



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2016-01270-2

Work-Product

COUNSEL: NONE

Work-Product

HEARING REQUESTED: NO

APPLICANT’S REQUEST

The Board reconsider the deceased service member’s request, amended to read:

- 1. His DD Form 214, Certificate of Release or Discharge from Active Duty, be corrected to reflect an honorable medical discharge or honorable, under medical conditions versus an honorable discharge (new request).
2. He be issued a DD Form 214 in lieu of the NGB Form 22, Report of Separation and Record of Service in the Air National Guard (reconsideration).
3. His NGB Form 22 be corrected to reflect his highest grade achieved of airman first class (E-3) rather than the grade of airman (E-2) (new request).
4. His AF Form 1226, Record of Court Martial Convictions and Time Lost, be corrected, sealed or purged to reflect he was not absent without leave (AWOL) from 1 – 30 Jun 75 (new request).
5. His AF Form 1613, Statement of Service, be re-created to show his active duty and Air National Guard (ANG) time was continuous with no time lost (new request).

RESUME OF THE CASE

The deceased service member is an honorably discharged Air National Guard (ANG) airman (E- 2).

On 20 Jun 17, the Board considered and denied the deceased service member’s request for a DD Form 214 in lieu of NGB Form 22. The Board agreed with ARPC/DPTS he did not meet the criteria to receive a DD Form 214. In accordance with AFI 36-3202, Separation Documents, in order to receive a DD Form 214, a member must complete 90 consecutive or more active duty days or 1 day or more if in support of a contingency operation; however, the deceased service member completed only 45 days of active duty time.

For an accounting of the deceased service member’s original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 12 Jun 19, the deceased service member requested reconsideration of his original request and four additional new requests.

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The deceased service member requested his case be expedited to any extent possible because of his recent diagnoses (2018) of Post-Traumatic Stress Disorder (PTSD), survivor guilt, Traumatic Brain Injury (TBI), cognitive issues, and disabilities dating back to Feb 71, which have a negative effect on his ongoing health and transplanted kidney-related issues.

The deceased service member contended he did not undergo a separation physical exam nor entrance physical exam when he transitioned from active duty to the ANG for Palace Chase. Some of his medical records and his immunization record card are missing. He received vaccines while in the service that have later been shown to cause chronic illnesses and he was exposed to hazardous chemicals. He has had increasing trouble with cognitive and health issues each year during and after exposure to the hazardous chemicals and experimental test shots. His 8 Sep 74, physical stated, "recommend NP consult," but he was never sent.

He also contended he was offered Palace Chase by his superiors with the agreement and assurance all active duty time would be consecutive from his induction date of 21 Sep 71 until his discharge from the ANG. He was not a deserter and was present for duty. There are no remarks, notes, nor comments on his NGB Form 22 that indicate he lost time or had less than honorable service from 22 Sep 71 to 23 Jan 76. Nor does his AF Form 1613 reflect time lost. His AF Form 572, *Physical Conditioning*, reflects he was on duty Jun 75, proving he was not a deserter. His active duty and ANG time were continuous with no time lost.

In support of his reconsideration and new requests, the deceased service member submitted 572 pages of supporting documentation with new evidence as follows: 1) various civilian and military medical documentation; 2) various military forms; 3) Department of Veterans Affairs (DVA) documentation and correspondence; and 4) various articles and publications.

On 28 Aug 22, on behalf of the deceased service member and upon his passing, his spouse requested the Board continue processing the request making her the applicant (Exhibit L).

The deceased service member's and his spouse's complete submission is at Exhibit F.

STATEMENT OF FACTS

On 21 Sep 71, the deceased service member entered active duty.

On 18 Dec 72, according to AFMPC Test Form, *Ready Reserve Service Contract*, the approving official approved the deceased service member's request to waive his unfulfilled active duty service commitment (ADSC) of 20 Sep 75 to serve in the Ready Reserve ANG until 18 Apr 78.

On 22 Dec 72, the deceased service member was issued a DD Form 214 for the period 21 Sep 71 to 22 Dec 72 and was released from active duty with an honorable discharge in the grade of airman first class (E-3).

On 23 Dec 72, according to Special Order Work..., dated 2 Jan 73, the deceased service member enlisted in the ANG under the Palace Chase program.

On 1 Jul 74, according to Special Order Work-Pro..., dated 2 Jul 74, the deceased service member was demoted to the grade of airman (E-2) with a new date of rank of 2 Jul 74.

On 16 Jul 74, the deceased service member was notified his absence from Training Assemblies on 13 and 14 Jul 74 were recorded. He was directed to report for training at the next scheduled training on 24 Aug 74.

On 26 Aug 74, the deceased service member was notified his absence from Training Assemblies on 24 and 25 Aug 74 were considered unsatisfactory service and recorded in his records as unexcused. He was directed to report for training at the next scheduled training on 14 and 15 Sep 74.

On 8 Sep 74, according to the Report of Medical Exam, conducted for “enlistment,” the deceased service member was found qualified for retention.

On 25 Sep 74, the deceased service member was notified he was being recommended for involuntary active duty for reason that he failed to participate in regularly scheduled inactive duty for training for periods 13-14 Jul 74, 24-25 Aug 74, and 14-15 Sep 74.

On 26 Sep 74, the deceased service member acknowledged receipt and understanding of the involuntary active duty notification and indicated he intended to request a delay to active duty, transfer to a standby status, or discharge.

On 22 Apr 75, according to Reserve Order Work-Pro..., the deceased service member was involuntary ordered to active duty for the period 1 Jun 75 – 16 Jul 75.

On 15 May 75, according to DD Form 173, *Joint Message Form*, Reserve Order Work-Pro... was returned to the unit as undeliverable after two attempts were made to the deceased service member through certified mail, made on 29 Apr 75 and 5 May 75.

On 1 Jun 75, according to AF Form 2098, *Duty Status Change*, dated 2 Jun 75, the deceased service member’s duty status changed from present for duty to absent without leave (AWOL) due to failing to report for his 45-day active duty tour for training. The remarks indicated, “Member is a Palace Chase separatee involuntarily called to a 45-day AD tour for training who failed to report...”

On 1 Jul 75, according to AF Form 2098, dated 1 Jul 75, the deceased service member’s duty status changed from AWOL to desertion.

On 30 Sep 75, according to AF Form 2098, the deceased service member reported for duty and his duty status changed from desertion to present for duty.

On 30 Sep 75, according to AF Form 1226, the deceased service member’s time lost was recorded as AWOL from 1 Jun 75– 30 Jun 75 and Deserter 1 Jul 75 – 29 Sep 75.

On 30 Sep 75, according to Standard Form 93, *Report of Medical History*, the deceased service member was found qualified for general service and world-wide duty. Physician notes included, “depression and nervousness, 1971, still takes valium for occasional nervousness, no comp, no seq.”

On 30 Sep 75, according to AF Form 973, *Request and Authorization for Change of Administrative Orders*, dated 3 Oct 75, the deceased service member began involuntary active duty for training. The service member’s mailing address, reporting unit, and start date were amended.

On 10 Nov 75, an Air Surgeon certified the deceased service member was medically disqualified for general military service and world-wide duty.

On 23 Jan 76, the deceased service member was honorably discharged from the ANG and as a Reserve of the Air Force in the grade of airman (E-2) and issued a NGB Form 22 for the period 23 Dec 72 – 23 Jan 76 and credited with three years, one month, and one day of service with the ANG.

On 29 Jan 76, Special Order Number **Work-Product** was published and indicated the deceased service member was honorably discharged for medical disqualification, effective 23 Jan 76.

On 10 Nov 16, ARPC/DPTS completed AF Form 1613 and indicated the deceased service member had no lost time between the period of 21 Sep 71 and 23 Jan 76.

For more information, see the excerpt of the deceased service member's record at Exhibit G and the advisories at Exhibits H, I, J, K, M, and P.

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memorandum.

On 3 Feb 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit O).

AIR FORCE EVALUATIONS

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request the deceased service member receive a medical discharge for his mental health condition. The deceased service member contended his mental health issues began in Feb 71, but he did not enter the service until 21 Sep 71. As such his contended conditions would be considered existed prior to service (EPTS) and no evidence these conditions were aggravated by his military service. For his time on active duty, there were no records he received any mental health treatment, received any mental disorder diagnoses to include PTSD, and no records of any TBI or cognitive issues he may have incurred or experienced. The deceased service member's post service treatment records reported he had at least two serious prior service head injuries, and there was no evidence his military service permanently aggravated his pre-existing conditions. There were no records he had any difficulties functioning in the military because of his mental health condition or cognitive issues. The deceased service member stated in his personal statement he had suicidal thoughts while at tech school training in 1971, but there was no evidence to corroborate this statement. He did report having suicidal thoughts during a periodic examination a few years later in Nov 74 when he was in the ANG, but it was related to his family problems and not his tech school training. Even if the deceased service member did have this experience, there was no evidence he had any unfitting mental health conditions to include PTSD that would meet criteria to be referred to a Medical Evaluation Board (MEB) for a possible medical discharge. Providing further support that he did not have any unfitting mental health conditions during active duty service, the deceased service member was able to meet accession standards to transfer to the ANG signifying he was considered fit for duty. Thus, the request for a medical discharge from active duty service could not be supported.

After the deceased service member entered into the ANG, there were also no records he received any mental health treatment or had any unfitting mental health conditions. There was evidence he was taking Valium, an anti-anxiety medication, but no other information was available reporting if this medication was prescribed by his military or civilian provider since he was in the ANG and was not on continuous status. Additionally, experiencing depression and nervousness/anxiety and taking a psychotropic medication during service do not automatically make any of these conditions as unfitting. Demonstration of how his mental health condition interfered with his ability to perform his military duties is necessary, which was absent in his records. There was no evidence a Line of Duty (LOD) determination was approved for his mental health condition to indicate his condition was incurred during duty status. Without a line of duty (LOD) determination since he was in the ANG and without any evidence, he had any unfitting mental health conditions; he would not be eligible for an MEB. The deceased service member's military records reported he was discharged for reason of medical disqualification and no other records were available to clarify the condition. Nevertheless, this nomenclature indicated he had an unsuited and not unfitting condition that would result in a non-compensable administrative discharge, which he had received. A medical disqualification discharge is not the same as a medical discharge.

The Board may consider applying liberal consideration to the deceased service member's request. The following are answers to the four questions from the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The deceased service member contends he was diagnosed with PTSD, survivor's guilt, TBI and cognitive issues in 2018 dating back to Feb 71 and requests a medical discharge.

2. Did the condition exist or experience occur during military service? The deceased service member's contended conditions were found to be EPTS. There are no records supporting he was diagnosed or received treatment for any mental health conditions to include PTSD. There was a report he experienced memory issues from a car accident in May 71, but this incident occurred prior to him entering into the Air Force and is considered EPTS. There were records reporting he experienced depression and nervousness and took valium for his symptoms during his time in the ANG.

3. Does the condition or experience excuse or mitigate the discharge? There is no evidence the deceased service member had any unfitting mental health conditions during service, active or ANG, that would meet criteria for a medical discharge. Therefore, his condition or experience does not mitigate the discharge.

4. Does the condition or experience outweigh the discharge? Since there is no evidence his mental health condition was unfitting for continued military service during active duty and the ANG, his condition/experience also does not outweigh his original administrative discharge.

The complete advisory opinion is at Exhibit H.

NGB/A1PP recommends denying the deceased service member's request to correct his DD Form 214 from an honorable discharge to a medical discharge. Based on the documentation provided in the application and analysis of the facts, there is no evidence of an error or injustice. The deceased service member requests his DD Form 214 be corrected to reflect a medical disqualification when discharged from the Regular Air Force; however, the reason for separation was not determined to be due to medical disqualification. IAW AFI 36-3202 para 2.2, DD Form 214, meets the legal requirement for issuing a discharge certificate and must meet all eligibility, in which the deceased service member did not meet.

The complete advisory opinion is at Exhibit I.

ARPC/DPTS recommends denying the deceased service member's request to re-create his Statement of Service to show his active duty and ANG time was continuous with no time lost since there is no substantiating documentation or proof of an error or injustice within his military record for the requested correction. To approve the request would be contrary to the Office of Personnel Management (OPM) regulation. The Air Reserve Personnel Center (ARPC) no longer provides the Statement of Service to ANG members. Per the regulations outlined by OPM, the Civil Service Retirement System and Federal Employees Retirement System, (CSRS/FERS) Handbook, Ch 22, ANG time must be certified by the Adjutant General's Office in the State where the member served. This was stated on the original Statement of Service provided to him in Nov 16. ARPC/DPTS also cannot verify his time served as Regular Air Force. Additionally, the Statement of Service is used to capture any active duty time served as a member of the Air Force Reserve prior to entering in Federal Civil Service and/or any periods of Leave without Pay (LWOP) after entering into Federal Civil Service.

The complete advisory opinion is at Exhibit J.

NGB/A1PP recommends denying the deceased service member's request to correct his highest rank achieved of airman first class (E-3) on his NGB Form 22. In accordance with current demotion policy AFI 36-2502, *Air National Guard (ANG) Enlisted Demotions*, paragraph 11.2, the unit commander may recommend the demotion of an enlisted ANG member under his/her command. Demotion authority for enlisted ANG members is vested in the adjutant general (TAG) or commanding general (CG) of the state, district, or territory according to policy and procedure. Demotion authority for enlisted ANG members serving in the ranks of TSgt and below may not

be further delegated. In accordance with paragraphs 11.3 and 11.4 there are specific reasons to demote and processes that the state must follow. Without seeing the demotion package there is no way to know if this was a voluntary or involuntary demotion and if proper procedures were followed.

The complete advisory opinion is at Exhibit K.

The BCMR Medical Advisor recommends granting the service member's request to change his DD Form 214 dated 22 Dec 72, from honorable to honorable, under medical conditions. Despite not favorably opining regarding the incurrence of any of the deceased service member's claimed medical conditions while serving in a military status, the evidence clearly revealed that at the level of the NGB Surgeon's office, the deceased service member was considered "medically disqualified for general military service" on 31 Oct 75. By not properly and clearly annotating the disqualification reasoning on the History and Physical Exam (H&PE) forms, the Air Force was in error per the reference cited in the discharge processing (ANG Regulation 39-10; paragraph 16). Even without proper documentation of the actual medically disqualifying condition (the error by the Air Force), the corresponding evidence as seen from both the NGB Surgeon's office as well as TAG cannot be summarily overlooked. The medical advisor would consider it a further error and injustice to not grant the requested change to the deceased service member's DD Form 214.

The complete advisory opinion is at Exhibit M.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 23 Sep 22 for comment (Exhibit N) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The BCMR Medical Advisor provided a secondary advisory opinion with a revised recommendation to deny the deceased service member's request to change his DD Form 214, dated 22 Dec 72, from honorable to honorable, under medical conditions. Despite not favorably opining regarding the incurrence of any of the deceased service member's claimed medical conditions while serving in a military status, the evidence clearly revealed that at the level of the NGB Surgeon's office, he was considered "*medically disqualified for general military service*" on 31 Oct 75. By not properly and clearly annotating the disqualification reasoning on the H&PE forms, the AF was in error per the reference cited in the discharge processing (ANG Regulation 39-10; paragraph 16). However, the normalization of his urine test in late 1971 deemed the deceased service member qualified for service and remained so qualified until the NGB deemed him medically disqualified in Oct 75. In addressing his official DD Form 214 dated 22 Dec 72, a date nearly three years prior to him being found medically disqualified, would bear no nexus between the two acts and their associated dates. Therefore, after an extensive re-review of the submitted documents, the medical advisor recommends to the Board to deny the request to change his DD Form 214, dated 22 Dec 72, from an honorable to an honorable, under medical conditions. The evidence remains clear through the reviewed material the dated discharge from active duty had no bearing in connection to a disqualifying medical condition. Even without proper documentation of the actual medically disqualifying condition, the corresponding evidence as seen from both the NGB Surgeon's office as well as the state Adjutant General cannot be summarily overlooked as occurring years past his release from active duty and thus being completely separate when considering his time-of-service separation from active duty in 1972.

The complete advisory opinion is at Exhibit P.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 14 Nov 22 for comment (Exhibit Q) 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 new evidence presented demonstrates an error or injustice. The Board concurs with the rationale and/or recommendations of the AFRBA Psychological Advisor, NGB/A1PP, ARPC/DPTS, and the BCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions.

Regarding the request the deceased service member's DD Form 214 be amended to reflect a medical discharge. The Board finds neither his mental health conditions nor his medical conditions were warranted to process through the Integrated Disability Evaluation System (IDES) as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. Specifically, these conditions were not a medical basis for career termination, nor did they meet the criteria for a referral to a Medical Evaluation Board for a medical discharge or retirement. Rather, the deceased service member elected an early discharge for Palace Chase reasons. However, the Board recommends the NGB correct the deceased service member's NGB Form 22 to reflect "medical disqualification."

Regarding the request the deceased service member be issued a DD Form 214 in lieu of the NGB Form 22 he received for his time with the ANG. The Board finds the deceased service member did not complete the required amount of time on active duty in accordance with AFI 36-3202 to be eligible or issued a DD Form 214.

Regarding the request the deceased service member's NGB Form 22 be corrected to reflect his highest grade achieved of airman first class (E-3) rather than the grade of airman (E-2). The Board finds insufficient evidence the grade is erroneous and notes his records reflect he was demoted to the grade of E-2. There is no evidence to indicate the deceased service member's grade of E-3 was reinstated or that he was promoted back to the grade of E-3 before his discharge.

Regarding the request the deceased service member's AF Form 1226 be corrected, sealed or purged to reflect he was not absent without leave (AWOL) from 1 Jun 75 – 30 Jun 75. The Board finds this request to be outside its authority in accordance with OPM, the Civil Service Retirement System and Federal Employees Retirement System, (CSRS/FERS) Handbook, Ch 22.

Regarding the request the deceased service member's AF Form 1613 be recreated to remove lost time. The Board finds the form was recreated on 10 Nov 16 and provided with the ARPC/DPTS advisory opinion and indicates the deceased service member had no lost time between the period of 21 Sep 71 and 23 Jan 76 and no break between his enlistment in the Regular Air Force and the ANG.

Additionally, while the Board considered the request under liberal consideration due to the deceased service member's mental health conditions, the Board finds liberal consideration is not applicable because it only applies to discharge upgrades and not medical discharges nor the other relief requested. 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-2016-01270-2 in Executive Session on 23 Feb 22 and 10 Jan 23:

- Work-Product [Redacted] Panel Chair
- [Redacted] Panel Member
- Work-Product [Redacted] Panel Member

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

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 20 Jun 17.
- Exhibit F: Application, DD Form 149, w/atchs, dated 12 and 15 Jun 19, 8 Dec 19, 13 Oct 20 and 27 Sep 21.
- Exhibit G: Documentary evidence, including relevant excerpts from official records.
- Exhibit H: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Sep 21.
- Exhibit I: Advisory Opinion, NGB/A1PP, w/atch, dated 1 Oct 21.
- Exhibit J: Advisory Opinion, ARPC/DPTS, w/atchs, dated 24 Feb 22.
- Exhibit K: Advisory Opinion, NGB/A1PP, w/atch, dated 28 Feb 22.
- Exhibit L: Applicant’s Response, dated 28 Aug 22.
- Exhibit M: Advisory Opinion, BCMR Medical Advisor, dated 21 Sep 22.
- Exhibit N: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Sep 22.
- Exhibit O: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 23 Feb 22
- Exhibit P: Advisory Opinion, BCMR Medical Advisor, dated 14 Nov 22.
- Exhibit Q: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Nov 22.

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.

12/15/2023

[Redacted Signature]

[Redacted Name]

[Redacted Title]

Work-Product [Redacted]