

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2018-02537

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request to upgrade her bad conduct discharge (BCD) to an honorable discharge.

RESUME OF THE CASE

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

On 27 May 21, the Board considered and denied her request to upgrade her BCD to an honorable discharge finding the applicant had provided insufficient evidence of an error or injustice to justify relief. Additionally, the Board considered upgrading the discharge based on clemency; however, found the applicant did not provide sufficient evidence concerning post-service activities and accomplishments to warrant a recommendation for upgrade.

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 9 Mar 23, the applicant requested reconsideration of her request to upgrade her BCD to an honorable discharge. She again contends she was found guilty of a single use of marijuana between on or about 1 Nov 85 – 1 Dec 85, resulting in a BCD. The applicant also contended she was under a constant state of stress for over a year while working as a medical service specialist in the cardio-thoracic step-down unit at Wilford Hall Medical Center, Texas (TX). She unknowingly developed Post-Traumatic Stress Disorder (PTSD) after hundreds of patients who she cared for died from non-combat related injuries and comorbidities. She attempted to cope by herself leading to actions that resulted in the BCD. Prior to traumatic events and undiagnosed PTSD, the applicant served honorably in all aspects of her Air Force military career.

Current Air Force policies, if present at the time of her offense and career, would have treated the marijuana use as a minor offense, and with a high probability, properly diagnosed the applicant with PTSD. Properly diagnosing the applicant with PTSD would have led to the rehabilitation and treatment of the PTSD that was directly caused by her military service while functioning as a medic at Lackland Air Force Base, TX. These new policies are evidenced by the Air Force allowing at least 43 recruits who tested positive for THC [tetrahydrocannabinol], the active ingredient in marijuana, to enlist after a second test in Sep 22, as part of a new program to boost recruitment, as Military.com reported.

The applicant is currently licensed as a registered nurse for the past 32 years and had obtained her Master of Science in Nursing Education in Dec 21.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) updated college transcript; (2) nomination letter for admission to Master of Science in

Nursing program; (3) photo of certificate of induction to the Honor Society of Nursing; (4) nomination document to the National Society of Leadership and Success; (5) employment offer letter; (6) applicant's letter requesting admission to the Master of Public Health program for Winter 2024 semester; (7) congratulatory letter from Florida Governor DeSantis, upon her graduation from University of Central Florida; and (8) website links for two articles addressing the Air Force allowing enlistment of recruits who test positive for THC.

The applicant's complete submission is at Exhibit G.

On 21 Sep 23, the Board sent the applicant a standard request for post-service information. This letter informed the applicant a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating her case. Although the applicant did reply to the request for post-service information (Exhibit J), her response did not include an FBI background check or other criminal history data.

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 21 Sep 23, 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

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

There is insufficient evidence the applicant had any mental health condition during her time in service. She was first diagnosed in 2018 with depressive disorder and anxiety disorder, 32 years after she was in the military. While the applicant claims she had undiagnosed PTSD, she was never diagnosed with PTSD according to her in-service or post-service records. Her anxiety symptoms appear to have started in 2018 when she reported she started to have severe anxiety two weeks ago.

While the applicant stated she developed PTSD from patient deaths, there is no evidence of this in her service record or her mental health encounters. While she reported several traumas that occurred to her, she does not mention patient deaths in any of her mental health encounters.

She does mention several traumas she experienced. It is unclear if her current mental health diagnoses stem from any of these experiences or if they are based on more recent circumstances (post-service). While self-medication can be a part of the sequela of symptoms associated with

mental health conditions, in the applicant's case, it is documented her misconduct (drug usage) occurred prior to any of her identified traumatic experiences. Her reported traumatic experiences include being court-martialed, being both "mentally and physically abused" while in confinement (after her court-martial), and her ex-husband sexually assaulting her son (approximately 11 years after her military discharge).

This psychological advisor concludes the applicant's use of marijuana, methamphetamine, and LSD [lysergic acid diethylamide] was not for self-medication. Additionally, methamphetamine and LSD would not typically be used to self-medicate mental health conditions, as they would exacerbate mental health symptoms. Therefore, the applicant's BCD for drug usage is not mitigated by any mental health condition.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate her misconduct. 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 contends she has PTSD after hundreds of patients who she cared for died.

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

There is no evidence the applicant had PTSD or any other mental health condition while in the military, or at discharge. The applicant was diagnosed post-service with depressive disorder and anxiety disorder. There is no available evidence the applicant was diagnosed with PTSD post-service.

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

While self-medication can be a part of the sequela of symptoms associated with mental health conditions, in the applicant's case, it is documented her misconduct (drug usage) occurred prior to any of her identified traumatic experiences. Her reported traumatic experiences include being court-martialed, being both "mentally and physically abused" while in confinement (after her court-martial), and her ex-husband sexually assaulting her son (approximately 11 years after her military discharge). This psychological advisor concludes the applicant's use of marijuana, methamphetamine, and LSD was not for self-medication. Additionally, methamphetamine and LSD would not typically be used to self-medicate mental health conditions, as they would exacerbate mental health symptoms. Therefore, the applicant's BCD for drug usage is not mitigated by any mental health condition.

4. Does the condition or experience outweigh the discharge?

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

The complete advisory opinion is at Exhibit K.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Feb 24 for comment (Exhibit L) 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 the applicant was diagnosed with PTSD during or after military service. The applicant's use of marijuana, methamphetamine, and LSD was not for self-medication. Additionally, methamphetamine and LSD would typically not be used to self-medicate as they would exacerbate mental health symptoms. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate her discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the seriousness of the offenses of which the applicant stood convicted, and in the absence of criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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-2018-02537 in Executive Session on 17 Jul 24:

, 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 2 Aug 21.
Exhibit G: Application, DD Form 149, w/atchs, dated 9 Mar 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 21 Sep 23.
Exhibit J: Applicant's Response, w/atchs, dated 23 Sep 23.
Exhibit K: Advisory Opinion, AFRBA Psychological Advisor, dated 28 Feb 24.
Exhibit L: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Feb 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.

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Board Operations Manager, AFBCMR