

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2006-00704

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request to upgrade her general (under honorable conditions) discharge to honorable.

RESUME OF THE CASE

The applicant is a former Air Force senior airman (E-4).

On 23 May 06, the Board considered and denied her request to set aside her general (under honorable conditions) discharge and change her discharge to a disability discharge, finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

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 F.

On 20 Dec 22, the applicant requested reconsideration of her request to upgrade her general (under honorable conditions) discharge. She again contends at her last duty station, she was married to a fellow military member who was an alcoholic with a fascination with guns and weapons, and tended to get abusive when he drank. She stayed with him because they had a baby. She was also still recovering from five surgeries she had on her stomach. One evening, her spouse left for a party with co-workers and called her later that night to tell her he had killed someone and was not coming home. She filed for divorce, but her spouse said he was not going to release their home to her, which meant she would have the house on her credit for years. The military then required that she testify against him, which scared her as he was good at intimidating her. She was horribly depressed, to the point where she attempted to end her life multiple times. After she woke from a coma, her parents took her son with them. To this day, she is still struggling. She is on a daily regimen of mood stabilizers, tranquilizers, and blood pressure medications. Bipolar and Post-Traumatic Stress Disorder (PTSD) never go away. Her ex-spouse was sentenced to 37 years but was recently released and tried to contact their son. The anxiety is awful and the memories from the past haunt her. Her [disability] rating is 100 percent, for which she is grateful, and means she will suffer from these things that happened to her mind, body, and life each and every day of her life.

Although the applicant did not provide new evidence in support of her reconsideration request, the Board waived that requirement as her previous case was adjudicated prior to release of current liberal consideration guidance.

The applicant's complete submission is at Exhibit G.

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 issued supplemental guidance (Kurta 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 the supplemental guidance, paragraphs 6 and 7.

On 22 Feb 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit I).

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, having considered the entire record, including the applicant's submission and contentions and all pertinent materials finds there is sufficient evidence to support the applicant's request for an upgrade of her discharge. The applicant is petitioning the Board to change the characterization of her service from under honorable conditions (general) to honorable. The applicant noted PTSD and Other Mental Health on her application. She is requesting her discharge be upgraded based on her service-connected disability, which is 100 percent, permanent and total.

This Psychological Advisor opines that her drug usage is mitigated and excused by her in-service diagnoses of bipolar disorder and PTSD. It is not uncommon in both diagnoses for individuals to self-medicate their symptoms to mask or ameliorate (numb) them. While she has multiple mental health diagnoses that were diagnosed while in service, this advisor advocates that it was primarily her bipolar disorder that made her seek an illegal substance (methamphetamine), but her other mental health and medical conditions are factors as well. Common symptoms of bipolar disorder include decreased need for sleep, racing thoughts, jumpiness, agitation, and poor decision-making. Manic episodes that occur during bipolar disorder can also trigger a break from reality (psychosis) causing even further disruption in normal cognitive functioning. Common complications of bipolar disorder that can result in serious problems include problems related to drug and alcohol use, suicide attempts, legal or financial problems, and poor work performance. Most, if not all of these, are noted in her medical records while she was in the military. She demonstrated increased reliance or desire to use medications to manage symptoms. There are several encounters in which she complained of medications not helping her and seeking higher doses of medications, as well as misuse/overuse of alcohol. Some encounters mention racing thoughts and sleep difficulties. She has attempted suicide on multiple occasions and has engaged in deliberate self-harm. All are symptoms and complications of bipolar disorder.

PTSD is likewise associated with drug usage to manage symptoms and has several overlapping features with bipolar disorder (anxiety, depression, sleep problems, racing thoughts, etc.). While methamphetamine may not be the drug of choice to manage these symptoms, it does produce a sense of euphoria, which may temporarily abate the symptoms of bipolar disorder and PTSD. Additionally, a person in a manic episode, which may appear psychotic, may not be rational in their attempts (choice of drug to use) to self-medicate. Finally, the applicant was in the process of being medically boarded for chronic constipation and abdominal pain, multiple abdominal surgeries, including hemicolectomy, with a preliminary rating of 10 percent. This condition, with noted pain, combined with her psychological struggles might lead her to self-medicate when she felt other prescribed medications were not effective.

The applicant is service-connected for bipolar disorder at 50 percent with her compensation and pension evaluation noting, *"The Claimant is also service-connected for the bipolar disorder. Previous service connection for this psychiatric disorder has been established."* The applicant is 100 percent service-connected for PTSD. Although it is noted that it existed prior to service, it was exacerbated during her military service. It noted the applicant's, *"Exacerbation was not previously addressed, but is evident given the Claimant's serious suicide attempt shortly after the murder and her testimony today and during the court martial that his murderous acts triggered memories and overwhelming pain from her childhood. It is more likely than not (greater than 50 percent probability) that the Claimant's PTSD was exacerbated by experiences while on Active Duty."*

A review of the available record finds there is sufficient evidence to suggest the applicant had a mental health condition that would mitigate and excuse her misconduct. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant is requesting her discharge be upgraded based on her service-connected disability, which is 100 percent, permanent and total. She is service-connected at 100 percent for PTSD and 50 percent for bipolar disorder.

2. Did the condition exist or experience occur during military service? The applicant was diagnosed with Bipolar II Disorder, PTSD, ADHD [Attention-Deficient/Hyperactivity Disorder], adjustment disorder with mixed anxiety and depressed mood, and Anxiety Disorder NOS [Not Otherwise Specified] while serving in the military.

3. Does the condition or experience excuse or mitigate the discharge? This Psychological Advisor opines that her drug usage is mitigated and excused by her in-service diagnoses of bipolar disorder and PTSD. It is not uncommon in both diagnoses for individuals to self-medicate their symptoms to mask or ameliorate (numb) them. While she has multiple mental health diagnoses that were diagnosed while in service, this advisor advocates that it was primarily her bipolar disorder that made her seek an illegal substance (methamphetamine), but her other mental health and medical conditions are factors as well.

4. Does the condition or experience outweigh the discharge? This Psychological Advisor opines that her drug usage is mitigated and excused by her in-service diagnoses of bipolar disorder and PTSD and that these conditions outweigh her discharge for methamphetamine use.

The complete advisory opinion is at Exhibit J.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 2 Aug 23 for comment (Exhibit K) 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 concludes the applicant is the victim of an error or injustice. The Board concurs with the opinion of the AFRBA Psychological Advisor that there is sufficient evidence the applicant had a mental health condition during her military service that would be considered a mitigating factor for the misconduct that caused her discharge. While the Board agrees there was no error in the original discharge process, the Secretary of the Air Force determination, upon review, to terminate action under the provisions of Air Force Instruction 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, was appropriate under guidance existing at that time, and was the basis for the Board's previous recommendation. However, the Board now recommends relief based on liberal consideration, finding the applicant's misconduct is mitigated by her diagnosed mental health condition, which also outweighs her discharge. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with her 14 Oct 05 discharge, be amended to reflect she was discharged with service characterized as honorable, a reentry code of 3K, 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-2006-00704 in Executive Session on 16 Nov 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 20 Jun 06.
Exhibit G: Application, DD Form 149, w/atch, dated 20 Dec 22.
Exhibit H: Documentary evidence, including relevant excerpts from official records.
Exhibit I: Letter, SAF/MRBC (Liberal Consideration and Clemency), dated 22 Feb 23.
Exhibit J: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Jul 23.
Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Aug 23.

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.

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Board Operations Manager, AFBCMR