

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXX

DOCKET NUMBER: BC-2010-03569-2

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request for the following:

1. His general (under honorable conditions) discharge be upgraded too honorable.
2. His narrative reason for separation and corresponding separation code be changed to "Disability (Other)" and "XET."
3. His reentry (RE) code be changed to a "3," which denotes an immediate barring from reenlistment.
4. In the alternative, any upgrade and changes to his separation/reenlistment indicators deemed appropriate by the Board.

RESUME OF THE CASE

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

On 29 Jun 11, the Board considered and denied his request for a discharge upgrade and to have his narrative reason for separation changed to a medical separation/retirement; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board took note of the applicant's complete submission, to include his response to the Air Force evaluation in judging the merits of the case; however, they agreed with the opinions and recommendations of HQ AFPC/DPSOS and the AFBCMR Medical Consultant and adopted their rationale as the basis for their conclusion the applicant had not been the victim of an error or injustice.

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 8 Dec 22, the applicant requested reconsideration of his request for a discharge upgrade and a change to his separation/reenlistment indicators on his DD Form 214, *Certificate of Release or Discharge from Active Duty*. He now seeks reconsideration of his request based on the Hagel and Kurta Memos regarding liberal consideration for mental health conditions. He again contends he is not proud of the way his Air Force career ended and is not running away from accepting responsibility for his actions and shows remorse. His diagnosis of Major Depressive Disorder

(MDD) with severe psychotic features impaired his thinking and perception and was the cause of his behavioral changes which led to his misconduct and discharge. With the help of his family and the Department of Veterans Affairs (DVA) he is improving in his work and education. Because of the invisible wounds he suffered from serving his nation, it ended his passion to serve, and he is still suffering from the effects of his mental illness.

In support of his reconsideration request, the applicant submitted the following new evidence: 1) his DVA rating from 2016; and 2) a copy of his Pharmacy Technician's License.

The applicant's complete submission is at Exhibit H.

STATEMENT OF FACTS

On 23 Apr 10, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for MDD, severe, recurrent with psychotic features.

On 16 Jul 10, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of MDD, severe with psychotic features with a disability compensation rating of 50 percent with a recommendation of "Temporary Retirement."

On 26 Jul 10, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings of the board and waived his rights to a formal hearing.

On 8 Sep 10, the Secretary of the Air Force directed the applicant be discharged per AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2 for conduct prejudicial to good order and discipline and terminated the action in regards to his disability evaluation case per AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. The board found no causal relationship between his medical condition and his misconduct.

On 17 Sep 10, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Other)" with a corresponding separation code of "JKM" and a RE code of "2B," which denotes "Separated with a general or under-other-than-honorable-conditions discharge."

For more information, see the excerpt of the applicant's record at Exhibit B, the previous ROP's statement of facts at Exhibit G, and the advisory at Exhibit J.

POST-SERVICE INFORMATION

On 12 Dec 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, he 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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 12 Dec 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 his record. As stated in the previous advisory, the applicant's discharge was adjudicated by the Secretary of the Air Force Personnel Council (SAFPC) on 8 Sep 10 as a dual-action case for involuntary administrative discharge or medical discharge. He was previously notified of administrative discharge action on 1 May 10, by his commander for engaging in a pattern of misconduct consisting of receiving a Letter of Reprimand for being disrespectful to two noncommissioned officers (NCOs), an Article 15 for disobeying an order by a NCO to put his phone away, not to have contact with another airman, and failed to go at the time prescribed to his appointed place of duty, and a second Article 15 for attempting to steal a bottle of perfume at the Army and Air Force Exchange Service. On 16 Jul 10, he was found unfit by the IPEB for his mental health condition of MDD, Severe with Psychotic Features with a proposed rating of 50 percent and to be placed on the Temporary Disability Retired List (TDRL). SAFPC deliberated his case and considered a potential mitigating factor or effect of his mental health condition on his behaviors and determined "there was not adequate evidence his disease was the source of his disciplinary infractions." SAFPC determined his involuntary administrative separation action was appropriate and he was discharged from service for reasons of misconduct. The medical consultant concurred with SAFPC's decision stating, "the Medical Consultant could not establish a causal or mitigating nexus between the applicant's disciplinary infractions and his diagnosed mental disorder" and "although the applicant's Depressive Disorder initially presented with psychotic features, e.g. auditory hallucinations, the evidence is insufficient to show he was unable to distinguish right from wrong at the time of his committed offenses (disrespect, twice failure to follow an order, and an attempted price alteration)." The previous AFBCMR Board also concurred with these opinions during an executive session on 29 June 11 and denied his request citing these findings and because there was no existence of any material error or injustice with his discharge.

The Psychological Advisor also concurs with SAFPC's and the Medical Consultant's opinions. The applicant did develop a mental health condition that eventually made him unfit for continued

military service. However, it is also noted in his psychological evaluation dated 15 Apr 10 that possible precipitating factors or events that may cause his depression with psychotic features were a recent divorce, new country, and language, getting into trouble at work and investigation regarding a charge in Ghana, and entering the States fraudulently. Some of these issues had occurred prior to his service, some not related to his military service, and some were caused by his own misconduct. The Psychological Advisor recognizes the applicant had acculturation issues that was also acknowledged in the previous medical advisory, and it may cause some of his misconduct such as being disrespectful or miscommunicating with his NCO but could not completely explain or excuse his remaining misconduct. The applicant is requesting liberal consideration be applied to his petition and the Psychological Advisor agrees his petition does warrant liberal consideration because of his contention of a mental health condition. Nevertheless, applying liberal consideration to his request also does not warrant an upgrade of his discharge, medical discharge, or other desired changes to his records. The applicant contends his diagnosis of MDD, Severe with Psychotic Features impaired his abstract thinking and perception causing a change in his behaviors. While this was a possibility and the applicant may have had these experiences during service, the nature of his documented misconduct was not consistent or would be caused by a mental health condition. He may have had impaired judgment and poor decision-making skills and as the medical consultant had stated, he knew the difference between right and wrong. He had no cognitive deficits or impairments that would cause his maladaptive behaviors and thought process. SAFPC and the Medical Consultant both determined his mental health condition was not a mitigating factor to his disciplinary infractions. The applicant did not provide any additional or new evidence or provide a compelling personal testimony that would be sufficient to overturn SAFPC's and the AFBCMR's previous decisions. Therefore, the Psychological Advisor also finds insufficient evidence has been presented to demonstrate his mental health condition had a direct impact to his disciplinary infractions and discharge and there was no error or injustice identified with his discharge.

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 is requesting a reconsideration of his previous petition. He believed his diagnosis of MDD with Severe Psychotic Features had impaired his abstract thinking and perception causing some changes in his behaviors that resulted in a series of misconduct and subsequent discharge.
2. Did the condition exist or experience occur during military service?
The applicant's mental health condition of MDD, Severe with Psychotic Features had existed and occurred during military service. The IPEB determined this condition was unfit for continued military service and proposed a rating of 50 percent and placement on the TDRL.
3. Does the condition or experience excuse or mitigate the discharge?
SAFPC and the medical consultant determined there was insufficient evidence to demonstrate a causal or mitigating nexus existed between the applicant's disciplinary infractions and mental health condition. The Psychological Advisor concurs with their opinions and finds his mental

health condition did not have a direct impact or was a mitigating factor to his misconduct and subsequent discharge. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

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 9 Jan 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 remains unconvinced the evidence presented demonstrates 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. Therefore, 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 to the applicant's request due to the contention of a mental health condition; however, he had no cognitive deficits or impairments that had a direct impact on his behaviors and misconduct resulting with his discharge; therefore, his condition or experience does not excuse, mitigate, or outweigh his discharge. The nature of his documented misconduct was not caused by a mental health condition; he knew the difference between right and wrong. 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 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-2010-03569-2 in Executive Session on 22 Mar 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit G: Record of Proceedings, w/ Exhibits A-F, dated 29 Jun 11.
Exhibit H: Application, DD Form 149, w/atchs, dated 8 Dec 22.
Exhibit I: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 12 Dec 22.
Exhibit J: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Jan 23.
Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jan 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.

X

Board Operations Manager, AFBCMR