was informed his father had another son from a previous relationship. The shock from this information greatly affected him mentally and emotionally, and he began to behave recklessly which caused his misconduct and subsequent discharge. He claimed he developed depression from this experience. There is no evidence he had any mental health conditions, including depression during service. In fact, during his separation physical examination with his primary care manager (PCM), he denied having any mental health issues, including depression or excessive worry, trouble sleeping, nervous trouble of any sort, etc. There is no evidence or records he was ever diagnosed with depression in his lifetime by a duly qualified mental health provider. There is evidence of possible involvement in the drug rehabilitation program, but the existing records stated he missed multiple meetings, so there are no records confirming he was seen or participated in this program during service. Drug use or abuse is an unsuiting mental health condition for military service.

The letter of notification detailing his reasons for his discharge reported he had misconduct problems before Jun 81; he disobeyed an order for and needed a haircut in Feb 81; he violated parking regulations on three occasions in Mar 81; and he was found sleeping on duty in Apr 81. This predated misconduct could not have been caused by his emotional distress or mental health condition from his family problem, because they had occurred before he learned of his father's other son. There is no evidence he had a mental health condition at the time of any of these pre-

existing acts of misconduct, or this misconduct was caused by his mental health condition. His misconduct problems continued to grow and worsen after Jun 81, and he did experience similar problems of not maintaining his appearance and grooming standards, and reporting late for duty after Jun 81 as well, but it is not certain if they were mostly, or all caused by his depression developed from his family problems. There is evidence through his LOC he had personal problems, which could be his family problems, but not certain as well, which may have attributed to him reporting late for duty on 13 Nov 81. This incident could be mitigated by his mental health condition as he contended. However, his mental health condition does not mitigate his remaining misconduct problems because there is no evidence his mental health condition caused the remaining misconduct, especially being in possession of marijuana twice, failing to appear in his court case, missing numerous drug rehabilitation appointments, passing a worthless check, and having a naked female in his dormitory room. The applicant had provided a statement at the time of service to explain his situation; he admitted to knowing females were not allowed in the dorms and she happened to be in the dorm during the raid, and he did not provide an explanation for why he possessed marijuana, but defended the female airman had no knowledge he possessed marijuana. The dormitory manager had reported he was late to work by three hours because he was caught off base and had no way of returning or calling. He also provided no excuses for car trouble or other extenuating circumstances as the reasons he was late to work. In his petition, he stated he only cashed one check at the exchange which was due to his overdraft account because of his reduction of pay. These explanations provided by the applicant do not demonstrate they were caused by depression or any other mental health condition. He did not specifically address his serious offenses of possession of marijuana on two occasions, failing to appear in court, and failing to make his drug rehabilitation appointments on numerous occasions during service or in his petition. There is no evidence his mental health condition caused any of this misconduct. Some of his misconduct demonstrated he appeared to be aware of his behaviors and they may have been intentional. The applicant claimed his misconduct was caused by his reckless behaviors due to his emotional distress and depression. While this is a compelling explanation, it does not excuse his behaviors. Some of his misconduct was serious offenses and could not be outweighed even by his mental health condition. To give the applicant the benefit of the doubt his mental health condition could have caused some of his minor misconduct of reporting late to work due to oversleeping and possibly failing to adhere to grooming standards, there is no evidence his mental health condition had caused his remaining numerous and serious misconduct.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. It is reminded, liberal consideration does not mandate an upgrade per policy guidance. The following are responses to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended after learning his father had a son from a previous relationship, he experienced emotional distress and depression causing him to be reckless with his behaviors which resulted in his misconduct and subsequent discharge from service.
2. Did the condition exist or experience occur during military service?

The applicant's service treatment records are not available or submitted for review, but the existing records find no evidence or records he had depression or any other mental health conditions during service. He denied during his separation physical examination having any mental health conditions including depression or excessive worry. There are records stating he missed his drug rehabilitation appointments, but no records to confirm he actually received or attended drug rehabilitation treatment.

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

There is evidence the applicant was late to work at least once because he had overslept and had personal problems, which could be his family problems as he contended. However, his military records and his statements made at the time of service and for this petition demonstrated most of his documented misconduct was not caused by his mental health condition. Some of his misconduct appeared to be intentional or he was aware of his behaviors at the time of his misconduct and other misconduct had predated his family stressors. The existing and objective military records find no evidence his mental health condition caused most or his more serious misconduct. 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 or experience does not excuse or mitigate his discharge, his mental health condition or experience also does not outweigh his 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 16 Oct 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. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition. There is evidence the applicant had minor misconduct and personal problems possibly related to his family problems as he indicated; however, there is no evidence he had any mental health conditions, including depression during service or in his

lifetime. Furthermore, some of his misconduct, including the most severe appears to be intentional as he was aware of the behavior, and some of the misconduct predated his family issues. Therefore, his mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, 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 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.

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-2024-02144 in Executive Session on 19 Mar 25:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 30 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 22 Jul 24.

Exhibit D: Applicant's Response, dated 26 Sep 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Oct 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Oct 24.

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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.

4/7/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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