



**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01243

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

**APPLICANT'S REQUEST**

His general (under honorable conditions) discharge be upgraded to honorable.

**APPLICANT'S CONTENTIONS**

He did not want to be labeled as a person that participates in misconduct. He had every intention of serving his country in the Air Force with dignity and respect and was able to do that as a civilian. He has been serving the United States as a war fighter through two government contractors since 1999 with pride. He did not make any specific mental health contentions but indicated a Traumatic Brain Injury (TBI) is an issue/condition related to his request; however, he did not elaborate on this condition.

In support of his request for a discharge upgrade, the applicant provides a Neuropsychological Examination and his Medical Narrative Summary regarding his alcohol usage and his mental health condition, numerous post-service certificates of achievement, awards and training, copies of his college degree, an employer character reference, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 21 May 99, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 27 Jan 99, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failing to maintain dormitory standards and for underage drinking. He received forfeiture of \$100.00 pay for 1 month and 12 days of extra duty.

**AFBCMR Docket Number BC-2021-01243**

Controlled by: SAF/MRB  
CUI Categories: [REDACTED]  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

b. On 9 Mar 99, AF Form 3070, indicates the applicant received NJP, Article 15 for underage drinking. He received a forfeiture of \$479.00 pay per month for 2 months and 30 days of base restriction and extra duty.

c. On 4 May 99, a Letter of Reprimand (LOR) was issued for underage drinking.

On 24 May 99, the 82 TRW/JAC found the discharge action legally sufficient.

Undated, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 2 Jun 99, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 7 months and 12 days of total active service.

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

#### **POST-SERVICE INFORMATION**

On 1 Jul 21, 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 C). The applicant replied on 9 Nov 21, and provided his security background investigation file required by his employer. According to the report, the applicant was involved in a driving under the influence (DUI) incident on 2 Sep 04. According to the applicant's testimony, the charges were thrown out. He was not fined but was required to pay court fees.

The applicant's complete response is at Exhibit D.

#### **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 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 22 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

**Honorable.** The quality of the airman's service generally has met 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.

**Under Honorable Conditions (General).** 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 airman's military record.

#### **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. The applicant clearly had alcohol abuse issues during service. He engaged in at least three alcohol related incidents during his brief time in service which were reasons leading to his discharge from the service. His first documented alcohol related incident of underage drinking was on 22 Dec 98, which was two months after he entered the service. About two weeks later from the first incident on 2 Jan 99, he sustained a head injury/Traumatic Brain Injury (TBI) after he fell out of a third-story window while heavily intoxicated with a blood alcohol level (BAL) of 0.309. He continued to drink after this incident resulting with a second Article 15 and LOR. The applicant offered no explanation in his petition for how his TBI caused his misconduct and discharge and did not address his drinking issues or misconduct from service. The applicant was assessed for his head injury/TBI by his medical providers and a neuropsychologist after the incident. Medical examinations found he had a cerebral contusion in the left insular and anterior temporal cortices following the incident, and he suffered from a period of unconsciousness immediately after the fall, a period of unspecified retrograde amnesia, numbness to the right side of his body for a week interfering with his writing ability and had difficulties with concentration and thinking. He completed a battery of comprehensive neuropsychological assessments on 12 Mar 99, two months after the fall, and was found to have mild deficits in verbal fluency, information processing speed and right-hand motor speed, which were weaknesses that were compatible with a TBI. However, there was no significant or permanent impairments to his functioning in the realms of cognition, thinking, memory, attention, concentration, reasoning, and problem solving detected through testing or by the applicant's self-report during the clinical interview portion of the examination. He was still in the process of active healing and recovery from his TBI when testing occurred, and his prognosis was good based on his age and general health. He was given a diagnosis of Cognitive Disorder, not otherwise specified (NOS) with mild severity from his neuropsychological examination, but no indication or evidence this condition had interfered with his ability to perform his military duties or impaired his overall functioning.

The applicant had a pre-existing alcohol related incident of underage drinking prior to his TBI and again, he was heavily intoxicated at the time when he fell out of the window causing his TBI. He continued to drink after sustaining a TBI and there was no evidence the residual effects or complications from his TBI caused him to engage in continuous drinking or aggravated his pre-existing drinking issues. He participated and received residential alcohol rehabilitation treatment following his TBI from 16 Feb 99 to 9 Mar 99 and was able to successfully complete this program. He had no problems with comprehension, following directions, decision-making, completing tasks and/or communicating with staff and other treatment participants while he was at residential treatment. There were also no behavioral or emotional issues observed during this treatment. To reiterate, the applicant continued to engage in underage drinking within a short period of time after

his TBI and eventually resulted with his administrative discharge action. The applicant's drinking behaviors appeared to be a continuation of his premorbid functioning/behaviors and these behaviors were consistent to symptoms of his condition of alcohol abuse and not due to his TBI or Cognitive Disorder NOS. There was no evidence his thought or cognitive issues impaired his judgment causing him to drink and no evidence his TBI had a direct impact to his misconduct and discharge. There was also no evidence he had any other mental health conditions such as anxiety, depression, psychosis, that caused him to use or cope with alcohol. His Narrative Summary from the Substance Abuse Rehabilitation Clinic (SARC) reported he liked to drink for fun and liked the feeling he got from alcohol. His reasoning for his use of alcohol was congruent to alcohol abuse/use. Furthermore, his alcohol abuse issues were found to have existed prior to service (EPTS) as his neuropsychological examination report revealed the applicant disclosed regular use of alcohol on the weekends prior his enlistment into the military. There was no evidence his military service had aggravated his EPTS condition especially since he was reported to have excelled during basic military training (BMT), was able to adjust positively to the military, and he reported having no problems on the job. His alcohol abuse issues may cause and explain his misconduct, but they do not excuse or outweigh his discharge. His alcohol abuse issues were unsuited for continued military service and his administrative discharge action was appropriate. Thus, an extensive review of the available records finds no error or injustice with his discharge.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's petition because his mental health condition/alcohol abuse was found to be EPTS with no evidence of service aggravation per Kurta Memorandum #15. Should the Board elect to apply liberal consideration to his petition, 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 made no mental health contentions and marked "X" to TBI for issues or conditions that may be related to his request. He did not offer an explanation for how his alcohol abuse issues or TBI may excuse or mitigate his discharge. He submitted a Narrative Summary from his SARC treatment and neuropsychological examination from service for review.

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

There is evidence the applicant sustained a TBI on 2 Jan 99 after he fell out of a third-story window while heavily intoxicated with a BAL of 0.309. He received residential alcohol rehabilitation treatment/SARC treatment from 16 Feb 99 to 9 Mar 99 for his alcohol abuse issues. He received a diagnosis of Alcohol Abuse when he entered SARC and this condition was assessed to be in remission at the time of discharge. He was referred and completed a neuropsychological examination on 12 Mar 99 for his TBI resulting with a diagnosis of Cognitive Disorder NOS and Alcohol Abuse by history. All of these events occurred during military service.

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

The applicant was found to have mild cognitive deficits of verbal fluency, information processing speed, and right-hand motor speed following his TBI from his neuropsychological test results; however, there were no permanent or severe impairments to his cognitive, thinking, memory,

attention, concentration, or problem solving skills detected that would interfere with his overall functioning. There was no evidence his TBI had caused him to continue to drink or aggravated his pre-existing alcohol abuse issues prior to his TBI and no evidence his TBI had a direct impact to his misconduct and discharge. The applicant disclosed he drank regularly prior to service and no evidence his military duties aggravated his EPTS condition/alcohol abuse issues. His mental health condition of alcohol abuse may have caused his misconduct, but they do not excuse or mitigate his discharge. His pre-existing alcohol abuse issues were unsuited for military service.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his conditions of TBI and/or alcohol abuse may excuse or mitigate his discharge, his conditions also do not outweigh his original discharge.

The complete advisory opinion is at Exhibit F.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 21 Oct 22 for comment (Exhibit G), and the applicant replied on 24 Oct 22. In his response, the applicant contends he did not intend the reason for his misconduct was due to his TBI. He takes full responsibility for his actions while he was an adolescent and understands his alcohol drinking was a childish thing. He does not drink and has no desire to do so. He has a family and works as a government contractor and has done so for the past 16 years. He has learned from his mistakes and would like his discharge upgraded to honorable.

In support of his request for a discharge upgrade, the applicant provides a personal statement, his civilian performance evaluations, a copy of his professional license, copies of various post-service awards and recognition letters, character reference letters, and his resume.

The applicant's complete response is at Exhibit H.

### **FINDINGS AND CONCLUSION**

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests are technically untimely. However, it would be illogical to deny such application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the majority of the Board concludes the applicant is the victim of an injustice. While the Board finds no error in the original discharge process, the majority of the Board recommends relief based on fundamental fairness. In support of his request for an upgrade, the applicant provided proof of employment in which background checks are part of the hiring process, a personal statement, numerous post-service certificates of achievement, awards and



training, copies of his college degree, his civilian performance reviews, and a character reference from his employer. He admits his behavior was childish and takes full responsibility for his behavior and further contends he served proudly as a government contractor supporting the war fighting efforts since 1999. The Board contemplated the many principles included in the Wilkie memorandum to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition. Given the evidence presented, the majority of the Board finds the applicant's post-service accomplishments sufficient enough to warrant a discharge upgrade. Therefore, the majority of the Board recommends the applicant's records be corrected as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 2 June 1999, he was discharged with service characterized as honorable and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

### CERTIFICATION

The following quorum of the Board, as defined in the 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-2021-00887 in Executive Session on 21 Dec 22:

[REDACTED], Panel Chair  
[REDACTED], Panel Member  
[REDACTED], Panel Member

A majority of the panel voted to correct the record. Mr. Tompkins voted to not correct the record and did not provide a minority opinion. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Nov 20.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Non-Viable Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 1 Jul 21.
- Exhibit D: Applicant's Response, w/atchs, dated 9 Nov 21.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 22 Apr 22.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Oct 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Oct 22.
- Exhibit H: Applicant's Response, w/atchs, dated 24 Oct 22.

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.

6/6/2025

---

Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2021-01243**