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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02323

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 was discharged by a commander who was inexperienced at the time for minor disciplinary infractions, to be used as an example even though the commander's goal was not to permanently oust him from the military. The commander was under the assumption and explained to him his discharge would automatically be upgraded after six months. He is now seeking further review, as the Air Force Discharge Review Board (AFDRB) informed him he would need to apply through the AFBCMR due to making the mistake of getting his time mixed up for the scheduled case review back in 2019.

His discharge was inequitable because he had a new commander who was inexperienced in his role. He was in a low point in his life and was experiencing severe personal and family/marital problems. It was unknown to him, the resources which should have been made available at the time to assist him during these life experiences, and had the commander been experienced, these resources would have been made available. Additionally, his punishment was inconsistent with other airmen, who received lesser punishments and more corrective measures for similar or worse infractions.

In support of his request for a discharge upgrade, the applicant provides a personal statement, letters of recommendation, military kudos, a graduation certificate, and post service certificates of achievement. The applicant also indicated he works as a system administrator for Work-Pro... County and required an FBI background check as part of the hiring process; however, he did not provide proof of his employment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

AFBCMR Docket Number BC-2024-02323

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The applicant is a former Air National Guard (ANG) airman first class (E-3).

On 6 Nov 09, the applicant's commander recommended the applicant be discharged from the Air National Guard, under the provisions of Air Force Instruction (AFI) 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, paragraph 3.21.2 for a pattern of misconduct. The specific reasons for the action were:

- a. On 11 Mar 07, a Letter of Reprimand (LOR) was issued for being cited by civilian authorities for driving under the influence of an intoxicant (DUII) on or about 17 Mar 07.
- b. On 21 Nov 08, an Work-Product Air National Guard Work-Product Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for DUII on or about 17 Jun 08. This was the second documented offense for DUII. He received a reduction to the grade of airman first class, suspended for a period of 119 days.
- c. On 8 Sep 09, an Work-Product Form 3070 indicates the applicant received NJP, Article 15 for being arrested for the crimes of unlawful entry and malicious injury to property. He unlawfully entered a residence while extremely intoxicated and fell asleep at this residence on or about 12 Jul 09. He received a reduction to the grade of airman first class.

On 26 Feb 10, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general (under honorable conditions) service characterization.

On 28 Feb 10, the National Guard Bureau (NGB) Form 22, *Report of Separation and Record of Service*, indicates the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Minor Disciplinary Infractions" and he was credited with 5 years, 8 months, and 23 days of total service for pay.

On 30 Sep 10, the applicant submitted a request to the AFDRB for an upgrade to his discharge. He submitted no issues regarding the inequity or impropriety of the discharge. The applicant contended he deserves a second chance despite his discrepancies, so he may serve his country.

On 9 Feb 12, 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. The board took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other accomplishments. The AFDRB found the seriousness of the willful misconduct offset any positive aspects of his duty performance and further found no impropriety or inequity to warrant an upgrade of the discharge.

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

POST-SERVICE INFORMATION

On 2 Dec 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 2 Dec 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 an upgrade of his discharge based on his mental health condition. A review of the available records finds no evidence to support the applicant's contentions. The applicant's service treatment records are not available or submitted by the applicant for review, so there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. There are no records he was ever diagnosed with a mental health disorder in his lifetime. He reported having personal and family/marital problems during service, but these problems are not mental disorders. There is no evidence these problems caused him to develop a mental health condition like anxiety, depression, etc., or he used alcohol to cope with his mental health condition. He clearly had problems with alcohol resulting in him receiving two DUIs and unlawfully entering a residence while intoxicated. His military duties and service did not cause his alcohol issues. Alcohol issues are an unsuiting condition for military service and while this unsuiting condition may explain and cause his maladaptive behavioral problems, it does not excuse or mitigate his misconduct. There is no evidence his mental health condition had a direct impact or was a contributing factor to any of his acts of misconduct resulting in his discharge. Therefore, the Psychological Advisor finds no error or injustice with the applicant's discharge from a mental health perspective. His contention was not 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 petition. 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 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 application to the AFBCMR and contended he was discharged by a commander who was inexperienced for minor disciplinary infractions, while he was at a low point in his life when he was experiencing severe personal and family/marital problems. Resources were not available to him to assist him with his life experiences whereas an experienced commander would have made them available to him. He did not identify his mental health condition or disorder he had and did not submit any treatment records for review.

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, so there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. There are no records he was ever diagnosed with mental health conditions in his lifetime by a duly qualified mental health provider. There is no evidence his personal and family/marital problems caused him to develop a mental health condition.

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 misconduct leading to his discharge from service. There is no evidence he used alcohol to cope with his mental health conditions. The applicant had alcohol problems during service and alcohol issues are an unsuiting condition for military service. While his unsuiting condition of alcohol problems may explain and cause his maladaptive behavioral problems, it does not excuse or mitigate his misconduct. Thus, his mental 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 4 Dec 24 for comment (Exhibit E), and the applicant replied on 5 Jan 25. In his response, he emphasized his lack of awareness of counseling and other avenues to help airmen facing life difficulties and felt he would have been better off had he known of these avenues. He also reiterated he is employed with the county which required an FBI background check; therefore, he did not supply a report to the Board. He provided additional information regarding post-service conduct and highlighted factors for clemency and liberal consideration.

The applicant's complete response is at Exhibit F.

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; however, there is no evidence of a mental health condition during his military service or at the time of discharge that would excuse or mitigate the applicant's misconduct. Additionally, there is no evidence the applicant used alcohol to cope with his mental health conditions. The applicant did have alcohol problems during service, which are unsuited conditions for service. While the alcohol problems may cause and explain his behavioral issues, it does not excuse or mitigate the misconduct in which he was discharged for. Therefore, his mental health condition does not excuse or mitigate the 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 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 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-2024-02323 in Executive Session on 19 Mar 25:

AFBCMR Docket Number BC-2024-02323

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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 26 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 2 Dec 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Dec 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Dec 24.

Exhibit F: Applicant's Response, w/atchs, dated 5 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.

4/4/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-02323

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