



**CUI//SP-MIL/SP-PRVCY**

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

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**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

*Attorney-Client*

**DOCKET NUMBER:** BC-2010-01967-2

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**RESUME OF THE CASE**

The applicant is a former Air Force airman basic (E-1) who was discharged on 29 Sep 69.

On 10 Feb 11, the Board considered and denied his request to upgrade his discharge; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board found no evidence an error or injustice occurred in the discharge processing. The applicant provided no evidence which would have led the Board to believe the characterization of the service was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. The Board noted the documentation submitted in support of his post-service activities; however, did not find it sufficient to support changing his characterization of discharge.

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 18 May 22, the applicant requested reconsideration of his request for a discharge upgrade. He again contends his character of service does not reflect the quality of his military service. He was given a general discharge because he confronted information that was given to him by his recruiter which turned out to be false. In support of his reconsideration request, the applicant submitted his complete military medical records and several Department of Veterans Affairs (DVA) disability rating decisions.

The applicant's complete submission is at Exhibit L.

**AFBCMR Docket Number BC-2010-01967-2  
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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

## **POST-SERVICE INFORMATION**

On 12 Nov 22, the Board sent the applicant a request for additional post-service information; however, he has not replied. This request advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit H). In the applicant's original case, an FBI report dated 1 Jul 10 and post-service information was provided to the Board for consideration. According to the report, the applicant had no arrests since discharge.

The complete response is at Exhibits C and 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 Post-Traumatic Stress Disorder (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 paragraphs 6 and 7 of the Wilkie memorandum.

On 12 Nov 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

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. There was evidence the applicant had alcohol issues, anxiety, depressed mood, and sleep disturbances during service; however, the causes of these issues were not clarified in his records nor by the applicant. His first documented potential issue with alcohol was on 30 Mar 68 when he was evaluated for alcoholism, and it appeared there were no issues found. He was seen at the emergency room (ER) on 25 Jul 68 for anxiety, but no explanation was provided for triggers of his anxiety. He was escorted to the ER on 26 Aug 68 after being relieved from duty and the applicant reported not being able to perform his duties and handle weapons safely because of his intoxicating state. He was noted to have depression and an acute anxiety reaction that was again not clarified in his records such as the cause of these concerns. It appeared he was evaluated by a mental health provider during this hospital visit and was not recommended to be admitted. His admission to the hospital was cancelled after the evaluation for reasons unknown; the evaluation report was unavailable. His records were silent for any reported alcohol and emotional distress issues after this visit for about a year. On 9 Aug 69, he was seen by a mental health provider by request of his first sergeant presumably related to his alcohol issues because he was found drunk in station and had broken base restriction around this time. The provider did not find he had any characterological diagnosis or personality disorder. He was not given any mental disorder diagnosis by this provider. He would be seen a few more times by his Primary Care Manager

(PCM) for various issues after this evaluation and was noted to be intoxicated or had alcohol on his breath during the visits. He completed a separation physical examination with his PCM and his PCM reported he had been having sleep problems for a year, infrequent nightmares for seven years (existed prior to service), and his depression and worry were related to situational depression. Again, there was no clarifying information about his situational depression although at this time, he was undergoing discharge procedures and had informed the DVA he struggled with his discharge and had problems after his discharge from service.

The applicant was noted to have engaged in at least one alcohol-related incident of being drunk in station on 6 Aug 69, which was reported to be later in the day or after he had received an Article 15 for misconduct and substandard performance of duty, loitering on post, and being absent without leave (AWOL) from 2 to 4 Aug 69. It was plausible he drank in response to the stressor of receiving disciplinary action caused by his own misconduct. His two other Article 15's and letter of reprimand (LOR) were for similar recurring misconduct problems and no indication they were caused by his mental health condition. The applicant did not provide an explanation for how his mental health condition had affected his behaviors and misconduct causing his discharge from service for this petition. He submitted a letter from the DVA reporting he received an increase in disability rating for PTSD but this letter nor his DVA treatment records identified his traumatic experience. He reported to his DVA provider on 28 Jun 18 he was frightened by booms on his first day in Vietnam and would be fearful while screening Vietnamese individuals who entered base for their jobs. This experience was not identified to be his traumatic experience causing him to develop PTSD, and he was not given a diagnosis of PTSD at the time. He was diagnosed with PTSD two years later in Sep 20 with no sufficient information provided. His records, in particular his Commander's Report, stated all his documented misconduct from the period of Jun 69 to Aug 69 that caused his discharge occurred in Vietnam. It is possible his behavioral problems may stem from being in Vietnam; however, the applicant was reported to have problems with alcohol, anxiety, and depression prior to his time in Vietnam. This was evidenced by his hospital visit at **Attorney-Client** on 26 Aug 68 for being unable to perform his duties because he was intoxicated and was noted to have acute anxiety reaction and depression. Thus, he already had pre-existing drinking, anxiety, and depression prior to his time in Vietnam. There was no evidence he had PTSD during service; however, acute anxiety reaction could possibly be a precursory condition to PTSD and is a similar condition to PTSD. It appeared his acute anxiety reaction had resolved because there were no follow-up visits for this condition and no report of any continuing issues with anxiety following this hospital visit. A year later while he was in Vietnam, his problems with drinking, anxiety, and depression recurred. The latter two issues of anxiety and depression were identified to be situational by his PCM during his separation physical examination, possibly related to his disciplinary and discharge action. His PCM also reported he had infrequent nightmares for seven years, which would indicate his sleep disturbances or anxiety had existed prior to service. An explanation he did provide to his leadership at the time of service for failing to report/sign into his squadron and being AWOL from on around about 9 to 18 Aug 69, was because no one told him to report for duty. When counseled again for failing to report to Special Guard mount duty on 18 Jul 69, he stated he understood his responsibilities and would perform his duties as required. A mental health evaluation reported he had a history of passive resistance to authority such as sleeping on post, not getting up, and not reporting to his squadron and he felt persecuted. There was no indication from any of these sources his behaviors were

caused by his mental health condition but more likely than not, a result from his own misconduct and behaviors.

The applicant made no contentions regarding his mental health condition but rather, contends he was given a general discharge because he confronted the information he was given by a military recruiter, which turned out to be false once he was inducted into service. It was possible he was referring to being informed he could complete college courses while being in the service simultaneously as he had contended in his previous petition to the AFBCMR. However, there was no evidence to support his allegation. Since the applicant did not provide any compelling contention for how his mental health condition had caused his misconduct and behaviors during service resulting with this discharge, a nexus between his mental health condition and discharge was not established. Inferences could be drawn but the responsibility and burden of proof rest with the applicant to provide the necessary information to support his request. Therefore, the Psychological Advisor finds no error or injustice with his discharge from a mental health perspective.

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 did not make any mental health condition contentions and did not discuss he had a condition or experience that may excuse or mitigate his discharge. He stated his general discharge was related to information he was given by his military recruiter that turned out to be false; he did not discuss the information he referenced. He submitted a letter from the DVA reporting he received an increase in rating from 50 percent to 70 percent for PTSD effective on 23 Nov 20.

2. Did the condition exist or experience occur during military service?  
There is no evidence the applicant's mental health condition of PTSD had existed during military service. He was diagnosed with PTSD by the DVA over 40 years post-discharge but the rationale for this diagnosis was not provided. He was reported to having problems with alcohol, anxiety, and depression during service and received a mental health evaluation that found he did not have a characterological/personality disorder diagnosis. His anxiety and depression were reported to be situational, and his nightmares had existed prior to service per his PCM from his separation physical examination.

3. Does the condition or experience actually excuse or mitigate the discharge?  
There is no evidence the applicant's mental health condition caused his misconduct resulting with his discharge from service. The applicant also did not provide any explanation for how his mental health condition may excuse or mitigate his discharge. The responsibility and burden of proof is placed on the applicant to provide the necessary information to support his request. The available information presented was found to be insufficient to support his request. Therefore, his condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's condition or experience does not excuse or mitigate his discharge, his condition or experience also does not outweigh his discharge.

The complete advisory opinion is at Exhibit I.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 27 Dec 22 for comment (Exhibit J) 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 not the victim of an error or injustice. 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. Additionally, 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. Specifically, the Board found no evidence he suffered from PTSD while in the service and found his use of alcohol a contributing factor to his misconduct and not as a coping mechanism for a mental health illness. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim that a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

### **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 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-2010-01967-2 in Executive Session on 22 Feb 23:

*Attorney-Client* [Redacted] Panel Chair  
[Redacted] Panel Member  
*Attorney-Client* [Redacted] Panel Member

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

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 10 Feb 11.
- Exhibit G: Application, DD Form 149, w/atchs, dated 18 May 22.
- Exhibit H: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 12 Nov 22.
- Exhibit I: Advisory Opinion, AFRBA Psychological Advisor, dated 12 Dec 22.
- Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Dec 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.

12/28/2023

*Attorney-Client* [Redacted] \_\_\_\_\_  
Board Operations Manager, AFBCMR  
Signed by: *Attorney-Client* [Redacted]