



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

THIRD ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2006-00086-4

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his general (under honorable conditions) discharge to honorable and change his narrative reason for separation.

RESUME OF THE CASE

The applicant is a former Air Force airman first class (E-3).

On 6 Apr 06, the Board considered and denied his request for discharge upgrade, finding no impropriety in the characterization of applicant's discharge. It appeared responsible officials applied appropriate standards in effecting the separation and the Board did not find persuasive evidence that pertinent regulations were violated or that the applicant was not afforded all the rights to which entitled at the time of discharge. The Board concluded the discharge proceedings were proper and the characterization of discharge was appropriate to the existing circumstances. Although the applicant stated he had been a productive member of society, he had not provided sufficient information of post-service activities and accomplishments for the Board to conclude his discharge should be upgraded based on clemency. For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit G.

On 24 Mar 15, the Board reconsidered and denied his request for a discharge upgrade; finding no basis to recommend granting the relief sought. After thoroughly reviewing the additional documentation submitted in support of his appeal and the evidence of record, the Board did not believe the applicant had overcome the rationale expressed in the previous decision and noted there was no error or injustice with regard to the processing of his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, the post-service evidence presented by the applicant consisted of the results of a Federal Bureau of Investigations (FBI) Background Check, job-related training and promotion recognition. It lacked any information pertaining to his contributions to his community, or character references vouching for his honesty and integrity; accordingly, the Board did not find the evidence presented was sufficient to conclude that the applicant's post-service activities overcame the misconduct for which he was

**AFBCMR Docket Number BC-2006-00086-4
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

CUI//SP-MIL/SP-PRVCY

discharged. For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit L.

On 9 Sep 15, the Board reconsidered and denied his request for a discharge upgrade; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The applicant requested reconsideration be based on clemency and submitted character reference letters from relatives, neighbors, friends, and co-workers regarding his contributions to his community, vouching for his honesty and integrity. The Board considered upgrading the discharge based on clemency; however, the Board majority did not find the evidence presented sufficient to compel the majority of the Board to recommend granting the relief sought for an honorable discharge; the level of discharge given to military members who have served honorably with unblemished records. On 22 Sep 15, a minority report was filed recommending the applicant's discharge be upgraded finding the applicant's positive post-service information coupled with the unblemished FBI Background Check, warranted upgrade of his discharge on the basis of clemency. The report concluded the applicant suffered the effects of the discharge long enough and his general (under honorable conditions) discharge to honorable, would appropriately address this perceived injustice. For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Records of Proceedings at Exhibit O.

On 10 Mar 22, the applicant requested reconsideration. He again contends his discharge was unjust and his military performance and evaluations exceeded the expectations of his service. His discharge was based on harassment, retaliation, and race. The Air Force failed to recognize he had a mental health issue of Post-Traumatic Stress Disorder (PTSD), he was not diagnosed until he was discharged, and he should have received a mental health evaluation before he was discharged. His mental health condition was a major contributor to his minor infractions and his narrative reason should be removed from his DD Form 214. When he signed the waiver, he was scared and felt if he refused to sign his discharge paperwork, he would have been targeted, harassed even more, and be put in a situation that could have resulted in a worse discharge. He is still dealing with mental health issues due to the way he was treated and felt he should have received an honorable discharge.

In support of his request, the applicant submitted the following new evidence: (1) a letter from the DVA attesting to his diagnosis of PTSD; (2) his DVA Compensation and Pension (C&P) examination; (3) his DVA disability rating; (4) his medical records; (5) copies of his awards, recognition letters, and training certificates; and (6) letters from his employer.

The applicant's complete submission is at Exhibit P.

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.

CUI//SP-MIL/SP-PRVCY

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 (USD P&R) issued supplemental guidance 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 the supplemental guidance, paragraphs 6 and 7.

On 23 Aug 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit Q)

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record finding no evidence his mental health condition had a direct impact to his discharge from service. The applicant had provided a comprehensive explanation for his behaviors and misconduct and most of his explanations were centered on him feeling he was being harassed or targeted and/or should have reacted differently to the situation at the time. He admitted to engaging in most of the behaviors resulting with his disciplinary actions and discharge but disagreed on the actions and reprimands he received. He did submit two character witness statements from his former fellow service members attesting to the harassments he endured during service and while it may have been possible these experiences may have occurred; his reprimands were not caused by his mental health condition but from harassments he received according to the applicant and his witnesses. His behaviors and reactions were not consistent to a mental health condition or symptoms. His post-service medical records reported he had developed and was diagnosed with PTSD from the DVA, decades post-discharge, from his traumatic experiences of alleged harassments and emotional and verbal abuse from superiors during service. The PTSD symptoms he reported experiencing to the DVA included nightmares, chronic sleep problems, flashbacks, avoidance of triggered, anhedonia, detachment, numbness, depression, anxiety, irritability, and anger. There was no evidence he experienced any of these symptoms during service and there was no evidence he had PTSD or similar conditions during service. He claimed he should have received a mental health evaluation because he had a mental health condition at the time of discharge. There was no evidence a mental health evaluation was warranted because he did not report or was observed to have any mental health issues or concerns at the time, especially since he had denied during his separation physical on 9 Nov 85 of having any mental health related symptoms to include anxiety, depression, and sleep disturbances. It appeared he had a delayed onset of PTSD causing him to meet diagnostic criteria and receive treatment for this condition decades post-service. Furthermore, he reported to his DVA provider talking about his military service to a social worker had triggered and aggravated his condition and symptoms of PTSD, indicating his symptoms more likely than not began post-service. The applicant contended his discharge was unjust but the Psychological Advisor finds insufficient evidence has been presented to support his contention. There was no error or injustice identified with his discharge from a mental health perspective based on the available records for review.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contended his discharge was unjust and felt his discharge was based on harassment, retaliation, and race. He contended he had a mental health condition of PTSD but was not

CUI//SP-MIL/SP-PRVCY

diagnosed with PTSD until post-service. He believed his mental health condition was a major contributor to his minor infractions.

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

There was no evidence the applicant had any mental health conditions to include PTSD during service. There were no records he received any mental health evaluation, diagnosis, or treatment during service. He received a separation physical on 8 Nov 85 and denied having any mental health related issues to include anxiety, depression, and sleep issues. He was diagnosed with PTSD by the DVA over 20 years post-discharge.

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

There was no evidence the applicant's mental health condition to include PTSD had a direct impact to his misconduct resulting with his discharge. The explanation he provided for his behaviors and misconduct were not sufficient to demonstrate his mental health condition had caused his behaviors or misconduct and rather, they were caused by him being harassed and being treated unjustly. There was no evidence he any mental health issues during service that would warrant a mental health evaluation. His mental health condition to include PTSD does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition to include PTSD may excuse or mitigate his discharge, his mental health condition also does not outweigh his discharge.

The complete advisory opinion is at Exhibit R.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 24 Oct 22 for comment (Exhibit S), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the applicant has overcome the rationale expressed in the previous decision and notes there was no error or injustice with regard to the processing of his discharge. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The discharge was not unduly harsh or disproportionate to the offenses committed. Furthermore, the Board concurs with the rationale and opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition, specifically PTSD; however, since there is no evidence a mental health condition existed during service nor had a direct impact on his behaviors and misconduct resulting with his

discharge, his condition or experience does not excuse, mitigate, or outweigh 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. Furthermore, the Board acknowledges the applicant's contention that he was discriminated against and harassed; however, the preponderance of evidence does not substantiate the applicant's contention. Therefore, the Board recommends against correcting the applicant's records.

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 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 the 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-2006-00086-4 in Executive Session on 21 Dec 22:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit G: Record of Proceedings, w/ Exhibits A-F, dated 6 Apr 06.
- Exhibit L: Addendum Record of Proceedings, w/ Exhibits H-K, dated 24 Mar 15.
- Exhibit O: Second Addendum Record of Proceedings, w/ Exhibits M-N, dated 9 Sep 15.
- Exhibit P: Application, DD Form 149, w/atchs, dated 10 Mar 22.
- Exhibit Q: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 23 Aug 22.
- Exhibit R: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Oct 22.
- Exhibit S: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 22.

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.

12/4/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*

AFBCMR Docket Number BC-2006-00086-4

CUI//SP-MIL/SP-PRVCY