

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2019-01361

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his general (under honorable conditions) discharge to an honorable discharge.

RESUME OF THE CASE

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

On 15 Apr 20, 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. It appeared 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 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 E.

On 28 Feb 24, the applicant requested reconsideration of his request to upgrade his general (under honorable conditions) discharge to an honorable discharge. He contends at the time of his poor decision making, he was suffering from chronic low back pain for which he was taking several medications for pain relief. The applicant was also having marital problems and was under a tremendous amount of anxiety and stress from the pain and the stress of trying to perform perfectly at his technical school, and graduate with honors and at the top of his class, which he did accomplish. The applicant did everything perfect in his military career and only had the one mistake which he still regrets to this day.

At the time of his separation, the applicant was not himself. He was suffering from low back pain from his service time in the Navy, and he re-injured it in the Air Force, and was treated for it. The applicant also suffered from anxiety and was mentally having difficulties dealing with the stress from his broken marriage and divorce proceedings, as well as the stress of fighting for perfection at his technical school. The applicant was not recognizing or being willing to see he was suffering from Post-Traumatic Stress Disorder (PTSD). He was unwilling to seek treatment or recognize the signs of PTSD and other mental health conditions in his quest to deny that he truly needed help.

The applicant recognized he had a mental issue, PTSD, and that simple anger was not going to fix this problem. It has been more than three years since his last application for the Board's review. After speaking with his doctor, and counseling by his disabled veteran service officer, the applicant started going to the Department of Veterans Affairs (DVA) behavioral clinic and

discovered he still suffered from issues from 1983, and the applicant is now getting the help he needs.

The applicant's complete submission is at Exhibit F.

STATEMENT OF FACTS

On 11 Apr 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraphs 5-48 and 5-49c. The specific reasons for the action were:

a. On 25 Feb 83, [the applicant] was arrested by civilian authorities for possession of marijuana. On 9 Mar 83, he was found guilty of possession of marijuana by the municipal court and fined \$261.00 and \$161.00 was suspended.

b. At the same time, or from times during the period from or about 28 Jan 83 to 28 Feb 83, [the applicant] wrongfully used marijuana as evidenced by a command-directed urinalysis submitted by the applicant on 28 Feb 83, which showed positive for marijuana and testing conducted by the Drug Abuse Testing Laboratory at **Work-Product** Air Force Base, Texas, for which the applicant was reprimanded.

On 13 Apr 83, the Staff Judge Advocate found the discharge action legally sufficient. On that same date, the discharge authority directed the applicant be discharged under the provisions of AFR 39-10, Chapter 5, Section H, paragraphs 5-48 and 5-49c, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 13 Apr 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Drug Abuse" and he was credited with 4 months and 26 days of net active service this period.

For more information, see the excerpt of the applicant's record at Exhibit G and the advisory at Exhibit I.

POST-SERVICE INFORMATION

On 23 Oct 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. The applicant previously provided a copy of his FBI report with his original application to the AFBCMR. According to the report, the applicant was arrested on 14 May 04 for Probation Violation.

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

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 the desired change to his records based on his mental health condition.

A review of the applicant's available records finds no evidence to substantiate any of the applicant's claims. There is no evidence or records the applicant had marital problems, anxiety, or stress secondary to his lower back pain that caused him to use marijuana at the time of service. In fact, there is no evidence the applicant had any mental health conditions during service. He was seen at Social Actions following his positive urinalysis test and no mental disorder diagnosis was annotated in his records. The applicant also denied having any mental health issues during his separation physical examination with his Primary Care Manager. The applicant was diagnosed with PTSD by a provider at the DVA over 40 years after his discharge from the Air Force. The applicant's PTSD was developed and caused by a traumatic event he experienced while he was serving in the Navy in 1980, per his DVA treatment records. There is no evidence the applicant experienced a traumatic event during his time in the Air Force and no evidence his diagnosed condition of PTSD was caused by events occurring during his time in the Air Force. The applicant's traumatic experience had occurred before his service in the Air Force, and there is no evidence his military service and duties with the Air Force had aggravated his pre-existing mental health condition. The applicant's current treatment at the DVA is focused on his experience in the Navy and not in the Air Force. There is no evidence he had PTSD, PTSD-like symptoms, or a similar mental health condition during his service with the Air Force. The applicant's military records documented his response to his Record of Individual Counseling for his drug use and he explained to his leadership he was jogging around the base at the time when he found marijuana and decided to try it. From the applicant's response, there is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time he decided to use marijuana. His drug use is unsuited for continued military service and he was discharged for this reason. This Psychological Advisor finds no error or injustice with his discharge from a mental health perspective, and the applicant's request for an upgrade of his discharge based on his mental health condition is not supported.

This Psychological Advisor opines liberal consideration is not required to be applied to the applicant's petition because there is no evidence his pre-existing mental health condition of PTSD, caused by a prior period of service with the Navy, was aggravated by his service with the Air Force, per Kurta Memorandum guidance #15.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 31 Oct 24 for comment (Exhibit J) 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 had marital problems, anxiety, or stress secondary to his lower back pain, that caused him to use marijuana at the time of service. Per the applicant's DVA treatment records, the applicant's PTSD was developed and caused by a traumatic event he experienced while serving in the Navy, and the applicant's current treatment at the DVA is focused on his experience in the Navy. The applicant's traumatic experience had occurred before his service in the Air Force, and there is no evidence

his military service and duties with the Air Force had aggravated his preexisting mental health condition. Liberal consideration was not applied in accordance with Kurta Memorandum guidance at #15.

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, and in the absence of post-service information and the 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-2019-01361 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 E: Record of Proceedings, w/ Exhibits A-D, dated 18 May 20.
Exhibit F: Application, DD Form 149, dated 28 Feb 24.
Exhibit G: Documentary evidence, including relevant excerpts from official records.
Exhibit H: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 23 Oct 24.
Exhibit I: Advisory Opinion, AFRBA Psychological Advisor, dated 28 Oct 24.
Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Oct 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