

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2009-01070-2

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider her request for the following:

1. Her general (under honorable conditions) discharge be upgraded to honorable.
2. Her narrative reason for separation of "Alcohol, Rehabilitation Failure" be removed.

RESUME OF THE CASE

The applicant is a former Air Force airman (E-2) who was discharged on 3 Jun 05 for failure in an alcohol abuse treatment program, with a general (under honorable conditions) service characterization.

On 29 Sep 09, the Board considered and denied her request for a discharge upgrade; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. They found no indication the actions taken to affect her discharge and characterization of her service were improper, contrary to the provisions of the governing regulations in effect at the time or based on factors other than her own misconduct.

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 E.

On 8 Nov 21, the applicant requested reconsideration of her request for a discharge upgrade and change to her narrative reason for separation. She again contends she was discharged for medical reasons, and she should have been given an honorable discharge; she is currently rated at 100 disabled by the Department of Veterans Affairs (DVA). She was discharged as reprisal due to being a whistleblower. She reported a fellow service member for confessing murder to her and witnessed an assault on a civilian. Instead of an investigation being conducted for her reporting of these incidents, she received punishment for underage drinking. She reported during boot camp, she took a psychological examination showing she had mental health issues but instead of providing help to her or a medical discharge, she was told she "failed the exam" and was coached on how to take it properly and to do a re-test. She spent time in a psychological institution for suicidal ideation and after this time, she was interrogated and threatened by the Office of Special Investigations (OSI) stating she would never be allowed out of the Air Force unless she turned in people, she had witnessed using drugs. Two years later, the people she turned in tracked her down and threatened to kill her, which essentially amounted to the government sending assassins after her. There was a delay in this report because when she came

forward with this information in 2010, she was told by the DVA these facts were not true and she was having paranoid delusions and was forced to take medication to stay quiet.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) character references and (2) college transcripts.

The applicant's complete submission is at Exhibit F.

On 12 and 21 Jul 22, confirmation emails were received to indicate the applicant had not filed any complaints with the Inspector General's Office nor were there any reports found by the Office of Special Investigations (OSI) regarding the applicant's claims.

POST-SERVICE INFORMATION

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

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 her record. The applicant acknowledged she had paranoid delusions and so her contentions could not be corroborated. The applicant clearly had alcohol abuse issues during service as evidenced by her two alcohol related incidents of underage drinking, her entrance and participation in the Intensive Outpatient alcohol abuse program, and her subsequent Alcohol and Drug Abuse Prevention and Treatment (ADAPT) rehabilitation failure resulting with her discharge. There was evidence she was depressed and had suicidal thoughts with a plan following the revelation of her boyfriend's infidelity causing her to be admitted to inpatient psychiatric hospitalization also occurring during service. The applicant's hospital records reported she had a prior-service history of depression, suicidal ideation and attempt, and substance abuse issues, which were also reported by her military and DVA providers. These conditions are considered to be existed prior to service (EPTS). There was no evidence her EPTS conditions were permanently aggravated by her

military duties, or her military duties caused or triggered her underage drinking, depression, suicidal ideation or other emotional distress she had experienced during service. Her post-service DVA treatment records reflected treatment was focused on her prior-service and not military experiences. The applicant had reported her illegal drug use on the Report of Medical History form dated on 31 Oct 02 during her enlistment process but failed to report her significant mental health history of depression and suicide attempt and drinking issues that occurred prior to service. This could be considered fraudulent entry because these conditions would require a waiver to enter into the armed forces.

The applicant contends she was discharged for medical reasons. This statement is not accurate. She was discharged because she refused to participate in alcohol treatment offered and recommended by the ADAPT program; the applicant's alcohol issues necessitated her alcohol rehabilitation treatment with ADAPT. One could argue her mental state was impaired at the time of her decision because there was evidence she was in the stabilization process following her hospital discharge two months prior and had a history of depression; however, treatment notes from her military psychiatrist dated on 17 Mar 05, 31 Mar 05, and 27 Apr 05, which was around the time of her decision to cease ADAPT participation, reported her depressive symptoms have been improving and her condition was stable. Thus, there was no evidence her judgment and decision making were impaired. Treatment participation is voluntary, and her alcohol abuse treatment was and could not be mandated as it was her decision to make. Her ADAPT provider had encouraged her to continue with treatment and warned her of potential consequences, but she chose to terminate her treatment anyway. The military had attempted to provide help and treatment to her, but she was not amenable or receptive to these efforts. There was no error or injustice identified with the applicant's discharge as she had elected to no longer participate in the ADAPT program and was considered an ADAPT rehabilitation failure according to regulation of AFI 36-3208, *Administrative Separation of Airmen*.

The applicant had contended in her previous petitions to the Air Force Discharge Review Board (AFDRB) and the AFBCMR respectively, she had coped with her depression using alcohol. Although this is possible as co-occurring disorders are common, her conditions again, were considered to be EPTS and with no evidence they were permanently aggravated by her military service. She also reported receiving a service-connected disability from the DVA. For awareness, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of law, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

There was no evidence her EPTS condition of depression had elevated to potentially unfitting meeting criteria to be referred to the Medical Evaluation Board (MEB) for a medical discharge. She was placed on a duty limiting condition profile and was not worldwide qualified following her hospital discharge, but this is standard operating procedure to allow for continued monitoring and stabilization. Her treatment notes from her military psychiatrist after hospital discharge reported her depressive symptoms were improved and stable with psychotropic medication usage and treatment. Due to her improvement, a referral to the MEB was not necessary or required. She had alcohol issues, but her condition is considered unsuited and would meet criteria for an administrative discharge. She reported having paranoid delusions in her petition, but she was not diagnosed with bipolar I disorder and schizoaffective disorder until several years post-discharge and it appeared she developed these conditions post-service as indicated in her DVA treatment notes. There was no evidence her behaviors or conditions of paranoid delusions, bipolar disorder or schizoaffective disorder had existed or occurred during military service, and no evidence they had affected her behaviors and impaired her judgment and decision-making skills causing her discharge from service.

Liberal consideration is not required to be applied to the applicant's request due to her mental health condition being considered as EPTS with no service aggravation according to policy guidance. Should the Board elect to apply liberal consideration to her request, the following are answers to the four questions from the Kurta memorandum 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 contends she was discharged for a medical reason and requested an honorable discharge.

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

There is evidence the applicant had alcohol issues and depression during military service. She received alcohol abuse treatment following her first underage drinking incident, was hospitalized for having suicidal ideation with a plan caused by her boyfriend's infidelity, received intensive outpatient (IOP) treatment for alcohol abuse after hospital discharge, and received medication management services for depression after hospital discharge according to her service treatment records.

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

The applicant's mental health condition of alcohol abuse and depression were found and documented to have EPTS. Her hospital, military, and DVA treatment records reported she had a long history of these issues prior to service, and she did not report this significant history during her enlistment process. There was no evidence her EPTS conditions were aggravated by her military service and so her mental health condition would not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since her mental health condition does not excuse or mitigate her discharge, her condition also would not outweigh her discharge. The applicant chose to discontinue her participation in the

ADAPT program resulting with her ADAPT rehabilitation failure discharge and as a result, there was there no error or injustice with her discharge.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 4 May 22 for comment (Exhibit H) 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 majority concludes the applicant is not the victim of an error or injustice. The Board majority concurs with the rationale 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; however, the Board majority finds her mental health condition of alcohol abuse and depression to have EPTS with no evidence of service-aggravation, therefore, her condition or experience does not excuse, mitigate, or outweigh her discharge. In the interest of justice, the Board majority considered upgrading the discharge to ensure fundamental fairness; however, given the limited post-service evidence presented, and in the absence a criminal history report, the Board majority finds no basis to do so. Therefore, the Board majority recommends against correcting the applicant's records. The Board majority encourages the applicant to apply in the future and provide additional evidence such as post-service certificates of achievements, civilian memberships, volunteer work, and additional character references or letters of appreciation.
4. The applicant alleges she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC § 1034). By policy, reprisal complaints must be filed within one year of the alleged incident or discovery to facilitate the inspector general (IG) investigation. However, the applicant has not provided any evidence that she filed an IG complaint alleging reprisal. Nevertheless, the Board reviewed the complete evidence of record to reach its own independent determination of whether reprisal occurred. Based on the Board's review, the applicant has failed to provide substantial evidence to establish that she was reprised against for making a protected communication. Therefore, in the absence of persuasive evidence to the contrary, the Board does not find that the applicant has been the victim of reprisal.
5. 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2009-01070-2 in Executive Session on 24 Aug 22:

, Panel Chair
, Panel Member
, Panel Member

A majority of the panel voted against correcting the record. XXXXX voted to correct the record and provided a minority opinion (Exhibit J). The panel considered the following:

Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 29 Sep 09.
Exhibit F: Application, DD Form 149, w/atchs, dated 8 Nov 21.
Exhibit G: Advisory Opinion, AFRBA Psychological Advisor, dated 3 May 22.
Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 4 May 22.
Exhibit I: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 11 Jul 22.
Exhibit J: Minority Opinion, dated 14 Sep 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR