

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2009-00579

XXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his Entry Level Separation (ELS) to an honorable discharge, change his reentry code to RE-1 and his narrative reason for separation to Secretarial Authority.

RESUME OF THE CASE

The applicant is a former Air Force Reserve airman first class (E-3).

On 21 Jul 09, the Board considered and denied his request to upgrade his ELS to a general (under honorable conditions) discharge and change his 2C [Involuntarily separated with an honorable discharge; or entry level separation without characterization of service] reentry code and narrative reason for separation, finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board found no basis to do so.

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 F.

On 3 Aug 13, the applicant requested reconsideration of his request to upgrade his ELS. In this application for reconsideration, he requested an upgrade to an honorable discharge. The applicant contends he was the victim of cruelty and maltreatment by the mental hygiene personnel. He further requested upgrade based on clemency. In support of his reconsideration request, the applicant submitted a personal statement. The Board denied the applicant's request for reconsideration (Exhibit H) due to lack of newly discovered relevant evidence.

The applicant's complete submission is at Exhibit G.

On 1 Jan 24, the applicant requested reconsideration of his request to upgrade his ELS to an honorable discharge. He additionally requested his reentry code be changed to RE-1 and his narrative reason for separation be changed to Secretarial Authority. He again contends his discharge was unfair at the time and remains so. His discharge was both procedurally and substantively defective. Since 1987, the applicant has unsuccessfully represented himself to the AFBCMR in an attempt to correct the Air Force error and injustice he suffered while in Basic Military Training (BMT) in 1986. The Air Force has not given the applicant fair and deserved justice and relief in this matter. According to the documents provided to the applicant by the AFBCMR, he was informed he was being recommended for discharge due to unsatisfactory entry level performance or conduct. The problem is the applicant completed BMT by passing his final exam, but there is no record/proof of this exam. Upon passing the final exam, the applicant was given a day-pass in San Antonio where he spent the day with his family. When he returned to base, the applicant forgot to sign in and fell asleep in his dormitory. The applicant was

arrested by the Air Force police in the middle of the night and taken to his commander's office, where he was given the riot act and threaten with an Article 15 and court-martial. This was the applicant's breaking point after all he had been through in BMT. The applicant asked for his records but only received Air Force form documents that did not go into detail. The applicant further contended he was suffering from Post-Traumatic Stress Disorder (PTSD), which was aggravated by the BMT command staff. There was an incident where the applicant was woken up in his dormitory room late one night to go to the laundry and re-clean it after it was found to be improperly cleaned earlier in the day. When the applicant went into the laundry room, there were people in there making out and stuff. It appeared to be a Training Instructor and a young female recruit. The applicant was sure he would be marked at that point because of what he saw. There was also one or two quick meetings with a female counselor but there are no detailed notes from her report. The applicant does not have any records, proof, or evidence the AFBCMR has required him to produce or be denied. The applicant contended he was ripped apart by this woman. She called him every belittling name in the book for his moment of weakness. The remainder of the applicant's statement was not included in his application.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) Personal statement (incomplete); (2) State law enforcement employment documentation; (3) Letters of Support for law enforcement license suspension; (4) State/County court judgment and probation documents; driving while intoxicated; (5) Certificates of Achievement; (6) Training Certificates; and (7) Letters of Appreciation.

The applicant's complete submission is at Exhibit I.

STATEMENT OF FACTS

On 25 Jul 86, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the Air Force Reserve.

On 21 Nov 86, the applicant's commander recommended the applicant be discharged from the Air Force for unsatisfactory entry level performance or conduct under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-22. The specific reasons for the action were:

- a. Lack of aptitude for military service.
- b. Failure to adapt to the military environment.
- c. Failure to make satisfactory progress in a required training program.
- d. Reluctance to make the effort necessary to meet Air Force standards of conduct and duty performance.
- e. Lack of self-discipline.

On 21 Nov 86, the Staff Judge Advocate found the discharge action legally sufficient.

On 24 Nov 86, the discharge authority directed the applicant be discharged with an ELS under the provisions of AFR 39-10, Chapter 5, paragraph 5-22.

On 25 Nov 86, the applicant received an uncharacterized ELS. His narrative reason for separation is "Entry Level Performance" and reenlistment code is "2C". The applicant was credited with 1 month and 20 days of total active service.

POST-SERVICE INFORMATION

On 13 Nov 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; however, he has not

replied. The applicant provided a personal statement, character statements, and certificates with his current application.

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 13 Nov 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit K).

AFR 39-10, Chapter 1 – *General Policy and Procedures*:

1-19. *Separation Without Service Characterization*:

a. *Entry Level Separation.* Airmen are in entry level status during the first 180 days of continuous active military service. A separation based on an action that starts while the airman is in entry level status will be described as an entry level separation unless:

(1) A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or

(2) The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty. This characterization is authorized if the reason for separation is:

(a) A change in military status according to Chapter 2;

(b) For the convenience of the government according to Chapter 3;

(c) For disability according to AFR 35-4; or

(d) Directed by the Secretary of the Air Force according to paragraph 1-2.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge.

While the applicant was diagnosed with an adjustment disorder, his mental health condition does not mitigate his ELS/unsatisfactory entry level performance. His unsatisfactory performance is not part of the sequela of symptoms associated with adjustment disorder. The applicant's lack of aptitude for military service, failure to make satisfactory progress in training, reluctance to put forth effort to meet standards of conduct/performance, and lack of self-discipline do not have a nexus with his mental health condition. The applicant was also medically cleared for separation, indicating he did not have any medical or psychological issues that accounted for his unsatisfactory entry level performance.

Additionally, after reviewing the available information, it is the opinion of this advisor there is evidence that shows the applicant's mental health issues existed prior to service, which accounts for his difficulty in adjusting to military life and led to his mental health diagnosis. A mental health encounter dated 30 Oct 86 noted the applicant had a history of nervousness since age six and was taking a medication to help control anxiety (Librax, which contains benzodiazepine and anti-anxiety medication).

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his unsatisfactory entry level performance/ELS. A review of the available records finds no error or injustice with the applicant's discharge, and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant check-marked Other Mental Health on his application.

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

The applicant was diagnosed with adjustment disorder with mixed emotions during his military service.

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

While the applicant was diagnosed with an adjustment disorder, his mental health condition does not mitigate his ELS/unsatisfactory entry level performance. His unsatisfactory performance is not part of the sequela of symptoms associated with adjustment disorder. The applicant's lack of

aptitude for military service, failure to make satisfactory progress in training, reluctance to put forth effort to meet standards of conduct/performance, and lack of self-discipline do not have a nexus with his mental health condition. The applicant was also medically cleared for separation, indicating he did not have any medical or psychological issues that accounted for his unsatisfactory entry level performance

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4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit L.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Nov 24 for comment (Exhibit M) 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. The applicant's unsatisfactory performance is not part of the sequela of symptoms associated with his diagnosed adjustment disorder. The applicant's lack of aptitude for military service, failure to make satisfactory progress in training, reluctance to put forth effort to meet standards of conduct/performance, and lack of self-discipline do not have a nexus with his mental health condition. The applicant was discharged for unsatisfactory entry level performance and his military records support this action. Further, there was no evidence the applicant was diagnosed with, or suffered from, PTSD during his military service. Nor was there evidence the applicant was mistreated or targeted by BMT staff. Liberal consideration was applied; however, his misconduct could not be excused or mitigated by his mental health condition. The characterization of the applicant's service was in accordance with AFR 39-10.

Additionally, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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 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-2009-00579 in Executive Session on 19 Feb 25:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 16 Sep 09.
Exhibit G: Application, DD Form 149, w/atchs, dated 3 Aug 13.
Exhibit H: Letter, AFBCMR (Reconsideration Denial), 30 Oct 14
Exhibit I: Application, DD Form 149, w/atchs, dated 1 Jan 24.
Exhibit J: Documentary evidence, including relevant excerpts from official records.
Exhibit K: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 13 Nov 24.
Exhibit L: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Nov 24.
Exhibit M: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Nov 24.

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

X

Board Operations Manager, AFBCMR