

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXX

DOCKET NUMBER: BC-2013-00359

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

RESUME OF THE CASE

The applicant is a former Air Force airman (E-2).

On 30 Sep 14, the Board considered and denied his request to upgrade his discharge from general (under honorable conditions) to honorable finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority. The applicant provided no evidence the characterization of service was contrary to the provisions of the governing regulations, unduly harsh, or disproportionate to the offenses committed. The Board considered upgrading the applicant's discharge based on clemency; however, after considering his overall record of service and the infractions that led to his administrative separation, the Board was not persuaded an upgrade was warranted.

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 F.

On 1 Mar 23, the applicant requested reconsideration of his request to upgrade his discharge from general (under honorable conditions) to honorable. He contended as an 18-year-old, he volunteered for K-9 duty. Working at night was a change for him. He and fellow troops would have breakfast at the Airmen's Club where they could drink beer. Before long, he would stay and drink when he should have been sleeping. It had a great impact on his performance. By the time he left Korea for his next duty station, he was drinking every day and also taking drugs. He was fortunate to rehabilitate from the drugs, but alcoholism stayed with him for years after. In support of his reconsideration request, the applicant submitted the following new evidence: (1) Character Reference, Alcoholics Anonymous Sponsor, dated 2 Sep 22; (2) Character Reference, personal friend, undated; and (3) Cover letter to his congressman, dated 7 Sep 22.

The applicant's complete submission is at Exhibit G.

On 20 Jun 23, 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 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 20 Jun 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit I).

Air Force Instruction (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.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

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 change to his record.

The applicant was discharged from service for having an unsuited mental health condition identified as sociopathic personality disorder. This condition was determined to have existed prior to service (EPTS) and was mild to moderately chronic in severity. The mental health provider cited his extensive drug abuse history (prior to and during service), prior-service legal and conduct problems, and misconduct problems in the Air Force as the personality traits meeting the diagnostic criteria for his personality disorder. His diagnosis was appropriate and valid based on the information presented and in accordance with the diagnostic criteria of this condition. His Department of Veterans Affairs (DVA) post-service treatment records found no evidence his mental disorder diagnosis given during service was made in error. The applicant provided no evidence his diagnosis or discharge was made in error or was unjust. His mental health evaluations and medication management services from his Primary Care Provider at the DVA were focused on his anxiety and sleep problems developed from his post-service stressors. There is no evidence he had anxiety disorder NOS [Not Otherwise Specified] or similar conditions during service. He was observed to be anxious during his Special Treatment Center's (STC) mental health evaluation during service, but it was one symptom and did not meet the diagnostic criteria for an anxiety disorder. There is no evidence the applicant's EPTS condition of sociopathic personality disorder was service-aggravated by his military duties.

The applicant contends he began to have alcohol issues while stationed in Korea that continued on in his next duty station and had an impact on his performance, causing his discharge. There is evidence the applicant received a Letter of Reprimand (LOR) for operating a vehicle while impaired and was intoxicated in a public place; however, his military records did not clearly specify he was intoxicated with alcohol and only stated he was impaired and intoxicated. It is possible his impaired and intoxicated state were caused by his illicit drug use and there was ample documentation of his drug use during service. Furthermore, when he was evaluated for the STC's substance abuse treatment on 3 Nov 71, he did not report abusing alcohol and he was not given any alcohol use disorder diagnosis. Therefore, there is no actual evidence he had confirmed problems with alcohol during service as he contends. He did disclose in his statement

regarding his Absent Without Leave (AWOL) at the time of service that he was “drinking some wine” when he became stressed with the realization that he was not financially able to pay his legal fines and decided to go AWOL. It appeared from his statement his decision to go AWOL was more aligned with the financial stressors caused by his legal problems than from alcohol intoxication. It is not certain how intoxicated he was at the time of his decision and how much alcohol impacted his decision, but he was AWOL for 10 days, and there is no evidence to suggest he was intoxicated the entire time during AWOL. His decision to remain AWOL for an extended period does not appear to be influenced by his alcohol-intoxicating state or alcohol problems. There is no evidence he had alcohol-related incidents impacting his performance as he claims. Even if he possibly had alcohol problems during service, his alcohol problems were not the primary cause or reason for his discharge. He was discharged for having an unsuiting personality disorder which was manifested by his patterns of misconduct as reflected by his three Article 15s for sitting while posted as a sentinel, failing to go to his appointed place of duty, and being AWOL from 8 Sep 71 through 17 Sep 71, until he was apprehended by civil police, and by his maladaptive behavioral problems of extensive drug abuse (illicit drugs) and negative results with drug rehabilitation treatment. His alcohol problems, if any, played a very minor or non-existent role in his reason(s) for discharge. He had submitted two personal statements to explain his AWOL and to appeal his Article 15 punishment during service. He did not mention having any alcohol, drugs, or any other mental health conditions such as anxiety, depression, trauma, etc. that may have caused his misconduct.

The applicant’s unsuiting personality disorder was the cause of his poor behavioral and misconduct problems resulting in his subsequent discharge from service. There are various types of mental health conditions, and the mental health conditions he had during service, i.e., personality disorder and polysubstance abuse, are unsuiting conditions for military service. His mental health evaluation during service reported the applicant stated he stopped using I.V. [intravenous] heroin when he entered the service but resumed use of I.V. heroin because of increased stress and upon returning to the U.S. from his overseas assignment in Korea. His stressors were not clarified and there was no clear and unmistakable evidence that his stressors and I.V. heroin use were related or caused by his military service and duties. There is no evidence he had other types of mental health conditions such as anxiety disorders, depressive or mood disorders, posttraumatic stress disorder or trauma or stressor-related disorders, psychotic disorders, etc. that caused him to use or cope with alcohol or drugs and/or contributed to his acts of misconduct. There is no evidence he had any of these conditions impairing his judgment at the time of any of his misconduct. This impression is corroborated by the applicant’s endorsement of not having any mental health condition or symptoms during his separation physical examination with his Primary Care Manager. He apparently received a mental health evaluation sometime in or around Mar 71 and was given a diagnosis of situational adjustment reaction as a result of, or in response to, his legal and misconduct problems. This diagnosis was not a factor or reason for his discharge and did not cause any of his misconduct. This psychological advisor acknowledges the applicant had sustained a blow to the right side of his head a few weeks prior to his admission to the STC’s substance abuse treatment program. His mental health evaluation performed on 3 Nov 71 reported he was administered a battery of neuropsychological tests, and it was suggested he had questionable organic brain syndrome that was described as transient and mild. He was evaluated by a neurologist at Wilford Hall Hospital and no evidence of a disease of the nervous system was detected. He was determined to have no overt thought disorder from the evaluation during service as well. There is no evidence he had any long-term cognitive impairments or deficits from the head injury per his post-service DVA treatment records and no evidence the residual effects of his head injury had interfered with his ability to function in the military, impacted his duty performance, caused his misconduct and discharge, was a contributing factor to his discharge, and/or caused him to not be amenable to substance abuse rehabilitation treatment. He had misconduct problems pre-dating his head injury. The applicant did not address his unsuiting personality disorder or series of misconducts

in his petition and did not discuss having any other mental health conditions besides alcohol issues potentially causing his discharge in his current petition to the AFBCMR.

The applicant was furnished with an under honorable conditions discharge, also known as a general (under honorable conditions) discharge. The applicant's commander, the Air Force Discharge Review Board, and prior AFBCMR consideration had all determined his discharge characterization was appropriate and congruent to his patterns of misconduct and characterization of his service as a whole. This psychological advisor concurs with their opinions and adds that although his unsuiting personality disorder may explain his behaviors and caused his discharge, his personality disorder/mental health condition does not excuse or mitigate his numerous misconducts and discharge. He had engaged in serious offenses, especially being AWOL for 10 days and no evidence his mental health condition of anxiety, depression, posttraumatic stress, etc. caused him to be AWOL. To reiterate, his personality disorder may cause or explain his poor decision, but his personality disorder condition was EPTS, and there is no evidence it was service-aggravated by his military service or duties. As a result, this psychological advisor finds no error or injustice with his discharge from a mental health perspective and insufficient evidence to support his request for an upgrade of his discharge based on his mental health condition.

Liberal consideration is applied to the applicant's request due to his contention of a mental health condition of having alcohol problems. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he began to have alcohol issues while stationed in Korea that continued on in his next duty station and had an impact on his performance, causing his discharge.

2. Did the condition exist or experience occur during military service?
There is no actual evidence the applicant's alcohol problems had existed during military service. It was implied he may have alcohol issues as he had received an LOR for driving while impaired and public intoxication; however, the substance was not identified. He received a mental health evaluation for STC substance abuse treatment during service and did not report having any alcohol problems nor was he given any alcohol use disorder diagnosis. He was given diagnoses of probable sociopathic personality disorder, existent prior service – mild to moderate chronic; drug abuse, heroin, marijuana; drug experimentation, LSD, speed, mescaline; enuresis; and transient, mild, acute, organic brain syndrome secondary to injury from the evaluation. He reported having some wine at the time when he became distressed about his financial situation leading to his decision to go AWOL. It is uncertain from his statement how intoxicated he was at the time and how much of an impact his alcohol intoxication contributed to his decision to go AWOL. There was no evidence he abused alcohol during his 10-day AWOL. He was also given a diagnosis of situational adjustment reaction from a different mental health evaluation occurring sometime in Mar 71, developed from the stressors of his legal and misconduct/disciplinary problems. This condition was not a factor in his discharge.

3. Does the condition or experience actually excuse or mitigate the discharge?
The applicant was discharged from service for having an unsuiting personality disorder of sociopathic personality disorder that was EPTS and there is no compelling evidence it was service-aggravated by his military service or duties. His unsuiting personality disorder was manifested by his patterns of maladaptive behaviors and misconduct. There is no error identified with his personality disorder diagnosis. His unsuiting personality disorder/mental health condition may explain or cause his misconduct and discharge but does not actually excuse or mitigate his discharge, especially since his misconducts were rather serious offenses. There is no evidence his alcohol problems, which would be an unsuiting condition, caused his discharge and also does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's personality disorder/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 3 Oct 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. 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. While the applicant contended alcohol issues impacted his performance and caused his discharge, there was no evidence presented to support this contention. In fact, when he was evaluated for substance abuse treatment on 3 Nov 71, he did not report abusing alcohol and was not given an alcohol use disorder diagnosis. Further, the applicant was discharged for having an unsuiting personality disorder of sociopathic personality disorder that existed prior to service, and there was no compelling evidence his mental health condition was service-aggravated. The applicant's pattern of misconduct, which according to the FBI report provided with his first application to the Board continued post-service, warranted the service characterization received. Liberal consideration was applied; however, while his unsuiting personality disorder may explain or cause his misconduct, the applicant's mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of more recent post-service information/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

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-2013-00359 in Executive Session on 21 Feb 24:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 30 Sep 14.
- Exhibit G: Application, DD Form 149, w/atchs, dated 1 Mar 23.
- Exhibit H: Documentary evidence, including relevant excerpts from official records.
- Exhibit I: Letter, SAF/MRBC (Liberal Consideration & Clemency, atchs, 20 Jun 23.
- Exhibit J: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Oct 23.
- Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Oct 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