

## ADDENDUM TO RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2013-03210

XXXXXXXXXXXXXXXX

**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. In addition, the applicant requested his DD Form 214, *Certificate of Release or Discharge from Active Duty*, Block 18. *Remarks*, be amended to include his temporary duty (TDY) in theaters of overseas operations, to include: [REDACTED] Air Force Base (AFB), Republic of the [REDACTED] AFB, [REDACTED] AFB, [REDACTED], and [REDACTED] Air Base, [REDACTED] during DESERT SHIELD.

### RESUME OF THE CASE

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

On 6 May 14 and 15 May 14, the Board considered and denied his request to: upgrade his general (under honorable conditions) discharge to an honorable discharge with all backpay, entitlements and medical benefits, change his separation authority to AR 635-200, paragraph 4-2, change his separation code from "JKA" [Pattern of Misconduct] to "MBK" [Expiration of Term of Service], change his reentry code from "2B" [Discharge under general or other than honorable conditions] to "1" [reenlistment eligible], and change his narrative reason for separation from "Misconduct – Pattern Discreditable Involvement with Military or Civil Authorities" to "Released from Active Duty upon Termination of Enlistment" finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The discharge appeared to be 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. Further, the reentry code, narrative reason for separation and corresponding separation code, were consistent with the discharge. The Board considered upgrading the discharge based on clemency but found no basis to do so.

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 D.

On 7 Sep 23, the applicant requested reconsideration of his request to upgrade his general (under honorable conditions) discharge to an honorable discharge. In addition, the applicant requested his DD Form 214, Block 18. *Remarks*, be amended to include his TDY in theaters of overseas operations, to include: [REDACTED] AFB, [REDACTED] AFB, [REDACTED] AFB, [REDACTED], and [REDACTED] during DESERT SHIELD. He contends he suffered from Post-Traumatic Stress Disorder (PTSD) after returning TDY from [REDACTED] during Operation DESERT SHIELD. His squadron commander did not realize the extent of the applicant's PTSD until he was hospitalized at [REDACTED] AFB for a suicide attempt. The commander, in error, thought it best to administratively separate the applicant, rather than to assist. No derogatory statement is being made about the commander, only that little was known about PTSD as there is today.

The applicant currently holds a security clearance and has never been in trouble with the law. He is currently a federal employee and serving his country as a civilian. The applicant has made a request for Department of Veterans Affairs (DVA) disability for PTSD to receive assistance.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) DVA claim for service-connection for PTSD; (2) DVA Mental Disorders (other than PTSD and Eating Disorders) Disability Benefits Questionnaire (DBQ); (3) DVA Medical Opinion DBQ; and (4) correspondence to DVA associated with his claim for service-connection.

The applicant's complete submission is at Exhibit E.

## STATEMENT OF FACTS

On 18 Sep 90, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for:

- Violation of Article 92, UCMJ:
  - [The applicant], who knew of his duties at **Work-Product** AFB, California (CA), on or about 12 Sep 90, was derelict in the performance of those duties in that he willfully failed to perform his squadron detail, as it was his duty to do.

The applicant was reduced to the grade of airman first class, ordered to undergo correctional custody for 30 days, and ordered to forfeit \$50.00 per month for two months, but for the execution of the portion of this punishment which provides the reduction in grade and 30 days correctional custody, is suspended until 17 Mar 91, at which time, unless suspension is sooner vacated, it will be remitted without further action.

On 10 Oct 90, according to AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, the suspended portion of the applicant's NJP, dated 18 Sep 90, which included 30 days correctional custody, was vacated for:

- Violation of Article 86, UCMJ:
  - [The applicant] did, at **Work-Product** AFB, CA, on or about 27 Sep 90, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: **Work-Product**.

On 30 Oct 90, according to AF Form 366, the suspended portion of the applicant's NJP, dated 18 Sep 90, which included reduction to the grade of airman first class, was vacated for:

- Violation of Article 92, UCMJ:
  - [The applicant], having knowledge of a lawful order issued by [applicant's commander] to complete 30 days correctional custody at **Work-Product**, CA, an order which it was his duty to obey, did at **Work-Product**, CA, on or about 12 Oct 90, fail to obey the same by declaring he would not complete the period of correctional custody after one day at the **Work-Product** Correctional Custody Facility.

On 7 Nov 90, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-47a. The specific reasons for the action were:

- a. Failure to go to his appointed base detail on 27 Aug 90, for which he received a Record of Counseling.

b. Dereliction of duty. On or about 18 Sep 90, [the applicant] slept on duty, for which he received an Article 15, dated 18 Sep 90.

c. Failure to go. On or about 27 Sep 90, [the applicant] failed to go at the time prescribed to his appointed place of duty, to wit: **Work-Product**. For this, the previously suspended correctional custody was vacated.

d. Vacation of suspended reduction to the grade of airman first class, effective 30 Oct 90, for failure to follow orders to complete correctional custody.

On 8 Nov 90, the Staff Judge Advocate found the discharge action legally sufficient.

On 21 Nov 90, the discharge authority directed the applicant be discharged under the provision of AFR 39-10, paragraph 5-47a, Misconduct – Discreditable Involvement with Military or Civilian Authorities, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 23 Nov 90, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct – Pattern Discreditable Involvement with Military or Civil Authorities” and he was credited with 3 years, 9 months, and 18 days of total active service.

On 4 Nov 24, according to DVA summary of benefits letter, provided by the applicant, he has one or more service-connected disabilities with a combined evaluation of 80 percent.

For more information, see the excerpt of the applicant’s record at Exhibit F and the advisory at Exhibit I.

## **POST-SERVICE INFORMATION**

On 29 Apr 24, the Board sent the applicant a request for post-service information and 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 G). The applicant replied on 29 Apr 24 and provided a DVA summary of benefits and employment verification. On 3 May 24, he provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant’s complete response is at Exhibit H.

## **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 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 29 Apr 24 and 4 Nov 24, the Board staff provided the applicant copies of the liberal consideration guidance (Exhibits G and K).

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.

AFR 35-6, *Separation Documents*, dated 1 Jan 90, Table 4. *How to Prepare DD Form 214*, Rules 29 through 39, *Remarks*:

- Department of Defense (DoD) named military operations are not an authorized entry on a member's DD Form 214.

## **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor found insufficient evidence to support the applicant's request based on his mental health condition.

A review of the applicant's available records finds no evidence to substantiate any of the applicant's claims. There is no evidence the applicant had PTSD caused by his TDY or was diagnosed with this condition during his military service or in his lifetime. The DVA's DBQ/Compensation and Pension (C&P) exam report the applicant submitted for review corroborated this information and determined he did not meet the diagnostic criteria for PTSD. He was not granted service-connection for PTSD because of this reason. There is no evidence this condition caused the applicant's misconduct and discharge.

There is evidence and records the applicant was psychiatrically hospitalized from 12-24 Oct 90 for having suicidal ideation while he was in correctional custody at **Work-Product**. There is no evidence or report of a suicide attempt. He had suicidal plans but no attempts. The applicant's hospital treatment records reported he had suicidal ideation with plans in reaction to his experiences of being humiliated by being yelled at, harassed, and forced to do difficult physical tasks while he was in correctional custody. There is no evidence he had suicidal thoughts, depression, or anxiety near or around the time he entered correctional custody. The applicant did have a reported history of suicidal gestures at the age of 17 that involved holding a gun to his head in reaction to a terminated romantic involvement. This was a prior service experience. There is no evidence his military service itself caused him to have suicidal ideation, depression, or anxiety. The applicant had difficulties adjusting to his correctional custody which led to him decompensating and necessitating a higher level of care. He was given a diagnosis of Adjustment Disorder with Mixed Emotional Features during his hospitalization stay and there is no error or injustice identified with this diagnosis. The stressful and situational experiences of being in correctional custody caused the applicant to have suicidal thoughts that led to his inpatient psychiatric hospitalization. There is no evidence or records he continued to have suicidal thoughts, depression, or anxiety following his release from correctional custody. It appeared once the applicant's situational stressor of correctional custody was removed, he no longer experienced suicidal ideation, depression, or anxiety. Therefore, his adjustment disorder was valid and consistent with his clinical presentation at the time of hospital treatment and military service. The applicant's anxiety and depressive symptoms appeared to have persisted and developed over the years after his military discharge, and he eventually met the diagnostic criteria for Persistent Depressive Disorder. The DVA specified this condition had a "late onset" in their rationale for denying him service-connection for this condition because this condition occurred after his military service and not during service. There is no evidence the applicant had this condition during service.

The applicant was also given a diagnosis of personality disorder with passive-aggressive and narcissistic features from his hospital treatment. The hospital mental health provider reported collateral information was obtained from the applicant's commander who had reported he had displayed manipulative behaviors, had a lack of desire to remain in the military that was evident to members of his squadron and chain of command, and had a long-standing history of misconduct/behavioral/administrative issues since he began active duty service three years prior. The applicant did confirm in his claim statement to the DVA that he was in correctional custody for 14 days while at technical school at **Work-Product** AFB in 1987. There is no evidence he was diagnosed or that this diagnosis was not valid. It is acknowledged the DBQ/C&P examiner reported his personality disorder symptoms do not appear to have been enduring and these symptoms overlap with severe depressive reactions. While the DBQ/C&P examiner is entitled to their own clinical judgment and opinion, this examiner only met the applicant for a single session for a disability evaluation based on his own report that occurred 40 years after his discharge. The military mental health provider evaluated the applicant over a two-week period in the hospital during service, when he was in distress and received collateral information from his commander. Their opinions will vastly differ due to these circumstances but does not suggest the hospital mental health provider's clinical formulation and diagnosis were erroneous or invalid.

The applicant alleged his hospital mental health provider failed to explore medical options and find ways to help him but instead, the Air Force chose to cast him aside. There is no evidence to support this theory, but the contrary. The applicant's hospital mental health provider reported, *"However, the patient has been recommended for follow-up on an outpatient basis to help him deal with chronic characterological deficits and difficulties in dealing with life stressors. This plan has been discussed with the patient, who at this time is refusing to follow with these recommendations."* The hospital mental health provider did attempt to offer the applicant help, but he declined the help of his own volition.

The applicant was discharged from service for a pattern of misconduct that consisted of failing to go on two occasions, dereliction of duty/sleeping on duty, and failing to follow orders to complete correctional custody. Except possibly for the last misconduct of failing to follow orders, there is no evidence the applicant's mental health condition, including PTSD or adjustment disorder, caused most of his misconduct. A Memorandum for Record (MFR) written by the Assistant Workcenter Supervisor discussed the applicant's account for why he was late to work (car trouble) on 27 Sep 90 which was not substantiated by any individuals at the places of business the applicant claimed to be at the time. The information presented in this MFR does not suggest the applicant had a mental health condition causing him to be late for work. There was no other explanation provided for his other misconducts, but he did choose not to make a comment to his Record of Counseling for failing to show at base detail on 27 Aug 90. There is no evidence the applicant had a mental health condition or was in emotional distress impairing his judgment at the time of any of these misconducts. There is evidence the applicant's mental health condition most likely caused his last misconduct of failing to complete his correctional custody because he did report to his hospital mental health provider that he could not promise not to have future thoughts of harming himself should he be returned to correctional custody. It is possible the applicant's failure to complete correctional custody was because he was unable to tolerate the emotional and psychological stressors of being in this environment and adapting to his situation. It is noted; however, the applicant's failure to obey orders to complete correctional custody occurred on the same day, 30 Oct 90, when he was notified of administrative discharge action. His failure to comply with the order may be in response to his discharge action. The applicant was not discharged for having an unsuited mental health condition. His mental health condition developed after most of his misconduct had occurred and from disciplinary action/punishment for his misconduct. From the collective information presented, this Psychological Advisor finds no error or injustice with the applicant's discharge from a mental health perspective. His request for an upgrade of his discharge based on his mental health condition is not supported.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition. It is reminded liberal consideration does not mandate an upgrade per policy guidance. The following are responses to the four questions from the Kurta Memorandum from the information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant contended he developed PTSD from his TDY to [REDACTED]. He also contended he was hospitalized from 12-24 Oct 90 for having suicidal ideation while he was in correctional custody at *Work-Product*. He believed his discharge was unjust, he was not offered any help, and the applicant alleged his commander initiating administrative separation after his medical diagnosis was an obvious motivating factor for his administrative separation.

2. Did the condition exist, or experience occur, during military service?  
There is no evidence or records the applicant had developed or was diagnosed with PTSD from his TDY during service or in his lifetime. There are records to confirm he was hospitalized from 12-24 Oct 90 for having suicidal ideation while he was in correctional custody at *Work-Product*. The applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features on Axis I and Personality Disorder NOS [Not Otherwise Specified] with passive-aggressive and narcissistic

features on Axis II in accordance with the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, from hospital treatment. These diagnoses appear to be appropriate and valid based on his clinical presentation at the time of service. The applicant was offered outpatient mental health treatment following his discharge from the hospital but declined this service.

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

The applicant was not discharged from service for having an unsuiting mental health condition but for a pattern of misconduct. His records reflected he had misconduct problems before he was sent to correctional custody as part of his disciplinary action/punishment and/or his correctional custody was the result of his misconduct. The applicant had suicidal ideation, depression, and anxiety because he was unable to adjust to the stressors of correctional custody and was hospitalized as a result. There is no evidence he had any of these symptoms or conditions prior to his entrance into correctional custody or at the time of his misconduct that resulted in this disciplinary action. The applicant's objective military and service treatment records find his mental health condition could have caused one of his misdeeds (failing to follow orders to complete correctional custody) but did not cause most of his misdeeds (failure to go on two occasions and dereliction of duty) to give the applicant the benefit of doubt. It is noted; however, the applicant's former misconduct occurred on the same day he was notified of administrative discharge action and his failure to comply with the order may be in response to his discharge action. The applicant's mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's 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 I.

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

The Board sent a copy of the advisory opinion to the applicant on 4 Nov 24 for comment (Exhibit J) and the applicant replied on 4 Nov 24. In his response, the applicant contended the advisory opinion's statements do not provide full situational awareness that led to his character of discharge. For example, the advisory opinion makes several references to "Pattern of Misconduct" but does not elaborate the fact the "Pattern of Misconduct" was tardiness and late to duty formations.

The advisory opinion makes note of PTSD and mental health conditions based on the DBQ performed by the DVA but does not reference the fact the DVA awarded the applicant a permanent disability for time served in the military.

The advisory opinion also does not mention the applicant does not have, or ever had, a criminal record. It also does not mention the applicant currently holds a sensitive position within the intelligence community and has presented technical information to the Pentagon, House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence.

The applicant requested all these factors, as well as the information received by the FBI with respect to his background and personal references, be considered in his request for discharge upgrade.

The applicant's complete response is at Exhibit L.

#### **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. There is no evidence or records the applicant had developed or was diagnosed with PTSD from his TDY during service or in his lifetime. The applicant had suicidal ideation, depression, and anxiety because he was unable to adjust to the stressors of correctional custody. There is no evidence the applicant had any of these symptoms or conditions prior to his entrance into correctional custody or at the time of his misconduct that resulted in this disciplinary action. His records reflect the applicant had misconduct problems before he was sent to correctional custody as part of his disciplinary action/punishment. Ultimately, the applicant was not discharged for having an unsuiting mental health condition but for a pattern of misconduct. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

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 fundamental fairness; however, given the evidence presented, the Board finds no basis to do so.

Finally, the applicant's DD Form 214 was created in accordance with AFR 35-6. 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-2013-03210 in Executive Session on 19 Mar 25:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit D: Record of Proceedings, w/ Exhibits A-C, dated 9 Jun 14.  
Exhibit E: Application, DD Form 149, w/atchs, dated 7 Sep 23.  
Exhibit F: Documentary evidence, including relevant excerpts from official records.  
Exhibit G: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 29 Apr 24.  
Exhibit H: Applicant's Response, w/atchs, dated 29 Apr 24.  
Exhibit H: FBI Report, dated, 3 May 24.  
Exhibit I: Advisory Opinion, AFRBA Psychological Advisor, dated 31 Oct 24.  
Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Nov 24.  
Exhibit K: Letter, SAF/MRBC, w/atchs (Updated Liberal Consideration Guidance), dated 4 Nov 24.

Exhibit L: Applicant's Response, w/atch, dated 4 Nov 24.

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.

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Board Operations Manager, AFBCMR