



Work-Product

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

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2013-05889-3

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT’S REQUEST

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

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1) who was discharged on 12 Jan 87 with a BCD due to his conviction by Special Court-Martial.

On 22 Apr 15, the Board considered and denied his request to upgrade his BCD, restore his highest grade held, and restore all of his medals and ribbons. The Board found insufficient relevant evidence was presented to demonstrate the existence of an error or injustice regarding the applicant’s request. It was noted the Board was without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board were limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court martial for the purpose of clemency. The Board concurred with opinions of the Air Force Offices of Primary Responsibility (OPR) and found no evidence which indicated the applicant’s service characterization, which had its basis in his court-martial conviction and was a part of the sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). Furthermore, the Board considered the applicant’s overall quality of service, the court-martial conviction which precipitated the discharge, and the seriousness of the offenses to which convicted. The Board further noted the comments of the AFBCMR Medical Consultant indicating relief to upgrade the discharge to general based on clemency; however, found in the absence of any evidence related to the applicant’s post-service activities, the Board could not determine if his accomplishments since his discharge were sufficient to overcome the misconduct for which he was discharged, and found no basis upon which to favorably consider his application.

On 20 Mar 18, the Board reconsidered his request to upgrade his BCD to honorable and after reviewing the evidence provided in support of his appeal, remained unpersuaded the evidence presented demonstrated the existence of an error or injustice. The Board concluded, the discharge

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proceedings were proper, and characterization of the discharge was appropriate to the existing circumstances. Furthermore, the Board was in agreement with the assessment and recommendation of the ABCMR Psychiatric Advisor and adopted the rationale as the basis of the conclusion the applicant had not been the victim of an error or injustice. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, based on the evidence, found no basis to grant clemency at this time and denied relief. In the ABCMR Psychiatric Advisory opinion, no evidence was found he had post-traumatic stress disorder (PTSD) in the military. It appeared he started to self-medicate his negative feelings with drugs which led to his addiction. Summarizing, the applicant came into the military motivated to be a good airman and at some point, starting using substances to which his motivation changed to focus on getting and using drugs. This negatively impacted his career and life, and it was not until recently where his life changed in a positive direction.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letters and Records of Proceedings at Exhibits J and N.

On 8 Oct 24, the applicant requested reconsideration of his request for a discharge upgrade. He contends, after 37 years, he should be granted a discharge upgrade. He has paid his debts, and it is a matter of record he was suffering from an undiagnosed mental health condition. Failure to treat his mental health condition created this havoc.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) a letter from a psychologist and other medical documentation; (2) recovery and treatment milestone certificates; (3) training, award, and achievement certificates; (4) several character references; (5) his college transcripts showing his Bachelor in Arts in Psychology and Bachelor in Arts in Social Issues; and (6) an FBI report. In his character references, his peers speak of his help with other veterans with psychiatric and other chronic medical issues, his recovery progress, and his positive change in behavior showing accountability and integrity.

The applicant's complete submission is at Exhibit O.

POST-SERVICE INFORMATION

On 30 May 25, 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 P). Although the applicant did not reply to this response, he did provide an FBI report with his application. According to the report, the applicant was arrested on 15 Sep 97 for two counts of theft, on 9 Jan 98 for drug manufacturing and distribution, on 25 Mar 99 for drug possession, on 12 Jun 99 for two counts of theft, on 9 Sep 99 for forgery to which was not prosecuted, on 11 Dec 01 for shoplifting, on 11 May 02 for theft and providing falsified information, on 1 Oct 02 for shoplifting and possession of cocaine, on 6 Sep 03 for driving under the influence (DUI), on 10 Mar 04 for printing and distributing false checks, on 27 Jun 04 for

burglary, shoplifting, and cocaine possession, on 2 Jun 05 for auto theft which was dismissed, on 4 Feb 06 for executing fictitious checks, on 13 May 07 for shoplifting, on 14 Feb 09 for DUI, on 3 Oct 10 for driving unsafe on a suspended license without insurance, on 29 Jan 12 for shoplifting, on 7 Mar 14 for DUI, and on 9 Dec 15 for speeding and violating traffic laws on a revoked license and for possession of drugs with the intent to distribute for which these charges were dismissed on 12 Jul 16. The applicant also provided character statements, certificates, college transcripts, and medical evidence to support his contentions.

The applicant's complete response is at Exhibit O.

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 30 May 25, the Board staff provided the applicant a copy of the liberal consideration/clarifying guidance (Exhibit P).

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.

Under Other than Honorable Conditions. This characterization is used 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 members. 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 DAF.
- 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 abuse of a child, sexual harassment, 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. A review of the applicant's available and

submitted records finds the applicant's contention is plausible, but there are no actual records in his military file to support his contention. His service treatment records revealed he was seen by various medical and mental health providers for mental health-related issues numerous times during service. During his first period of enlistment, he was seen by a medical provider in Oct 81 and Sep 82 for physical concerns, but during each visit, a neurological exam was performed. The results of his neurological examination were either "grossly intact" or "negative" indicating he had no cognitive impairments or issues. Also, during his first term of enlistment, he met with a mental health provider in Sep 83 for a pending evaluation. The reason for this evaluation was not reported, but his mental status exam (MSE) was assessed to be within normal limits. He was not diagnosed with any mental disorder and was given a code of V62.89 for phase of life problems or other life circumstance problems to signify a situation that may be stressful to him or had a negative impact on his mental health. His phase of life problem was also not identified in his treatment records. It is plausible, his stressful situation was a traumatic event, but this is not confirmed. There were no records he reported or was assessed to have anxiety, depression, manic episodes, or PTSD symptoms during his first term of enlistment. During his second term of enlistment, he completed a physical examination with a medical provider for Air Traffic Control duties in Jun 85. During this examination, he denied having any mental health issues, including any frequent trouble sleeping, depression or excessive worry, and nervous trouble of any sort, and he was deemed medically qualified for Air Traffic Control duties by the provider. In Sep 85, he was seen at the Mental Health Clinic (MHC) for a command-direction evaluation for having multiple minor disciplinary infractions and being under investigation by the Office of Special Investigation (OSI), presumably related to his illicit drug-related activities due to the timeline of events. His MSE was again assessed to be "within normal limits, and he denied having any safety concerns. He was again not given a mental disorder diagnosis but a code of V62.89 for phase of life problems. A note from the MHC in Feb 86 reported he was entered into a drug rehabilitation program, and another note, also in Feb 86, reported he was seen for a Phase III evaluation by referral from a judge advocate. While he was advised by his legal counsel not to discuss his drug issue, he disclosed a past history of using marijuana 10 times before he entered the Air Force, he denied having any social or work difficulties, and he expressed a desire to be discharged. He was recommended to be entered into the local rehabilitation program. Finally, he completed a confinement physical examination in Mar 86, and no mental health concerns were reported. To reiterate, during the applicant's time in service, including both terms of enlistment, there are no records or reports from the applicant he had any anxiety, depression, manic or hypomanic episodes, or PTSD symptoms.

The applicant reported to his mental health provider at the DVA in May 05 and to the Compensation and Pension (C&P) examiner in Jun 13 that he experienced a traumatic event during his first term of enlistment, witnessing a pilot being ejected from a plane resulting in the pilot's death in 1980 at *Work-Product* Air Force Base. There is no documentation of this traumatic event in his military or service treatment records, including in his appraisals, but it is accepted from the applicant's testimony this event occurred during his first term of enlistment. Although it is accepted that this event occurred, there are no records or indications in his records to support he had developed PTSD, anxiety, depression, etc. from this incident during service. His DVA provider reported he had symptoms of mood dysregulation (depression and hypomania), periods

of depressed mood with low interest, motivation and social withdrawal, feelings of hopelessness and thoughts of suicide, periods of elevated mood with racing thoughts, decreased need for sleep, grandiosity and impulsivity, intrusive thoughts about traumatic life experiences, nightmares, hypervigilance, exaggerated startled response, and significant distrust of others. There are no records from his service treatment records to confirm or support he experienced any of these symptoms during service. He was seen numerous times during service by different medical and mental health providers, and there are no records to suggest he had undiagnosed or untreated mental health conditions, including bipolar disorder and PTSD, as he contended. The validity or existence of the applicant's mental health condition during service is not the primary concern, but rather whether the applicant's condition had caused his misconduct resulting in his discharge. His records do not support this impression. The applicant was discharged from service after he was convicted at a special court-martial for using and possessing some amount of marijuana, with the intent to distribute and conspiring to distribute marijuana. There is no evidence or records to support he used marijuana to cope with his mental health condition during service, although this is possible. However, his misconduct of distribution and conspiring to distribute marijuana are premeditative behaviors involving thought, planning, and intent. He knew what he was doing at the time, and his misconduct was willful and had occurred on more than one occasion. His premeditative misconduct was not caused by his mental health condition, nor is it excused or mitigated by having a mental health condition. His misconduct better aligned with antisocial personality traits, which were detected by his DVA provider, and not caused by having PTSD or bipolar disorder. Personality traits are unsuited for military service, and while they may explain some of his misconduct, they do not excuse or mitigate his misconduct. There is no evidence he was in emotional distress, was in a manic or hypomanic episode, or had a mental health condition impairing his judgment and contributing to his decision to engage in any of his misconduct. Furthermore, his acts of misconduct were serious offenses leading to his special court-martial conviction and a BCD. The severity of his misconduct is not outweighed by his mental health condition. It is acknowledged the applicant had been service-connected by the DVA for his mental health condition, but receiving service connection does not indicate causation or mitigation of the discharge and merely suggests the condition was somehow related to his military service and not the cause of the discharge. For reasons discussed, there is no error or injustice with the applicant's discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request 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 available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended he was suffering from undiagnosed mental health problems, and the failure to diagnose and treat his conditions "created this havoc" in reference to his misconduct. He did not identify his undiagnosed or untreated mental health conditions, but he submitted records that reported he was diagnosed with PTSD, bipolar disorder, polysubstance abuse (in remission), and borderline and antisocial traits.

2. Did the condition exist or experience occur during military service?

A review of the applicant's service treatment records revealed he was seen by various medical and mental health providers during his time in service. He was assessed by his medical provider as not having any cognitive or neurological concerns. He had repeatedly denied to his providers he did not have any mental health issues, including having no anxiety, depression, or sleep disturbances. There are no records that he was ever diagnosed with a mental health condition, including PTSD or bipolar disorder, during service. He was given a condition of phase of life or life circumstance problems to denote a situation that may be stressful to him or has a negative impact on his mental health. Some of his stressful situations documented were that he had multiple minor disciplinary infractions, and he was under investigation by the OSI for his drug-related activities. He was diagnosed with bipolar disorder and PTSD by his providers at the DVA years and decades after his discharge from the Air Force. He reported to his provider at the DVA his traumatic experience, witnessing a pilot dying after being ejected from an aircraft in 1980. It is accepted that his traumatic experience did occur during his military service based on his personal testimony, but his military and service treatment records found no documentation of this event during service.

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

The applicant was discharged from service after he was convicted at a special court-martial for using and possessing some amount of marijuana, with the intent to distribute and conspiring to distribute marijuana. There is no evidence or records to support he used marijuana to cope with his mental health condition during service, although this is possible. However, his misconduct of distribution and conspiring to distribute marijuana are premeditative behaviors involving thought, planning, and intent. He knew what he was doing at the time, and his misconduct was willful and had occurred on more than one occasion. His premeditative misconduct was not caused by his mental health condition, nor is it excused or mitigated by having a mental health condition. His misconduct better aligned with antisocial personality traits, which were detected by his DVA provider, and not caused by PTSD or bipolar disorder. Personality traits are unsuited for military service, and while they may explain some of his misconduct, they do not excuse or mitigate his misconduct. There is no evidence he was in emotional distress, was in a manic or hypomanic episode, or had a mental health condition impairing his judgment and contributing to his decision to engage in his misconduct. Therefore, his 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 mental health condition also does not outweigh his original discharge. His acts of misconduct were serious offenses leading to his special court-martial conviction and BCD, so the severity of his misconduct resulting in his discharge is not outweighed by his mental health condition.

The complete advisory opinion is at Exhibit Q.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Sep 25 for comment (Exhibit R) but received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. Based on the available evidence of record, the Board finds the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. Furthermore, the Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions as the Board finds no evidence the applicant was diagnosed with a mental health disorder to include PTSD or bipolar disorder during service. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. It is plausible he experienced a traumatic event during service which led to substance abuse and his addiction; however, the conviction of distribution of marijuana could not be excused due to a mental health condition. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. In support of his request for an upgrade, the applicant provided an FBI report, character statements, a copy of his college transcripts, and medical documentation showing his substance abuse recovery and his struggles with mental health. While the Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or clemency, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant has presented some supporting statements indicating he has apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, the supporting statements from the applicant's peers indicate the applicant's positive change in character, his recovery from his substance abuse struggles, and his help with other veterans struggling with mental illnesses. However, these statements do not provide his impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not

constitute an injustice to those who have earned this characterization of service. In addition, the applicant provided an FBI report indicating he has had several incidents of serious criminal activity since his discharge. While all of the incidents occurred almost 10 years ago, the applicant shows no remorse for any of these transgressions and blames his behavior on a mental health condition. Therefore, given the evidence presented, the Board does not find the applicant's submission sufficient to grant the requested relief and recommends against correcting the applicant's record. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, additional character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on clemency.

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-2013-05889-3 in Executive Session on 26 Sep 25 and 9 Oct 25:

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Panel Chair

Panel Member

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Panel Member

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

Exhibit J: Record of Proceedings, w/ Exhibits A-I, dated 22 Apr 15.

Exhibit N: Record of Proceedings, w/ Exhibits K-M, dated 20 Mar 18.

Exhibit O: Application, DD Form 149, w/atchs, dated 8 Oct 24.

Exhibit P: Letter (Liberal Consideration and Clemency Guidance), SAF/MRBC, dated 30 May 25.

Exhibit Q: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Sep 25.

Exhibit R: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Sep 25.

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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.

11/12/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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