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Wor... Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03161

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

The Air Force dealt with him very harshly at the time. He was a young man, immature, and inexperienced. Due to his misconduct, he was discharged with a UOTHC. He made a series of poor decisions which eventually led to the discharge. His chain of command could have done more to guide and mentor him. Instead, he was summarily discharged. He has been able to overcome the stigma of his discharge and he now works for the United States Border Patrol. However, his character of service continues to prejudice him, even 16 years later. He would like a chance to overcome this.

In support of his request for a discharge upgrade, the applicant provides a personal statement, post service certificates of achievement, and letters of recommendation demonstrating his exceptional leadership skills, high moral character, and integrity.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 26 Oct 07, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2 for a pattern of misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 16 Oct 06, a Letter of Reprimand (LOR) was issued for operating his vehicle on base while his driving privileges were suspended, resulting in apprehension by security forces on or about 16 Oct 06.

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- b. On 24 Feb 07, a Letter of Counseling (LOC) was issued for negligently failing to keep his room clean. A gallon of milk was left out on his dresser, resulting in a foul odor coming from his dorm room. When inspected, his room was found in disarray, the bathroom was not clean, the floors were not swept, the refrigerator had old food in it and his trash needed to be taken out on or about 21 Feb 07.
- c. On 23 Apr 07, an LOR was issued for reporting to work late after previously being briefed on the importance of reporting to guard mount on time, on or about 23 Apr 07.
- d. On 27 Apr 07, an LOR was issued for conviction by the county district court for insufficient funds and he was ordered to pay a fine, on or about 20 Mar 07. Furthermore, he was found sleeping on post, on or about 1 Mar 07.
- e. On 13 Jun 07, an LOC was issued for failure to show for flight physical training (PT) on or about 13 Jun 07.
- f. On 10 Jul 07, a LOR was issued for failure to report at the time prescribed on or about 10 Jul 07.
- g. On 28 Aug 07, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go at the time prescribed, to his appointed place of duty between on or about 17 Jul 07 and on or about 18 Jul 07. The applicant received 30 days extra duty.
- h. On 25 Oct 07, an AF Form 3070 indicates the applicant received NJP, Article 15. On divers occasions, with intent to defraud, he devised a scheme to obtain money by means of false pretenses by contacting a United Services Automobile Association (USAA) representative via telephone on the day after a vehicle accident, falsely representing he had not been involved in any recent vehicle accidents in order to reestablish coverage on his wrecked vehicle. He falsely indicated an accident occurred on 11 Apr 07, when in fact, it occurred on 9 Apr 07. Additionally, he attempted to steal money, of value of more than \$500.00 from USAA general indemnity company. The applicant received a reduction to the grade of airman basic (E-1).

On 29 Oct 07, according to the legal review, the applicant offered an unconditional waiver of rights to an administrative discharge board.

On 3 Dec 07, the Acting Staff Judge Advocate found the discharge action legally sufficient.

On 12 Dec 07, the applicant received a UOTHC discharge. His narrative reason for separation is "Conduct Prejudicial" and he was credited with 2 years, 3 months, and 27 days of total active service.

On 30 Aug 10, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge. He contended he was now mature, had a clean record, and he was enrolled in school.

On 2 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 recognized the applicant was 20 at the time of discharge but opined he was older than the vast majority of first-term airmen who properly adhered to the standards of conduct. It determined there was no impropriety or inequity in the discharge process and his character was deemed appropriate.

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

POST-SERVICE INFORMATION

On 10 Feb 25, the Board staff sent the applicant a request for post-service information and advised the applicant he should provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would assist in evaluating his request. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 19 Feb 25 and provided an FBI report. According to the report, the applicant has had no arrests since his discharge.

The applicant's complete response is at Exhibit E.

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 10 Feb 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 finds insufficient evidence has been presented to support the applicant's request for an upgrade to his discharge based on his mental health condition. A review of the available records finds the applicant's contentions are not supported by his objective military records. There are records that he received brief mental health treatment for having psychosocial stressors of occupational problems due to his divorce and his mother's illness from 19 Jun 07 to 7 Aug 07 during service. He voluntarily sought mental health treatment after his more serious misconduct occurred. The consequences of his own misconduct led him to have occupational problems causing him emotional distress. He had other situational stressors of going through a divorce and his mother's illness in addition to his occupational problems, which may have also caused him to have maladaptive behavioral and conduct problems. He was given a diagnosis of adjustment disorder with disturbance of conduct and condition of phase of life or life circumstance for his stressors and problems. There is, however, no evidence or records he had depression as claimed. He was consistently assessed, and there was no documentation indicating he had a depressed mood, or depression, or was diagnosed with depression. He was noted to have displayed a "mildly dysphoric mood" to signify his unhappiness, distress, or indifference, but this type of mood is not the same as depressed mood or depression. He claimed in his testimony to the AFBCMR he turned to alcohol to numb his feelings and believed it was a form of depression in response to him being conflicted about his religious teachings and his treatment of being on details of performing janitorial services, yard work, and things other airmen did not want to do because of his conscientious objector status. There is no evidence or records to confirm he declared being a conscientious objector or his secret security clearance was revoked because of this status. There is also no evidence he used alcohol to cope with his depression for the reasons he provided. There is evidence he was assessed by the alcohol and drug abuse prevention and treatment (ADAPT) program on 22 Jun 07 following his unlawful consumption of alcohol and disorderly conduct. There are no records of any disciplinary actions he received for any alcohol-related incidents or to clarify his underage drinking and disorderly conduct. His unlawful consumption of alcohol and disorderly conduct were not one of the reasons for his separation from service. He was not given any mental disorder diagnosis including an alcohol or substance use disorder diagnosis by ADAPT and he was recommended to complete the substance abuse awareness seminar (SAAS), a substance/alcohol education course. He complied with this recommendation. There are no records from ADAPT or from his provider at the mental health clinic (MHC) indicating he used alcohol

to cope with his depression. It is possible he may have coped with his depression with alcohol despite no evidence, to give him the benefit of the doubt, but there is no evidence his depression had a direct impact or was a contributing factor to his misconduct and discharge.

The applicant was discharged from service for engaging in numerous and serious misconduct. There is no evidence his depression or alcohol issues caused any of this misconduct. He explained in his petition, by balancing his money, helping his mother with her bills, and having a newborn child, he was unable to pay his car insurance and lost coverage. Around this time, he got into a car accident and filed a claim with his insurance without appreciating he was not covered due to lack of payment. He claimed he never intended to defraud anyone. From his explanation, it appeared he had a misunderstanding, and his actions did not demonstrate they were caused by depression. This was the only misconduct he addressed, and he did not address his other numerous acts of misconduct. He did not clearly or convincingly discuss how his depression caused any of his misconduct and discharge. Some of his misconduct appeared to have been intentional and deliberate, indicating he was aware of his behavior and decisions, and could not be caused by his mental health condition. His service treatment records reported he had no cognitive impairment issues, so he was able to distinguish between right and wrong and adhere to the right and refrain from the wrong. He demonstrated poor judgment but there is no evidence his poor judgment was caused by having a mental health condition. There is no evidence he had any mental health conditions including depression at the time of any of his misconduct. As stated by the ADFRB, he was given ample opportunities to repair his behavior, and he was not amenable to efforts provided by his leadership. Based on a thorough review of the applicant's available records, the Psychological Advisor finds no error or injustice with his discharge from a mental health perspective. There is no evidence he had a mental health condition impairing his judgment which caused his numerous acts of misconduct resulting in his discharge and thus, his request for an upgrade of his discharge based on his mental health condition is not supported.

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 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 his records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended he struggled with his religious beliefs and job duties and informed his command of his claim for conscientious objector status. His secret clearance was revoked as a result and he was placed on details of janitorial services, yard work, and doing things other airmen did not want to do. From being conflicted with his religious teachings and the treatment he received from the detail duties, he began to turn to alcohol to numb his feelings and believed it was a form of depression. He filed a claim with his insurance for his car accident while not appreciating he was not covered due to lack of payment and alleged he never intended to defraud anyone. He did not address his remaining numerous acts of misconduct which caused his discharge and he did not discuss how his mental health condition may have caused, excused, or mitigated his discharge.

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

There is no evidence or records to confirm he declared being a conscientious objector or his security clearance was revoked because of this status during service. There is no evidence or records he had a depressed mood, or depression, was diagnosed with depression, or had coped with his depression with alcohol during service. He received brief mental health treatment during service from Jun 07 to Aug 07 for his psychosocial stressors of occupational problems, divorce and his mother's illness. He was noted to have a "mildly dysphoric mood" signifying his unhappiness, distress, or indifference, but this type of mood is not the same as a depressed mood or depression. He was given a diagnosis of adjustment disorder with disturbance of conduct and condition of phase of life or life circumstance for his stressors and problems. He was assessed by ADAPT and was not given any mental disorder diagnosis including any alcohol or substance use disorder diagnosis. He completed SAAS, an alcohol/substance education course. There are no records reporting he used alcohol to cope with depression.

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

There is no evidence the applicant's mental health condition including depression had a direct impact or was a contributing factor to his numerous acts of misconduct, resulting in his discharge. Some of his misconduct was reported to have been deliberate and intentional, indicating he was aware of his actions and was not caused by his mental health condition. He demonstrated poor judgment but there is no evidence his poor judgment was caused by having a mental health condition or depression. His service treatment records reported he had no cognitive impairment issues which would cause his impaired or poor judgment. There is no evidence he had any mental health conditions including depression at the time of any of his 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 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 3 Mar 25 for comment (Exhibit F), and the applicant replied on 2 Apr 25. In his response, the applicant provided an explanation of his acts of misconduct during service, apologized for his actions, and asked not to be judged by just 2 years of his 37 year life. He requested an upgrade based on the man he has become, not for benefits.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

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1. The application was timely filed. It would be illogical to deny a discharge upgrade 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 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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all of his request. The Board finds no error in the original discharge process and concurs with the rationale of the AFRBA Psychological Advisor that there is insufficient evidence the applicant's mental health condition had a direct impact or a nexus with his misconduct and discharge to warrant granting relief on the basis of liberal consideration. However, in the interest of justice and fundamental fairness, the Board recommends the applicant's UOTHC discharge be upgraded to general (under honorable conditions). The Wilkie Memo (#6) states it is consistent to punish only to the extent necessary and to favor second chances in situations in which individuals have paid for their misdeeds. It has been more than 18 years since the applicant's discharge. Based on the passage of time, the applicant's clean arrest record since his discharge and his post-service accomplishments, to include his service in the United States Border Patrol, completion of his bachelor's degree, the character statements in support of his request and his personal statement accepting responsibility and remorse for his actions are compelling to find the applicant's UOTHC discharge no longer serves a useful purpose. In view of the above, the Board recommends the applicant's UOTHC discharge be upgraded to general (under honorable conditions) and his narrative reason for separation and separation code be changed to "Secretarial Authority." Therefore, the Board recommends correcting the applicant's records 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 12 Dec 07, 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-2024-03161 in Executive Session on 6 Jun 25:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 27 Aug 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 10 Feb 25.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 17 Feb 25.
- Exhibit E: FBI Report, dated, 19 Feb 25.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Mar 25.
- Exhibit G: Applicant's Response, w/atchs, dated 2 Apr 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.



Board Operations Manager, AFBCMR

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