

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2010-00270

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his general (under honorable conditions) discharge to an honorable discharge and change his narrative reason for separation from "Misconduct" to "Secretarial Authority."

RESUME OF THE CASE

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

On 4 Nov 10, the Board considered and denied his request to upgrade his general (under honorable conditions) discharge and change his narrative reason for separation from "Misconduct" to "Secretarial Authority," finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

In an undated letter to the Board, the applicant requested reconsideration of his request to upgrade his general (under honorable conditions) discharge and change his narrative reason for separation from "Misconduct" to "Secretarial Authority." The applicant contended his request was based upon new evidence related to the lack of an assessment by a Medical Evaluation Board (MEB) for bipolar disorder (BPD) while he was serving on active duty. The applicant provided a detailed account of how BPD is diagnosed to support his contention. The applicant further contended at the time of his discharge, base mental health clinics were overwhelmed with patients experiencing Post-Traumatic Stress Disorder (PTSD), and he speculated on how providers were addressing the additional workload. The applicant further contended he was misdiagnosed while serving, and since the Department of Veterans Affairs (DVA) awarded him service-connection with a 50 percent disability rating, his request for relief should be granted.

On 13 Dec 12, the Board again denied the applicant's request, finding the statements submitted by the applicant in his undated letter did not meet the criteria for reconsideration. As the applicant was previously advised, reconsideration is provided only where newly discovered relevant evidence, if presented, was not available when the original application was submitted. Further, the reiteration of facts previously addressed, uncorroborated personal observations, or additional arguments on the evidence of record are not adequate grounds for reopening a case.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Air Force Board for Correction of Military Records (AFBCMR) Letter and Record of Proceedings at Exhibit J.

On 20 Aug 24, the applicant requested reconsideration of his request to upgrade his general (under honorable conditions) discharge and change his narrative reason for separation from "Misconduct" to "Secretarial Authority." He contends his request is a result of the new guidance regarding mental health conditions related to discharge upgrades and is based on a recent decision in a class action lawsuit, *Johnson et al v. Kendall*, which was only recently decided in

court. Additionally, the applicant pointed out the BCMR Medical Consultant's evaluation in his original case stated, "Should the Board consider the applicant's disorders as mitigating factors in his pattern of misconduct, then it would be appropriate to consider an upgrade of discharge to honorable and change the narrative reason to Secretarial Authority." The consultant's recommendation was to upgrade his discharge. In support of his reconsideration request, the applicant submitted an employment notification, dated 3 Jul 24.

The applicant's complete submission is at Exhibit K.

POST-SERVICE INFORMATION

On 27 Jan 25, the Board staff sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

APPLICABLE AUTHORITY

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 27 Jan 25, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit M).

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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge.

There is insufficient evidence the applicant met the criteria for BPD during his military service or at discharge. The applicant was evaluated by mental health on numerous occasions and was never diagnosed with BPD. This is likely a result of not meeting the diagnostic criteria for BPD at the time. He was seen for approximately nine encounters. The previous advisor noted that despite being diagnosed with adjustment disorder and a possible personality disorder, the applicant was only diagnosed with relational, occupational, and life circumstances problems. His discharge/separation examination did not find any medical issues and concluded the applicant did not have any mental health problems. This Psychological Advisor concludes the applicant was not diagnosed with BPD while in the military or at discharge, as he did not meet the criteria for a BPD diagnosis.

The applicant was not diagnosed with BPD until two years after discharge and was not service connected for BPD until 2008, three years after his military discharge. The applicant contends he saw mental health while he was in service. While this is true, he was never diagnosed with BPD. The applicant even denied recalling having any manic episodes (a primary diagnostic criterion for a Diagnostic and Statistical Manual of Mental Disorders diagnosis of BPD). It should be noted the DVA 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 of 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.

The previous medical consultant noted: "Further, there is evidence that the applicant's initial claim to the DVA was met with a denial of service-connection for his BPD, principally because of a lack of evidence in the applicant's service records of treatment for a diagnosed compensable mental impairment. The applicant was ultimately successful in his appeal to the DVA and he was granted service-connection with a 50% disability rating. This was based largely upon the applicant's post-service clinical symptoms, which were more diagnostic of a BPD, as shown in

the episodes of care with [provider] in Oct and Nov 06 above. In this case, the DVA exercised its prerogative to render the applicant service-connection for BPD, even though it was not a diagnosable ailment during the applicant's military service." As noted above, the DVA is able to reevaluate an applicant's post-service condition as it may worsen. This Psychological Advisor concurs that the applicant's BPD was not diagnosable during his military service as he did not meet the criteria.

This Psychological Advisor concludes the applicant did not have any mental health condition that would mitigate or excuse the substantive degree, if not all, of his misconduct (over 20 separate disciplinary actions). His mental health conditions of adjustment disorder, relational problems, occupational problems, and life circumstances problems are not part of the sequelae of symptoms associated with his misconduct. The previous medical consultant stated: "Should the Board consider the applicant's disorders as mitigating factors in his pattern of misconduct, then it would be appropriate to consider an upgrade of discharge to honorable and a change in narrative reason for discharge to Secretarial Authority." This Psychological Advisor disagrees with this past consultant's suggestion and does not recommend the Board consider an upgrade of his discharge as his mental health condition does not mitigate or excuse his misconduct.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. 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 check-marked "Other Mental Health" on his application.

2. Did the condition exist, or experience occur, during military service?
The applicant was diagnosed with adjustment disorder and relational, occupational, and life circumstances problems while in the military. There is insufficient evidence that he had BPD while in the military or at discharge. The applicant was evaluated by mental health on numerous occasions and was never diagnosed with BPD. This is likely a result of not meeting the diagnostic criteria for BPD at the time. He was seen for approximately nine encounters. The applicant was not diagnosed with BPD until two years after discharge and was not service-connected for BPD until 2008, three years after his military discharge.

3. Does the condition or experience excuse or mitigate the discharge?
This Psychological Advisor concludes the applicant did not have any mental health condition that would mitigate or excuse the substantive degree, if not all, of his misconduct (over 20 separate disciplinary actions). His mental health conditions of adjustment disorder, relational problems, occupational problems, and life circumstances problems are not part of the sequelae of symptoms associated with his misconduct. This Psychological Advisor disagrees with the past consultant's suggestion and does not recommend the Board consider an upgrade of his discharge as his mental health condition does not mitigate or excuse his misconduct.

4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Feb 25 for comment (Exhibit O) 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 evidence presented demonstrates an error or injustice. The Board 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; however, the applicant did not have any mental health condition that would mitigate or excuse his multiple acts of misconduct. His mental health conditions of adjustment disorder, relational problems, occupational problems, and life circumstances problems are not part of the sequelae of symptoms associated with his misconduct.

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. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2010-00270 in Executive Session on 6 Jun 25:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit J: Addendum Record of Proceedings, w/ Exhibits A-I, dated 27 Dec 12.
- Exhibit K: Application, DD Form 149, w/atch, dated 20 Aug 24.
- Exhibit L: Documentary evidence, including relevant excerpts from official records.
- Exhibit M: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 27 Jan 25.
- Exhibit N: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Feb 25.
- Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Feb 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.

X _____

Board Operations Manager, AFBCMR