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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02778

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was raised in an alcoholic home and did not receive much positive guidance from his parents. He joined the Air Force in 1985 to get away from his hometown. At his first base, the experiences were positive but looking back, he saw there was a huge problem with parties and alcohol use. There was always alcohol around and he had trouble saying no. His reporting officials often had parties, and he felt the need to fit in. At one of the parties, there was a substance people were sniffing. Six months later, his first sergeant took him to be questioned and was shown pictures where he recognized two to three people out of the dozens of pictures shown to him. He was given a drug test and sent on his way. The next thing he knew, he was being charged and was offered a deal to cooperate, which included six months of confinement followed by a discharge. If he had not agreed, he was told he would be convicted, and the punishment would be more severe. He felt he had to take the deal, despite testing negative for drugs. He thought cooperating would earn him a second chance. He was sent to confinement where he earned trustee and was allowed to work and attend alcoholics anonymous (AA) meetings. He was released after five months and returned to his dorm and normal job. At some point later, he was sent to see the base commander and was told he would get a second chance; however, the general above him denied the request.

Post-service, he started a career in construction, got married and raised two daughters. His life has been trouble-free since the discharge. It has been 40 years, and he is still ashamed and broken over what happened, and when asked about his service, he has a difficult time talking about it and seeing himself as a veteran. He is a proud American who would do anything to change what happened and would serve now if asked. Even though he was scared, he did not run from the situation and did what was right for a confused, 20 year old who had alcohol issues at the time. He never knew what was happening or how the repercussions would be so severe considering his minor involvement.

In support of his request for a discharge upgrade, the applicant provides a personal statement, character references, a mental health treatment summary, and a Federal Bureau of Investigation (FBI) criminal history report.

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The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 6 Nov 87, the convening authority published General Court-Martial Order Number 14. The Order stated the applicant pled guilty to one charge and two specifications of wrongful use of methamphetamines and marijuana (Article 112a). The applicant was sentenced to confinement for 13 months, forfeiture of all pay and allowances, reduction to the grade of airman basic, and discharge from the service with a BCD.

On 13 Jul 88, the convening authority published General Court-Martial Order Number [Work...]. The Order stated the sentence was finally affirmed and the BCD was executed.

On 14 Jul 88, the applicant received a BCD. His narrative reason for separation is "Court-Martial Conviction Other Than Desertion" and he was credited with 2 years and 11 months of total active service.

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

POST-SERVICE INFORMATION

On 19 Mar 25, the Board sent the applicant a request for post-service information, including a standard criminal history report from the FBI, which the applicant previously provided and is attached to the application (Exhibit A). According to the report, the applicant has had no arrests since discharge.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 19 Mar 25, the Board staff provided the applicant with 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 recommends denying the application, finding 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 the applicant was involved in an alcohol related incident of fighting under the influence of alcohol. From this incident, he was referred to and received an evaluation from social actions on 7 May 87 for his alcohol abuse issues. He was given a diagnosis of problem drinker and was recommended to participate in the social actions and the local rehabilitation programs. He was able to progress and resolve his alcohol issues with treatment. His alcohol use or abuse problems were not the basis for his discharge from service.

On 22 Sep 87, the applicant received a second evaluation by social actions following his investigation for illicit substance use. During this evaluation, he admitted to using illicit substances identified as amphetamines at least two times, specifically for their mood-altering effects and used the substances in combination with alcohol. There was no specific report of marijuana use but this could be included in his description of illicit substances. He stopped using the illicit substances six months prior to the evaluation to avoid adverse consequences from the substances and involvement in the rehabilitation program. His evaluation also reported he denied psychological or physical dependency on the substances, and he had no psychiatric symptoms or history contributing to his substance use. These reports confirmed he did indeed use illicit

substances (amphetamines and/or methamphetamines), and his mental health condition did not cause him to use the substances, or he used the substances to cope with his mental health condition and symptoms. He reported he had a negative drug test, but a negative drug does not necessarily disprove he did not use the substance. In his case, his negative drug test was most likely caused by the timing of when he submitted to the test. Since he reported discontinuing the use of illicit substances six months prior to the evaluation, the substance would no longer be in his system to produce a positive result. He was given various diagnoses of drug user, multiple substance use, and drug abuse from social actions, and his conditions were reported to have been resolved or in remission near the time he completed the local rehabilitation treatment program. As discussed previously, the applicant admitted to using drugs and this was the reason he was convicted at a general court-martial, resulting in his BCD. Again, there is no evidence from his report at the time of his service he used drugs to cope with his mental health condition or his mental health condition caused him to use drugs. There is no evidence he had a mental health condition at the time of his drug use. Hypothetically if he used drugs to cope with his mental health condition, his behaviors would not be excused or mitigated, even by his mental health condition as amphetamine /methamphetamine and marijuana are serious drugs, especially the former, and the Air Force has a zero-tolerance policy for drug use. His drug use was a serious offense and not a minor offense/involvement as he claimed. Furthermore, alcohol and substance abuse issues are unsuiting mental health conditions for military service and while his illicit substance use caused his discharge, it does not excuse or mitigate his misconduct resulting in his general court-martial conviction and BCD.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's request due to marking "other mental health" on his petition and his contention of alcohol use problems. It is reminded, 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 contended he had trouble saying no to alcohol and felt he needed to fit in. At a party one night, he saw people sniff a substance, and six months later, he was questioned, shown pictures, and given a drug test. He was charged with a UCMJ crime and was offered a deal to cooperate and claimed if he did not take the deal, he would be convicted regardless, and his punishment would be more severe. He felt he had no choice but to take the deal and cooperate even though his drug test came back negative. He claimed he was a confused and scared 20-year-old who had alcohol issues at the time and did not understand what was happening or how the repercussions could be so severe for a minor involvement. He is requesting an upgrade of his discharge. He did not clearly explain how his mental health condition may excuse or mitigate his discharge.

2. Did the condition exist or experience occur during military service?
There is evidence the applicant received an evaluation from social actions on 7 May 87 after he was found fighting under the influence of alcohol. He was given a diagnosis of problem drinker and was recommended to participate in the social actions and local rehabilitation programs for his

alcohol issues. With treatment, his alcohol issues were resolved. He was evaluated again by social actions on 22 Sep 87, after being investigated for illicit substance use. He admitted during his evaluation he used illicit substances identified as amphetamines at least two times for their mind-altering effects and used the substances in combination with alcohol. He stopped using illicit substances six months prior to the evaluation to avoid adverse consequences from the substances and involvement in the rehabilitation program. His evaluation also reported he denied psychological or physical dependency on the substances, and he had no psychiatric symptoms or history contributing to his substance use. He was given various diagnoses of drug user, multiple substance use, and drug abuse from social actions and was entered into the local rehabilitation program. His substance use condition was in remission near the time he completed his treatment program.

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

There is no evidence or records the applicant's mental health condition was a contributing factor or had a direct impact on his general court-martial conviction and BCD for illicit substance use. The applicant denied during his second evaluation with social actions he had developed any psychological or physical dependency on the substance and there were no psychiatric symptoms or history which contributed to his substance use. There is no evidence he had a mental health condition at the time of any of his misconduct. His alcohol problem was not a reason for his discharge. He was discharged for illicit use of methamphetamines /amphetamines and marijuana, and substance abuse problems are unsuiting mental health conditions for military service. 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.

AF/JAJI recommends denying the application, finding no error or injustice with the discharge process. The applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction. The AFBCMR and the Secretary of the Air Force have limited authority to correct court-martial records. Under 10 U.S.C. Section 1552(f), the AFBCMR may extend its authority to correct a record to reflect an action taken by review authorities under the UCMJ or take action on the sentence of a court-martial for purposes of clemency. The applicant does not request correction of a record to reflect an action taken by review authorities. Therefore, clemency on the applicant's sentence is the only option available for consideration.

In accordance with the Wilkie Memo, when determining whether to grant relief on the basis of clemency, the AFBCMR should consider a variety of factors to include character references, evidence of rehabilitation, severity of misconduct, the applicant's meritorious service, character, and reputation.

The Hagel Memo and Kurta Memo outline liberal consideration guidance concerning discharge upgrade requests from member's diagnosed with PTSD and/or mental health conditions. In accordance with the Hagel Memo, PTSD is not a likely cause of premeditated misconduct.

corrections boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship. Per the Kurta Memo, paragraph 19, premeditated misconduct is not generally excused by mental health conditions, including PTSD. The applicant also requests the AFBCMR to consider his mental health in deciding whether to grant relief. AF/JAJI recommends the AFBCMR review these matters consistent with the Wilkie Memorandum, and in light of the guidance for liberal consideration of mental health issues in the Kurta Memorandum. Nonetheless, the AFRBA Psychological Advisor provided an extensive overview of the mental health considerations in this case and has made a recommendation against relief on this basis.

AF/JAJI finds insufficient evidence to recommend relief on the basis of a legal error. The AFBCMR always has the authority to grant clemency in the form of a discharge upgrade; however, the review did not identify any information warranting clemency from a legal perspective.

The complete advisory opinions are at Exhibit C and D.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Mar 25 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitations period established by 10 U.S.C. § 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 of the AFRBA Psychological Advisor and the rationale and recommendation of DAF/JAJI 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. There is no evidence the applicant had any mental health condition at the time of the illicit drug use. Further, the applicant admitted during his evaluation he used the illicit substances for their mind-altering effects and used them in combination with alcohol. It was reported during the evaluation he had no psychiatric symptoms or history contributing to his substance use. Additionally, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on clemency; 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 clemency; 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, remorse for his actions, or 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, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others.

4. The applicant has not shown that 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

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00481 in Executive Session on 18 Jun 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 24 Jul 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory opinion, AFRBA Psychological Advisor, dated 20 Feb 25.

Exhibit D: Advisory opinion, AF/JAJI, dated 13 Mar 25.

Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 19 Mar 25.

Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 19 Mar 25.

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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.

6/26/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-02778

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