

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2014-03595-2

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

(AKA) XXXXXXXXXXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Her honorable discharge be changed to a medical retirement.
2. The administrative demotion from E-6 to E-5 be revoked and her grade to E-6 be reinstated.
3. Her non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice, imposed on 10 Mar 14, with a reduction to E-4 and forfeiture of pay be declared void and removed from her record.
4. Corrections to her DD Form 214, *Certificate of Release or Discharge from Active Duty*, to include the following:
 - a. Her narrative reason for separation be changed from "Misconduct" to "Secretarial Authority."
 - b. Her separation code be changed from GKN¹ to JFQ².
 - c. Her reentry code be changed from 4D³ to 2Q⁴.

RESUME OF THE CASE

The applicant is an honorably discharged Air Force senior airman (E-4).

On 19 Apr 16, the Board considered and denied the applicant's requests finding insufficient relevant evidence to demonstrate the existence of an error or injustice to warrant removing the contested EPRs, NJP, revoking her administrative demotion to E-4, reinstating her grade to E-5, or changing her discharge to a medical retirement. Regarding her request to change her discharge to a permanent medical retirement, the AFBCMR Psychiatric Advisor recommended approval stating there is a nexus between the applicant's mental health illness and her misconduct. Contrarily, the Psychiatric Advisor also stated the applicant's involvement in therapy was very sporadic and notes that she refused medication management and that consistent treatment could have provided her with more resilience to overcome her difficulties, which, in the Board's opinion, did not add credence to the applicant's request for a medical retirement. The Psychiatric Advisor also pointed out that Secretary of the Air Force Personnel Council (SAFPC) followed all the rules and determined that an administrative discharge was the most appropriate resolution with a 4 to 1 vote stating there were insufficient mitigating factors to

¹ Misconduct Minor Infractions

² Disability Aggravation.

³ SrA or SSgt with at least 9 years but fewer than 16 years TAFMS

⁴ Medically Retired or Discharged

disregard the disciplinary action. As such, it appears the steps taken to terminate the actions under the provisions of AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, for her chronic adjustment disorder were proper and in compliance with the provisions of the governing instructions.

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 N.

On 14 Oct 16, the applicant requested reconsideration of her request to remove the contested NJP, revoke her administrative demotion to the grade of E-5, reinstate her grade to E-6 and to change her discharge to a medical retirement. Additionally, she requested corrections to her DD Form 214 to change her reentry code, separation code, and narrative reason for separation. She again contends after identifying and reporting longstanding discrepancies and gross mismanagement of two command-level programs, she was retaliated against by her unit leadership, subjected to a series of unfavorable personnel actions based on false and unfounded allegations. During this time she was undergoing treatment for a mental health condition which was aggravated by the toxicity and hostility within her unit; however, was administratively discharged instead of being medically retired. In support of her reconsideration request, the applicant submitted the following evidence: (1) a personal statement; (2) witness statements; (3) medical records; (4) awards and certificates; (5) college degree; (6) military correspondence; and (7) character reference letters.

The applicant's complete submission 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 (Kurta Memo) 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 24 May 21, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit P).

AIR FORCE EVALUATION

AFBCMR Psychological Advisor recommends denying the applicant's request finding insufficient evidence to support a medical retirement based on her mental health contention. She did not present any new evidence related to her mental health conditions in this reconsideration petition. The applicant referenced the SAFPC medical professional's opinion and the AFBCMR Psychiatric Advisor's opinion that "there is a nexus between the applicant's mental health illness and her misconduct." This Psychological Advisor acknowledges those opinions and also clarifies that a nexus does not equal causation or mitigation. As acknowledged by the previous advisor, the applicant was experiencing significant psychosocial stressors at times during her military service and was diagnosed with a mental health condition. However, as also noted by the previous advisors, these mitigators and conditions were considered by both SAFPC and AFBCMR in their decisions to deny the applicant's request for a medical retirement. The SAFPC memorandum for HQ AFPC/DPFDD dated 24 Feb 15 stated "After reviewing all available facts and evidence, the board determined there was no causal relationship between the member's medical condition and her misconduct. The board also concluded that there were insufficient mitigating factors to disregard the disciplinary action." The previous Psychiatric Advisory stated, in the advisory dated 4 Mar 16 "All the rules and regulations have been followed and after completion of her Medical Evaluation Board (MEB), both were processed by the Secretary of the Air Force Personnel Council (SAFPC) as "Dual-Action" board review, which determined that administrative discharge was the most appropriate resolution with vote 4:1." This Psychological Advisor identified no error or injustice in the processing of the applicant's case with regard to consideration of her mental health conditions. While it was agreed the applicant did have a mental health condition in service, there is no evidence the applicant's mental health condition caused nor mitigated the misconduct(s) that lead to her discharge and the applicant did not provide any new evidence pertaining to her mental health condition for consideration in this reconsideration petition.

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. The following responses are based on information provided in record to the four pertinent question in the policy:

a. **Did the veteran have a condition or experience that may excuse or mitigate the discharge?** The applicant was diagnosed with Adjustment Disorder with Anxiety in service.

b. Did that condition exist/experience occur during military service? The applicant was given the diagnoses of Adjustment Disorder with Anxiety in service. The informal Physical Evaluation Board (IPEB) found the applicant's mental health condition unfit for continued service and recommended the applicant be permanently retired with a 50 percent disability rating; the applicant's case was referred to SAFPC for dual-action processing. SAFPC directed the applicant be honorably discharged under the provisions of AFI-36-3208, *Administrative Separation of Airmen*, and terminated the action under the provisions of AFI 36-3212 and IDIS for the applicant's diagnosis of Adjustment Disorder. SAFPC concluded there were insufficient mitigating factors to disregard the disciplinary action.

c. Does that condition or experience actually excuse or mitigate the discharge? SAFPC concluded there were insufficient mitigating factors to disregard the applicant's disciplinary action. The Board concluded in the previous consideration of this case there were insufficient mitigating factors to disregard the disciplinary action. The applicant did not present any new evidence pertaining to her mental health condition in this reconsideration petition, thus the condition does not mitigate or excuse her discharge.

d. Does that condition or experience outweigh the discharge? Because no error or injustice was identified in the processing of the applicant's case with regard to consideration of her mental health conditions, the condition does not outweigh the discharge. The applicant did not present any new evidence pertaining to her mental health condition in this reconsideration petition, thus the condition does not mitigate or excuse her discharge.

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 2 Jun 21 for comment (Exhibit R), and the applicant replied on 13 Jun 21. In her response, the applicant disagrees with the AFBCMR Psychological Advisor stating her intention was not to request that the AFBCMR determine her suitability for a medical retirement as this determination was already made during the Medical Evaluation Board, which convened on 2 Jul 14 and the PEB which convened on 24 Jul 14. The purpose of her petition was to address the false allegations of misconduct that caused her retirement to be rescinded via the SAFPC dual action process. Furthermore, the assertions made by the Psychological Advisor in the advisory opinion, appear to contradict the facts outlined in the response dated 4 Mar 16 (from previous case), in which the Psychiatric Advisor addresses the nexus between her mental health condition and misconduct, and notes that in her previous requests for redress, she did not submit a petition for a medical retirement. As a result, the purpose of submitting such an extensive petition on 25 Sep 20 was two-fold: (1) To address the false allegations, disciplinary actions, and subsequent decision made by the SAFPC; and (2) To present new evidence that would support her formal petition for the medical retirement she was previously granted.

The applicant's complete response is at Exhibit S.

ADDITIONAL AIR FORCE EVALUATION

DAF/IG does not make a recommendation but provides their evaluation for information purposes only. Upon review of the applicant's five previous Inspector General (IG) cases, they determined all cases were processed in accordance with AFI 90-301, *Inspector General Complaints Resolution*, and received appropriate oversight review and approval by DoD IG on the reprisal cases, where they alone are the authority to approve the final resolution. On 10 Aug 12, the applicant filed an IG complaint with the XXXX/IG office. The applicant failed to

respond to any IG requests for information to properly analyze the complaint. The complaint was dismissed and the case was closed on 6 Sep 12. On 10 Jan 14, the applicant filed a complaint with the XXXX/IG office alleging reprisal against her chain command following a protected communication. Although the applicant brought an allegation of reprisal to the XXXX/IG, the evidence did not support a reprisal allegation, as there was no evidence that any adverse action was taken against the applicant. Subsequently, the XXXX/IG facilitated a resolution of the applicant's concerns over her Enlisted Performance Report with the appropriate level of command and the case was closed on 19 Feb 14. On 9 Mar 14, the applicant filed a complaint with the DoD Hotline alleging reprisal for reporting bullying and harassment to the XXXX/EO office. Although the applicant filed a valid reprisal complaint with DoD IG in Mar 14, which was subsequently referred to DAF/IG, the responsive IG office determined that the applicant had also filed an Article 138 action with her chain of command on the same matter. AFI 90-301 guidance as of Mar 14 directed such a reprisal complaint be dismissed, with the applicant being advised she could refile the reprisal complaint after the Article 138 action was resolved. DoD IG approved this dismissal. On 5 Feb 15, the applicant resubmitted an updated reprisal complaint direct to DAF/IG which was transferred to ACC/IG then to the XXXX/IG for resolution. Although the applicant filed a valid reprisal complaint to DAF/IGQ, the responsive installation IG office conducted a thorough complaint analysis, and based on the preponderance of evidence, found that the actions taken against the applicant were based on her actions and behaviors, not on a previous protected communication. On 18 Mar 15, the applicant contacted DAF/IGQ requesting assistance in extending her discharged date to allow adequate time to out-process. DAF/IG was successful in coordinating with the Air Force Personnel Center to extend her discharge date from 19 Mar 15 to 31 Mar 15. DAF/IG closed this case as an "assist" on 27 Mar 15.

The complete advisory opinion is at Exhibit T.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 16 Nov 21 for comment (Exhibit U), and the applicant replied on 16 Dec 21. In her response, the applicant states there is no account of the chain of events that preceded the correspondence with the XXXXX beginning in 2012 or her attempts to seek informal assistance from the IG and MEO offices in the IG advisory opinion. The XX ABW Security Forces investigations, Air Force Office of Special Investigations, Detachment XXX, nor any other investigative body has ever produced a report of investigation from a Commander Directed Inquiry, investigation, or other fact-finding process that supports the allegations made against her. On the contrary, she has provided hundreds of pages of documents that have been collected over the last seven years that are not only favorable, but prove the actions of her commander were excessive and were based on retaliation against a non-commissioned officer he labeled a troublemaker and a threat to good order and discipline.

The applicant's complete response is at Exhibit V.

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 majority remains unconvinced the evidence presented demonstrates an error or injustice. The Board majority concurs with the rationale and recommendation of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board majority found that the applicant did not present any new evidence relating to her mental health

conditions. The Board majority acknowledges the applicant was experiencing significant psychosocial stressors at times during her military service and was diagnosed with a mental health condition; however, as with the previous cases, the Board majority concluded there were insufficient mitigating factors to disregard the disciplinary action which led to an administrative discharge. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2014-03595-2 in Executive Session on 20 Jan 22:

- , Panel Chair
- , Panel Member
- , Panel Member

A majority of the panel voted against correcting the record. XXXXX voted to partially correct the record and did provide a minority opinion (Exhibit W). The panel considered the following:

- Exhibit N: Record of Proceedings, w/ Exhibits A-M, dated 14 Oct 16.
- Exhibit O: Application, DD Form 149, w/atchs, dated 25 Sep 20.
- Exhibit P: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 24 May 21.
- Exhibit Q: Advisory Opinion, AFBCMR Psychological Advisor, dated 28 May 21.
- Exhibit R: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jun 21.
- Exhibit S: Applicant's Response, dated 13 Jun 21.
- Exhibit T: Advisory Opinion, DAF/IG, dated 7 Oct 21.
- Exhibit U: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Nov 21.
- Exhibit V: Applicant's Response, dated 16 Dec 21.
- Exhibit W: Minority Opinion, dated 24 Jan 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR