

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXX

DOCKET NUMBER: BC-2013-03217

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his bad conduct discharge (BCD). Additionally, in an updated personal statement, dated 9 Oct 24, the applicant requested his BCD be upgraded to an honorable discharge or a medical discharge with a 100 percent disability rating, and backpay to the date of his original discharge.

Further, the applicant noted in his supporting documentation errors on his DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States* (date of birth) and DD Form 214, *Certificate of Release or Discharge from Active Duty* (awards and decorations). The applicant failed to exhaust lower administrative avenues to obtain relief for these issues; therefore, the Board is not required to consider these matters.

RESUME OF THE CASE

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

On 6 May 14, the Board considered and denied his request to upgrade his BCD to a general (under honorable conditions) discharge finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board also acknowledged it is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code § 1552(f) [10 USC § 1552(f)], the Board's authority is limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. The Board found no evidence the applicant's service characterization, which had its basis in his court-martial conviction and was a part of the sentence of the military court, was improper or exceeded the limits set forth in the Uniform Code of Military Justice (UCMJ). Finally, the Board considered upgrading the discharge based on clemency; however, after considering the applicant's overall quality of service, the court-martial conviction which precipitated the discharge, the seriousness of the offenses of which he was convicted and, noting the lack of documentation pertaining to the applicant's post-service activities, concluded clemency was not warranted.

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 21 Dec 23, the applicant requested reconsideration of his request to upgrade his BCD. He again contends mental health conditions had a significant impact on his life. He was diagnosed with Post-Traumatic Stress Disorder (PTSD), schizophrenia, spinal stenosis, and multiple other disorders. The mental health challenges the applicant faced during service contributed to his misconduct. Since separation from the military, the applicant has actively sought treatment and counseling to address and manage his mental health condition. The applicant is currently taking

his prescribed medications and is committed to his treatment plan. Support from healthcare professionals plays a crucial role in his ongoing recovery.

On or about Jun 02, the applicant was assaulted by off-duty military police in Work-P... Air Base, Korea. This incident left lasting physical and emotional scars. The assault affected the applicant's ability to fulfill his duties and maintain the expected level of conduct. Subsequent to this incident, the applicant struggled with physical pain, emotional distress, and a decline in mental health, ultimately leading to the actions that resulted in his BCD. During this assault, the applicant was strangled, physically beaten, and sustained a cut on his left hand. The five or six perpetrators left the applicant incapacitated on the ground, further contributing to the physical and emotional trauma. The applicant provided news articles detailing criminal incidents in Korea in support.

The applicant further contended paint fumes present in the missile bay where he worked were substantial and the enclosed space heightened his exposure risk. Inhalation of these fumes have been linked to various mental health issues, including anxiety, depression, and cognitive impairment. The applicant believes this exposure, as well as exposure to JP8 [jet fuel], exacerbated the challenges he faced during his service and also contributed to the incident which led to his BCD. The applicant provided news articles regarding PFAS [Per- and polyfluoroalkyl substances] exposure and pollution reports within the general area in which he served. He also provided mental health documentation supporting his living situation and letters from health care professionals to shed light on the challenges he faced during his military service.

Toxic exposure has contributed to episodes where the applicant finds himself wandering, seemingly without purpose or control. This behavior is not a deliberate act of defiance but rather an unintended consequence of the impact on the applicant's cognitive functions. The exposure to harmful substances has affected the applicant's mental clarity, contributing to moments of disorientation and confusion. These episodes made it challenging for the applicant to adhere to military protocols and expectations consistently and impacted his ability to conform to the traditional structure of military life.

The applicant also detailed an incident he contended led to his development of spinal stenosis. He incurred this condition from preventing a fully loaded live munitions trailer from crashing into a wall. This incident was not his fault, and he was later given heavy narcotics. Further, during his time in service, the applicant participated in combat training exercises with M16 rifles and detonating cord. He also worked in close proximity to aircraft engine noise. Over the course of his service, this prolonged exposure resulted in measurable hearing loss. This hearing loss contributed to challenges in communication, both in professional and personal settings. Understanding and responding to verbal commands became increasingly difficult, impacting the applicant's performance during training exercises and potentially contributing to the circumstances that led to his discharge.

The applicant further contended during his duty stateside, his former spouse ran him over, resulting in her arrest. This event had a profound and enduring effect on his mental health, pushing the applicant to the brink of despair. This emotional trauma led to a moment of crisis when he cut his wrists. Approximately four months after this suicide attempt, the applicant was deployed as worldwide qualified to Korea for a second deployment. This deployment occurred despite the delicate state of the applicant's mental health. The decision to deploy him during such a vulnerable period was a severe oversight that compromised his well-being, and potentially posed a risk to the applicant and others. The applicant had not fully recovered from the emotional and psychological aftermath of the suicide attempt, and the circumstances surrounding his mental health should have been carefully considered before any deployment decisions were made. The decision to deploy the applicant at this sensitive time was a grave error and contradicts the principles of compassionate and responsible military leadership.

These incidents are not isolated events. Rather, they form a complex tapestry that has significantly influenced the applicant's mental health and contributed to the development of PTSD.

In the aftermath of his military service, the applicant faced the additional hardships of a failed marriage. Despite these personal challenges, the applicant persevered and sought ways to contribute positively to his community. The applicant attempted to volunteer at the local fire station. Unfortunately, due to his physical limitations resulting from spinal stenosis, he faced challenges in fulfilling certain responsibilities. The applicant also volunteered at a local church washing dishes. The applicant is trying to continue his education to help maintain a healthy lifestyle, but it is difficult due to transportation.

In an updated statement, dated 9 Oct 24, the applicant contended he was diagnosed with major depression and major adjustment disorder and personality disorder while in service. His immaturity when he joined the service contributed to his difficulties adjusting to military life. The applicant further contended he had been hospitalized for depression prior to his enlistment and was born with schizoaffective disorder with bipolar symptoms. The applicant amended his original request for reconsideration to include a discharge upgrade to honorable, or a medical discharge with a 100 percent disability rating, with backpay from the date of original discharge, contending this support would significantly enhance his financial stability and provide him with the opportunity to focus on his health and well-being.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) Department of Veterans Affairs (DVA) correspondence; (2) excerpts from medical records; (3) statement from applicant's mother; (4) Social Security Administration correspondence; and (5) miscellaneous news articles.

The applicant's complete submission is at Exhibit G.

POST-SERVICE INFORMATION

On 18 Oct 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit I). The applicant replied on 25 Oct 24 and provided an FBI report. According to the report, the applicant was arrested on:

- 4 Nov 00 for Disorderly Conduct and Resisting Arrest
- 22 Oct 04 for Desertion, Violation of Article 85, UCMJ and Wrongful Use of a Schedule I, II, or III Drug (Marijuana), Violation of Article 112a, UCMJ
- 1 Jul 05 for Domestic Violence, Third Degree
- 28 Sep 05 for Possession of a Weapon
- 23 Aug 08 for Probation Violation
- 17 Nov 08 for Possession of a Weapon
- 26 May 10 for Conditional Release Violation
- 24 Aug 11 for Menacing
- 17 Apr 13 for Probation Violation (Domestic Violence, Third Degree)
- 18 Jun 14 for Dangerous Drugs; Distribution, Controlled Substance
- 1 Jun 22 for Domestic Violence, Third Degree Assault

The applicant also provided multiple personal statements and character references from family members.

The applicant's complete response is at Exhibit J.

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, 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 (USD P&R) 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 USC § 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 USC § 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.

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.

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 18 Oct 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit I).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.

- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition. Additionally, his request for disability should be addressed by the DVA.

A review of the available records finds the applicant's contentions are not corroborated by his objective military records. While it is plausible his traumatic experiences of being run over by his ex-wife and being physically assaulted by military police occurred during service, there are actually no records of any of these events in his military file. The applicant's service treatment records are not available and not submitted by the applicant for review so there are also no records he had any mental health conditions including anxiety, depression, PTSD, schizophrenia, or schizoaffective disorder, or had attempted suicide during service. The applicant's post-service treatment records revealed he had attempted to initiate substance abuse treatment at a Naval Hospital around the time of his discharge. There was no report of any anxiety, depression, PTSD, or psychosis that may have co-occurred with his substance abuse problems or caused him to use substances to cope. The applicant contacted the DVA's National Suicide Prevention Hotline over 10 years after his discharge several times for complaints of suicidal thoughts, panic attacks, hallucinations, housing issues, and relationship problems, which were all related to his post-service stressors and not military service. These problems occurred after his military service. The applicant did report during his first call to the suicide prevention hotline that he had attempted suicide during service, but there are no records available to corroborate his self-report. He submitted a letter from his current psychiatry prescriber attesting to treating him for schizoaffective disorder and PTSD since Sep 23. The applicant's provider did not report when he began to experience psychosis, the first time he was diagnosed with a psychotic disorder and PTSD, his traumatic experiences causing him to meet the diagnostic criteria for PTSD, and how any of these conditions caused his discharge. It is possible and more likely than not that these mental health conditions were developed after his service. The applicant was discharged from service for being Absent Without Leave (AWOL) or being a deserter for almost four months until he was apprehended, for using marijuana, and possession of marijuana. There is no evidence or records the applicant's mental health condition caused him to engage in any of these misconducts for which he was convicted at a general court-martial. There is also no evidence he used marijuana to cope with his mental health condition or that he was experiencing emotional distress from anxiety, depression/suicidal ideation, trauma, or psychosis impairing his judgment at the time of any of these misconducts. Being AWOL and a deserter is a serious offense, and it was mentioned in his general court-martial order the applicant intended to remain away indicating he was aware of his actions and made the decision to remain AWOL or a deserter. It appeared the applicant knew what he was doing at the time, and his mental health condition does not excuse or mitigate this serious offense. Lastly, the applicant claimed he was exposed to PFAS pollution and substantial paint fumes that may have contributed to his mental health challenges and exacerbated his conditions like anxiety, depression, and PTSD. There is no medical evidence to support his claim that these exposures caused or exacerbated his mental health condition. There is no evidence or records to corroborate the impression the applicant's mental health condition including anxiety, depression, PTSD, schizophrenia, or schizoaffective disorder, was a contributing factor or had a direct impact on his general court-martial conviction and BCD. Based on the available records and for the reasons discussed, this Psychological Advisor finds no error or injustice with his discharge from a mental health perspective. The applicant's request for an upgrade of his discharge based on his mental health condition is not supported by the available records and evidence submitted for review.

Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. It is reminded liberal consideration does not mandate an upgrade per policy guidance. The following are answers 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 had traumatic experiences of being run over by his ex-wife and was physically assaulted by off-duty military police during service and had attempted suicide after the former incident. The applicant also claimed he was exposed to PFAS pollution and paint fumes during service. He believed these experiences contributed to his mental health conditions causing him to develop anxiety, depression, PTSD, and schizophrenia or schizoaffective disorder which in turn caused his misconduct and discharge.

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

There is no evidence or records the applicant's traumatic experiences of being run over by his ex-wife or being physically assaulted by military police existed or occurred during his military service. His service treatment records are not available or submitted for review so there is also no evidence or records his mental health condition including anxiety, depression, PTSD, schizophrenia, schizoaffective disorder, or his act of attempting suicide had existed or occurred during his military service. There is no evidence or records the applicant was exposed to PFAS pollution and substantial paint fumes causing him to develop or exacerbate his mental health condition. The applicant submitted a letter from his post-service provider reporting he had been treated for schizoaffective disorder and PTSD since Sep 23, 16 years after his discharge from the Air Force. His DVA records reported the applicant contacted their suicide prevention hotline several times for complaints of suicidal ideation, panic attacks, hallucinations, housing issues, and relationship problems. All of these problems were related to his post-service stressors and not to his military service.

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

There is no evidence or records the applicant's mental health condition including anxiety, depression, PTSD, schizophrenia, or schizoaffective disorder was a contributing factor or had a direct impact on his general court-martial conviction and BCD. There is no evidence the applicant had a mental health condition at the time of any of his misconducts. His misconduct/offense of being a deserter was reported to be intentional indicating the applicant was aware of his actions. Therefore, 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 K.

AF/JAJI recommends denying the applicant's request for discharge upgrade and finds there is insufficient evidence on a legal basis to demonstrate relief is warranted. This advisory opinion only addresses the legal issue regarding the applicant's request for discharge upgrade.

The applicant entered active duty on 13 Jun 01 and attained the rank of airman first class. In Feb 05, the applicant was tried by general court-martial, for one charge and specification of desertion in violation of Article 85, UCMJ, and one charge and three specifications of wrongful use and wrongful possession of marijuana, in violation of Article 112a, UCMJ. Consistent with his pleas, the applicant was found guilty of both charges and their specifications and sentenced to a BCD, six months confinement, and reduction to airman basic (E-1).

The desertion charge stemmed from the applicant failing to return from leave and being absent from 22 Jul 04 to 22 Oct 04. He was apparently returned to military control after apprehension by civilian authorities and placed in pretrial confinement. It is not apparent from the record the circumstances surrounding the marijuana use or possession other than the offenses occurred in May 04 and Jun 04, just prior to the applicant deserting. Following sentencing on 10 Feb 05, the applicant remained in post-trial confinement until 21 Mar 05. Upon release, he was placed in excess leave status. The convening authority approved the applicant's sentence, and the applicant was discharged on 28 Aug 06¹.

The applicant asserts he was diagnosed with mental health conditions while on active duty and continues to suffer from various mental health conditions to present. The AFRBA Psychological Advisor reviewed the applicant's case and issued an opinion finding insufficient evidence to warrant a discharge upgrade based on mental health conditions.

The applicant's FBI Identity History Summary Check disclosed the applicant has been arrested multiple times post-conviction, between 2005 and 2022, for domestic violence, menacing, probation violation, drug distribution, possession of a weapon, and conditional release violation.

In accordance with 10 USC § 1552(f), because the applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and sentence, the Board can only take two types of action: (1) correction of a record to reflect an action taken by reviewing authorities under the UCMJ (e.g. convening authority clemency or appellate corrections); or (2) action on the sentence of a court-martial for purposes of clemency. The applicant has provided no evidence of an error in any record of action taken by a reviewing authority of his court-martial. Therefore, the only correction for consideration is action on the applicant's court-martial sentence for purposes of clemency.

There is insufficient evidence that clemency is warranted or appropriate in the applicant's case, or that there is a basis for relief under the equity, injustice, or clemency considerations pursuant to the Wilkie Memorandum, or the guidance for liberal consideration of mental health issues pursuant to the Kurta Memorandum. The AFRBA Psychological Advisor determined there was no evidence the applicant's asserted mental health conditions were diagnosed during his military service or bore any relationship to his misconduct. In accordance with paragraph 19 of the attachment to the Kurta Memorandum, "[p]remediated misconduct is not generally excused by mental health conditions..." The applicant's offenses involved premeditated misconduct, specifically the offense of desertion, following his drug use and possession. Finally, the applicant's post-conviction conduct involves a lengthy and persistent arrest record, further cutting against consideration of a discharge upgrade.

The complete advisory opinion is at Exhibit L.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 15 Nov 24 for comment (Exhibit M) but has received no response.

¹ The convening authority approved the applicant's sentence on 28 Aug 06. The applicant was discharged on 28 Jun 07.

SUPPLEMENTAL AIR FORCE EVALUATION

In a supplemental advisory opinion, the AFRBA Psychological Advisor still finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition.

The original mental health advisory was completed using records and information available at that time. A new set of the applicant's military records was discovered recently and received several months after the original advisory was completed. This supplementary advisory will include and discuss the new records for the Board's consideration of the applicant's request. The Board should review this supplemental advisory in addition to the original advisory as most information provided in the original advisory is still relevant to the applicant's case file and request and not conducive to being reiterated in this advisory.

This Psychological Advisor has reviewed the newly discovered records and continues to find insufficient evidence to support the applicant's request for an upgrade of his discharge. The newly discovered records do not corroborate his contentions. The new records reported the applicant was depressed because of his marital problems and his wife wanting a divorce, which occurred prior to his AWOL. The applicant was found to have marijuana in his car during a traffic stop which led to the discovery that he was wanted for desertion. The applicant reported having suicidal ideation, but these thoughts occurred when he was only on base. There are no records of his suicide attempt. There are still no records to corroborate the applicant's reports his ex-wife ran him over or off-duty military police assaulted him which caused him to develop anxiety, depression, PTSD, or psychosis. The applicant was given diagnoses of adjustment disorder with depression, dysthymia, and partner relational problems from his marital issues, and adjustment disorder with mixed disturbance of emotion and conduct, substance use disorder, and personality disorder NOS [not otherwise specified] when he was assessed for pretrial confinement. There is evidence the applicant was depressed but no evidence he had anxiety, PTSD, schizophrenia, or schizoaffective disorder during service. It is possible the applicant's depression may have caused him to be AWOL, but this is a serious offense and cannot be excused by his mental health condition. The applicant was a deserter for about three months and there is no evidence he was depressed while he was a deserter or that his depression or other mental health condition caused him to remain AWOL or being a deserter for a prolonged period of time. As stated in the original advisory, the applicant was noted to have intentionally remained away from his base indicating he was aware of his actions, and it was deliberate. The applicant's mental health condition did not cause him to remain AWOL or be a deserter, and there is no evidence his mental health condition caused him to have impaired judgment resulting in his misconduct and discharge. There is also no evidence the applicant's mental health condition caused him to possess or use marijuana. There is no evidence from the newly discovered records the applicant's discharge from service was made in error or was unjust, and no evidence his mental health condition may excuse or mitigate his discharge. The applicant's request to upgrade his discharge based on his mental health condition is not supported by the new records.

Liberal consideration was applied to the applicant's request in the original advisory. The following are answers to the four questions from the Kurta Memorandum that were slightly revised based on the available records to include the newly discovered records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended he had traumatic experiences of being run over by his ex-wife and was physically assaulted by off-duty military police during service and he had attempted suicide after the former incident. He also claimed he was exposed to PFAS pollution and paint fumes during service. The applicant believed these experiences contributed to his mental health causing him

to develop anxiety, depression, PTSD, and schizophrenia or schizoaffective disorder which, in turn, caused his misconduct and discharge.

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

There is no evidence or records the applicant's traumatic experiences of being run over by his ex-wife or being physically assaulted by military police had existed or occurred during his military service. His available service treatment records revealed he was depressed because of his marital problems and his wife wanting a divorce, which occurred before he was AWOL. The applicant was found to have marijuana in his car during a traffic stop which led to the discovery that he was wanted for desertion. The applicant reported having suicidal ideation during his pretrial confinement evaluation, but these thoughts occurred when he was only on base. There are no records of a suicide attempt. There is no evidence or records his mental health condition, including anxiety, PTSD, schizophrenia, or schizoaffective disorder, had existed or occurred during his military service. There is no evidence or records the applicant was exposed to PFAS pollution and substantial paint fumes causing him to develop or exacerbate his mental health condition. The applicant submitted a letter from his post-service provider reporting he had been treated for schizoaffective disorder and PTSD since Sep 23, 16 years after his discharge from the Air Force. The applicant's DVA records reported he had contacted their suicide prevention hotline several times for complaints of suicidal ideation, panic attacks, hallucinations, housing issues, and relationship problems. All of these problems were related to his post-service stressors and not to his military service.

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

While there is evidence the applicant had depression from his marital problems during service and his depression may have caused him to be AWOL or be a deserter, there is no evidence the applicant continued to be depressed while he was AWOL or that his depression caused him to remain AWOL and being a deserter for a prolonged period of time. The applicant's records indicated he intended to remain permanently away from his base demonstrating he was aware of his decision and his act was deliberate. There is also no evidence the applicant's mental health condition caused him to possess or use marijuana. Further, there is also no evidence his mental health condition caused him to have impaired judgment resulting in his general court-martial conviction and BCD. Therefore, 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 supplemental advisory opinion is at Exhibit N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the supplemental advisory opinion to the applicant on 16 Jan 25 for comment (Exhibit O) 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 rationales and recommendations of the AFRBA Psychological Advisor and AF/JAJI and finds a preponderance of the evidence

does not substantiate the applicant's contentions. There is no evidence or records the applicant's traumatic experiences of being run over by his former spouse or being physically assaulted by military police existed or occurred during his military service. While the applicant's service treatment records reflect he was depressed due to marital problems, the applicant was found to have marijuana in his possession during a traffic stop which led to the discovery he was wanted for desertion. The applicant was reported as having suicidal ideation during his pre-trial confinement evaluation; however, there are no records of a suicide attempt. Moreover, there is no evidence or records the applicant's mental health condition including anxiety, PTSD, schizophrenia, or schizoaffective disorder had existed or occurred during his military service. Additionally, there is no evidence or records the applicant was exposed to PFAS pollution and substantial paint fumes causing him to develop or exacerbate his mental health condition. The applicant provided no evidence to support his contentions regarding development of spinal stenosis or hearing loss. In accordance with the Vazirani Memorandum, a bifurcated review was conducted. As the applicant was never diagnosed with an unfitting physical or mental health condition during military service, disability processing and benefits through the Air Force Disability Evaluation System are not appropriate. Liberal consideration was applied to the applicant's upgrade request; however, due to the serious and deliberate nature of his offenses, the applicant's mental health condition does not excuse or mitigate his discharge.

Further, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the court-martial authority'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 clemency; however, given the evidence presented, the multiple acts of premeditated misconduct, the serious nature of the charges, and extensive criminal history provided by the applicant, 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2013-03217 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 6 May 14.
Exhibit G: Application, DD Form 149, w/atchs, dated 21 Dec 23.
Exhibit H: Documentary evidence, including relevant excerpts from official records.
Exhibit I: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 18 Oct 24.
Exhibit J: Applicant's Response, w/atchs, dated 25 Oct 24.

Exhibit J: FBI Report, dated, 21 Oct 24.
Exhibit K: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Aug 24.
Exhibit L: Advisory Opinion, AF/JAJI, dated 24 Oct 24.
Exhibit M: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 24.
Exhibit N: Supplemental Advisory Opinion, AFRBA Psychological Advisor,
dated 16 Jan 25.
Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Jan 25.

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