

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-1998-02180

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

The Board reconsider his request to change his general (under honorable conditions) discharge to an honorable or medical discharge.

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1).

On 23 Feb 99, the Board considered and denied his request to upgrade his general (under honorable conditions) discharge to an honorable discharge finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The facts and opinions stated in the advisory opinion appeared to be based on the evidence of record and had not been rebutted by the applicant. Absent persuasive evidence the applicant was denied rights to which he was entitled, appropriate regulations were not followed, or appropriate standards were not applied, the Board found no basis to disturb the existing record.

On 24 Sep 01, the applicant submitted an application for reconsideration; however, on 26 Oct 01, the Board denied the request based on a lack of new, relevant evidence. The applicant was notified the reiteration of facts previously addressed by the Board, uncorroborated personal observations, or additional arguments on the evidence of record are not adequate grounds for reopening a case.

On 22 Feb 15, the applicant again submitted an application for reconsideration requesting his general (under honorable conditions) discharge be changed to an honorable or medical discharge. The applicant contended he was being administratively separated from the Air Force amid threats of being sent to Leavenworth Federal Prison and for the convenience of the government. He further contended he was considered to be a notorious character because of missed GI parties and roll calls, and a few other less serious infractions. However, he was later granted service-connection by the Department of Veterans Affairs (DVA) for paranoid schizophrenia with insomnia disorder. During active duty, the applicant was suffering from the first phases of his illness which accounts for the deterioration of responsible actions and normal thought patterns as well as his seemingly lack of respect for authority and inability to adapt to military life. The applicant contended he was not given a psychological examination after these infractions or at discharge.

On 21 Apr 15, the applicant supplemented his application with a personal letter requesting an upgrade in rank from airman basic (E-1) to airman (E-2) as well as any accompanying decorations for the period he was in service. The applicant reiterated his contentions from his 22 Feb 15 application regarding his undiagnosed mental health condition.

On 21 Jul 16, the Board again denied his request noting despite the advisory opinion indicating an error conceivably took place in the decision rendered in 1974, and the recommendation the

Board use Secretarial Authority to upgrade the discharge to honorable, the Board was not convinced corrective actions were warranted based on the lack of any military medical evidence directly related to the applicant's contentions regarding his psychotic disorder. Specifically, the Board noted the advisory opinion acknowledged that determining the applicant's mental state at the time of his service with any certainty would be very problematic due to the paucity of medical records available for review. Additionally, the advisory opinion noted there was not enough evidence to recommend medical retirement, and the Board concurred. The Board found the applicant's short military service (6 months and 15 days) was appropriately characterized as general (under honorable conditions) citing his lack of good behavior during his military service and subsequently in his post-service life. Further, the applicant's request for an upgrade in rank is not warranted in accordance with governing regulations.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Air Force Board for Correction of Military Records (AFBCMR) Letter and Record of Proceedings at Exhibit J.

On 26 Dec 23, the applicant requested reconsideration of his request to change his general (under honorable conditions) discharge to an honorable or medical discharge. He again contends it was discovered after a medical examination by the DVA that he was suffering from the prodromal stages of a psychiatric condition for which he filed a claim for service-connected disability which was approved. The applicant further contended he was discharged for the convenience of the government. It was believed the applicant was intentionally committing bad behavior and influencing new arrivals to the base and being a notorious character. In the interest of justice, the applicant believes a correction should be made. He would like to file for retirement from the service as if he had not been discharged early, he would have made a career. The approximate date of discovery was the date of his DVA examination in Aug 10. The delay is because the applicant was increasingly mentally ill and incoherent.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) DVA Rating Decision correspondence; and (2) excerpt from his medical records.

The applicant's complete submission is at Exhibit K.

STATEMENT OF FACTS

On 20 Nov 13, according to a DVA Rating Decision, provided by the applicant, he was granted service-connection for chronic paranoid schizophrenia, including insomnia, with an evaluation of 100 percent, effective 8 Feb 11.

POST-SERVICE INFORMATION

On 5 Aug 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied. A copy of the applicant's FBI report was submitted with his original application and, according to the report, the applicant was arrested on:

- 23 Dec 74 for Non-Residential Burglary
- 20 Jan 75 for Petty Larceny Shoplifting
- 30 Jan 75 for Robbery; Hold for Warrant
- 3 Jun 75 for two charges of Aggravated Robbery
- 29 Oct 78 for Petty Larceny Shoplifting and Battery
- 31 Oct 78 for two charges of Attempted Rape, Assault, Escape from Custody, Resisting and Opposing an Officer, Battery of an Officer, and Lewd and Lascivious Conduct
- 14 May 80 for Aggravated Robbery and Attempted Rape

- 9 Feb 90 for Aggravated Sexual Battery

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 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an

entirely separate Military Department determination regarding whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

a. First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

b. After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 5 Aug 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit L).

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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical disability or upgrade of his discharge based on his mental health condition.

This Psychological Advisor has reviewed the newly submitted evidence in addition to his past records and finds the newly submitted evidence is not sufficient to overturn the Board's previous decisions. To address the applicant's request for a medical discharge first, his service treatment records are not available or submitted for review so there is no evidence or records he received any mental health evaluation, treatment, or a mental disorder diagnosis during service. Because there are no records the applicant had any mental health conditions during service, this would also demonstrate he did not have any unfitting mental health conditions including chronic paranoid schizophrenia that would meet the criteria to be referred to the Medical Evaluation Board for a medical discharge. There is no evidence or records the applicant was placed on a

duty limiting condition profile for his mental health condition, he was never deemed not worldwide qualified or not deployable due to his mental health condition, and there are no statements from his leadership that the applicant's mental health condition had impacted his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. This Psychological Advisor acknowledges the applicant received service-connection from the DVA for his mental health condition of chronic paranoid schizophrenia, including insomnia, and for awareness, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (10 USC), only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. The applicant's service-connection, which was granted decades after his discharge from the military, is not retroactively reflective of his clinical presentation or functioning at the time of service. There is no evidence the applicant had chronic paranoid schizophrenia during service, and he most likely developed this condition after service as documented in his post-service treatment records.

To address the applicant's alternative or second request for an upgrade of his discharge, the applicant and the previous Board received a psychiatric advisory dated 18 May 16. The Psychiatric Advisor found no evidence to support the applicant's request for a medical discharge but did recommend his character of service be upgraded to honorable. The rationale provided was the proximity of his first psychotic episode was within a few months of his discharge and there was a possibility he suffered from prodromal symptoms during his short military service. This information was originally documented in a Compensation and Pension (C&P) examination that was performed on 15 May 13, resulting in him being granted a 100 percent service-connected rating by the DVA. The previous Board did not concur with the Psychiatric Advisor's opinion citing they were not convinced corrective actions to his records were warranted because of the lack of military medical evidence supporting his psychotic disorder had accounted for his deterioration of responsible actions and his seeming lack of respect for authority and inability to adapt to military life in 1974. This Psychological Advisor also does not concur with the previous Psychiatric Advisor's opinion. The previous Psychiatric Advisor did not cite any objective records that were written or completed at the time of service to support the impression the applicant's pattern of misconduct was caused by psychosis or a psychotic disorder. The Psychiatric Advisor's nexus opinion was based on a C&P examination that was performed in 2013, 39 years after the applicant's discharge from the military. The C&P examiner's opinion was purely speculative with no records to support his psychosis or prodromal symptoms had occurred at the time of service. The applicant's service treatment records are not available or submitted by the applicant for review and the available existing objective records find no evidence the applicant had any mental health conditions, including paranoid schizophrenia or insomnia, at the time of service or that his mental health condition had a direct impact or was a contributing factor to his misconduct and discharge. The applicant had submitted several responses to his Records of Individual Counseling (RIC) to explain his behaviors at the time of service. His explanations included he was unaware of the dorm board briefing and morning detail causing him not to show up to these events, his use of vulgar language was not induced until someone else had used it at a party, claimed it was a noncommissioned officer (NCO) who was disrespectful, and he was ironing his uniform and his clock was slow causing him to be late to mandatory formation twice. None of these explanations the applicant provided demonstrated his mental health condition caused his misconduct and behavioral problems. There is no

evidence he had a mental health condition or was in emotional distress impairing his judgment, causing his poor decision making, resulting in misconduct and subsequent discharge from service as he contended. The applicant also did not provide a clear explanation in his current petition for how his psychotic disorder had caused his documented misconduct of his failure to go to his appointed place of duty on numerous occasions, being late on numerous occasions, being disrespectful to an NCO, using vulgar language, having a female in his dorm room, etc.

As stated previously, the applicant was given service-connection for his mental health condition of chronic paranoid schizophrenia, including insomnia. The DVA had assigned him a 100 percent rating based on his symptoms and problems of grossly inappropriate behavior, persistent danger of hurting others, persistent delusions, persistent hallucinations, difficulty in adapting to a work-like setting, impaired impulse control, neglect of personal appearance and hygiene, unprovoked irritability with periods of violence, occupational and social impairment with reduced reliability and productivity, difficulty in establishing and maintaining effective work and social relationships, disturbances of motivation and mood, chronic sleep impairment, depressed mood, and panic attacks (less than weekly). There is no evidence or records the applicant had or experienced any of these symptoms or problems during service. He was reported to have his first psychotic episode a few months after service, and it was opined by the applicant, the C&P examiner, and the Psychiatric Advisor that he had prodromal symptoms during service. There is no evidence or records the applicant had prodromal symptoms during service. It could be his psychotic disorder, or psychosis, actually began right after service and did not necessarily begin during service. Proximity of the applicant's first psychotic episode to his date of discharge does not confirm he had psychosis or prodromal symptoms during service, especially since there are no service treatment records to support this impression. The applicant's mental health condition and functioning appeared to have decompensated after service and there is no evidence his psychosis or mental health issues experienced after service were caused by, or related to, his brief military service. The applicant most likely had problems adjusting to the military environment as his records had shown, but this does not indicate he had a mental health condition as well. After an exhaustive review of the available records, 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 also not supported.

Liberal consideration is not applied to the applicant's request for a medical discharge because the updated clarifying guidance, Vazirani Memorandum, published on 4 Apr 24, clearly states liberal consideration does not apply to fitness determination requests, which includes medical discharge, disability, or retirement. The updated clarifying guidance did instruct a bifurcated review should be performed when a mental health condition potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change in the narrative reason is appropriate. As such, liberal consideration is applied to the applicant's petition for his request for an upgrade of his discharge. 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 suffered from prodromal stages or symptoms. He believed his disability of paranoid schizophrenia was responsible for his poor decision making that led to his discharge.

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

The applicant's service treatment records are not available or submitted by the applicant for review. There is no evidence he had any mental health conditions including paranoid schizophrenia, including insomnia, during service. He had his first psychotic episode a few months after his military discharge and was service-connected for chronic paranoid schizophrenia decades after service by the DVA.

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

There is no evidence or records the applicant's mental health condition had a direct impact or was a contributing factor to his misconduct and discharge. The applicant had submitted several responses to his RICs at the time of service to explain his behaviors and none of the explanations he had provided demonstrated his mental health condition caused his misconduct and behavioral problems. There is no evidence the applicant had a mental health condition or was in emotional distress impairing his judgment, causing his poor decision making, resulting in misconduct and subsequent discharge from service. Thus, 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 mental health condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit M.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 21 Aug 24 for comment (Exhibit N) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence or records the applicant received any mental health evaluation, treatment, or a mental disorder diagnosis during service. Proximity of the applicant's first psychotic episode to his date of discharge does not confirm he had psychosis or prodromal symptoms during service, especially since there are no service treatment records to support this impression. The applicant's mental health condition and functioning appeared to have decompensated after service and there is no evidence his psychosis or mental health issues experienced after service were caused by, or related to, his brief military service. The applicant most likely had problems adjusting to the military environment as reflected in his records, but this does not indicate the applicant also had a mental health condition.

Further, under 10 USC, the military's DES was established to maintain a fit and vital fighting force, and by law, can only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. The DVA, under 38 USC, may evaluate a service member over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time.

Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and the

extensive post-service criminal history provided by the applicant, the Board finds no basis to do so. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-1998-02180 in Executive Session on 15 Jan 25:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit J: Record of Proceedings, w/ Exhibits A-I, dated 21 Jul 16.
Exhibit K: Application, DD Form 149, w/atchs, dated 26 Dec 23.
Exhibit L: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 5 Aug 24.
Exhibit M: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Aug 24.
Exhibit N: Notification of Advisory, SAF/MRBC to Applicant, Undated.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR