

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01954

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to:

- a. Change Block 24. *Character of Service*, from "Uncharacterized" to "Honorable" or "General (Under Honorable Conditions)."
- b. Change Block 28. *Narrative Reason for Separation*, from "Entry Level Performance and Conduct" to "Secretarial Authority" or "Miscellaneous/General Reasons."

APPLICANT'S CONTENTIONS

Per applicant's counsel, her Adjustment Disorder, sustained during her military service following vicious harassment by her superior officer in the Air Force, created hostile conditions under which she could not continue to serve. Due to the severity and cruelty of her experience, a refusal to upgrade her discharge would violate traditional notions of equity and fairness.

The applicant served in the Air Force from 5 May 99 until 2 Nov 99 after 181 brutal days in training. The severe harassment she experienced ultimately inhibited her ability to fulfill her obligations as a member of the Air Force, causing her discharge. The mistreatment the applicant experienced created conditions which deteriorated her mental health, forced her to leave the Air Force, and produced invisible scars that have never healed. The applicant's dedication to the military prevailed, as she fulfilled an additional 20 years of service between the Army Reserve and the [State] Army National Guard after her traumatizing experience in the Air Force. Her exemplary military service and admirable post-discharge conduct better reflect her service to the nation and discharge status.

The applicant served in the Air Force as a saxophone musician. She joined the Band of the Golden West and completed the six-week Basic Military Training in Jun 99. She joined the Air Force with a clean bill of health. Prior to her enlistment, the applicant had no diagnoses or treatments for mental, emotional, psychological conditions or personality disorders. However, she had difficulty adapting to life in the Air Force due to harassment from her superior who engaged in rank bullying, constantly berating and belittling her. His presence was so negative that members of the band appeared anxious, reserved, and depressed. Because of this person's position of power, the applicant did not speak up about the hostile work conditions to prevent additional friction. Instead, she became quiet and fearful, miserably showing up to rehearsal and avoiding any chance of confrontation with her harasser.

After three months of constant harassment and intimidation, the applicant confronted her deteriorating mental health by seeking professional help. Her quality of life had crumbled, and her mental health had reached its breaking point. On 13 Sep 99, the applicant was seen at the outpatient behavioral health clinic for "anxiety, depression – related to her position in the band." Her demeanor was described as "tearful, angry with band", and she was subsequently diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. The staff psychologist and applicant discussed the condition with her supervisor and company commander, and the

psychologist recommended individual and group counseling to help with her current stressors. Over the next month, the rank bullying and constant beratement and harassment continued. The applicant had no choice but to remove herself from this toxic and mentally damaging environment. On 2 Nov 99, the applicant was formally discharged.

Wishing to continue serving her country, the applicant joined the Army Reserve Band. While in the Army Reserve, she attended graduate school and obtained a Doctor of Musical Arts in Jan 05. The applicant served in the Army Reserve Band until 2016, after which she enlisted in the Army National Guard, where she served until 29 Mar 22, retiring after 20 years of service to the country. The applicant continued to be harassed while in the Army Reserve and was later diagnosed with Post-Traumatic Stress Disorder (PTSD) for events that occurred during her Army service. In 2021, the Department of Veterans Affairs (DVA) awarded the applicant service-connection for PTSD, plantar fasciitis, and tinnitus, with a combined disability rating of 80 percent. In 2021, the applicant learned her discharge was uncharacterized rather than honorable. Using that date for when the injustice was discovered, the applicant's submission would be timely filed.

The applicant was not discharged due to misconduct, rather she was discharged to address her mental health by seeking relief from workplace harassment. In this case, the applicant's mental health conditions, positive military service of 20 years, and exemplary post-discharge conduct support the upgrade of her characterization of service to an honorable discharge. When given liberal consideration under the 2017 Kurta Memorandum, the applicant's discharge is inequitable because her service-related mental health condition led to her discharge. Her case exemplified the relief the Kurta Memorandum elicits because her Adjustment Disorder directly caused her discharge. Her trauma left invisible scars that manifested for over two decades. She forfeited her sense of self and continues to suffer the long-lasting mental health effects of her condition to this day. Counsel provided excerpts from the Kurta Memorandum in support of this contention.

According to counsel, the applicant's Adjustment Disorder originated in the Air Force, and her medical records verify her military service caused her mental health conditions. She had every intention of continuing to serve in the Air Force, as demonstrated by her subsequent 20-year military career. The applicant had no choice but to leave the Air Force to protect her mental health from continued deterioration; therefore, her mental health condition actually excused or mitigates the discharge. The abbreviated duration of her service in the Air Force should not cloud the extensive and impressive legacy she holds today. The applicant should be granted an upgrade on the grounds of justice and equity and based on the totality of her life and circumstances.

The applicant was diagnosed with PTSD due to harassment while in the Army Reserve from 2011 to 2015. In her 10 May 21 DVA Disability Questionnaire, a psychiatrist found her history consistent with PTSD secondary to physical threats and public humiliation in the military, demonstrating her condition is connected to the harassment the applicant experienced in the Army.

Since her Air Force discharge, the applicant has worked as a teacher and community organizer. Her extensive resume includes teaching positions where she received ample praise from her supervisors. Parents praised her for giving students confidence and an amazing experience in class. The applicant never let her trauma impede her desire to share her talents and cultivate those of young children. The applicant does not seek financial gain through this request. The applicant would gain the sole relief she seeks, validation of her honorable service to the Air Force.

In support of her request for clemency, the applicant provides a personal statement, reference letters, copies of military awards and certificates, and other documents related to her request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 May 99, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the Regular Air Force for a period of eight years.

On 6 Oct 99, according to an AMC/BA-T/CCF memorandum to XX MAW/JA, Subject: Entry Level Discharge, the applicant's first sergeant requested legal assistance in preparing the necessary documents for the commander to officially notify the applicant of his intent to seek this discharge. The applicant was informally notified of the commander's intent.

On 2 Nov 99, the applicant received an Entry Level Separation (ELS). Her Narrative Reason for Separation is "Entry Level Performance and Conduct", and she was credited with 5 months and 28 days of total active service.

On 21 May 21, according to an excerpt from a DVA Rating Decision, provided by the applicant, she was awarded service-connection for PTSD with a 50 percent disability rating, effective 24 Feb 20.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits D and E.

POST-SERVICE INFORMATION

On 15 Apr 24, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 provided an FBI report with her original application. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, character statements, certificates, and commendations.

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 15 Apr 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AFI 36-3208, *Administrative Separation of Airmen*, dated 14 Oct 94, Chapter 5 – *Reasons for Involuntary Separation*, Section 5D – *Entry Level Performance or Conduct*:

5.22. *Eligibility and Criteria.* Airmen in entry level status should be discharged when their unsatisfactory performance or conduct shows they are not qualified to be productive members of the Air Force.

5.22.1. An airman may be discharged under this provision only if the discharge processing starts during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service.

5.22.2. Unsatisfactory performance or conduct may be shown in a number of ways. They may include, but are not limited to:

- Lack of aptitude for military service;
- Failure to adapt to the military environment;
- Failure to make satisfactory progress in a required training program;
- Reluctance to make the effort necessary to meet Air Force standards of conduct and duty performance;
- Lack of self discipline;
- Minor disciplinary infractions;
- Exceeding body fat or failure to meet fitness standards (paragraph 5.65).

5.22.3. Eligibility for discharge under this section does not preclude separation for another reason when the separation is authorized and warranted by the circumstances of the case. For example, if homosexual conduct is involved, the case must be processed under section 5G. If the member failed in drug abuse rehabilitation, action under section 5F may be more appropriate.

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

AFPC/DP2SSR recommends denying the application. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

The complete advisory opinion is at Exhibit D.

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to her record.

This psychological advisor has reviewed the available records and finds the applicant's and legal counsel's contentions are not quite corroborated by her objective Air Force records. They reported she endured harassment from her superiors and although these experiences were plausible, there is no evidence or reports in her Air Force military records to substantiate this claim. Her Air Force records, as documented in several Memorandums for Record (MFR) by different individuals in her chain of command, revealed she was explicitly unhappy with enlisting into the Air Force mainly because she did not like, and did not want, to play jazz music but wanted to play classical music. Contrary to her legal counsel's contention that she became quiet and fearful and avoided confrontation, she was rather expressive and vocal about her disdain of being in the Air Force to her leadership. She informed them she did not like people telling her what to do, felt uncomfortable not being in control of her situation, did not like wearing the uniform, hated wearing military hats and wanted to wear civilian clothes all the time, did not like being in the Air Force and compared it to being in a prison, felt trapped in the Air Force, regretted enlisting in the Air Force, and made several requests to be discharged from the Air Force. There were no reports or complaints of any harassment she had endured from her superior or anyone in her leadership in any of the MFRs. She was so emotional and tearful at times when expressing her thoughts and desires that her first sergeant and supervisor were concerned for her mental health and emotional stability. The applicant was recommended to seek mental health services by her first sergeant. She did meet with a mental health provider at least once during service and reported having anxiety and depression "related to her position in the band." Her legal counsel interpreted this as she became anxious and depressed due to the harassment she was experiencing. However, her anxiety and depression related to her position in the band are congruent with her numerous complaints of not liking playing jazz music and other requirements and obligations of being in the band as documented in the MFRs. Again, the

applicant was clearly dissatisfied being in the Air Force band, playing jazz music, and being in the Air Force itself, and these stressors caused her to develop anxiety and depression. There is no evidence or records she was anxious and depressed because she was harassed by a superior in the Air Force. The applicant endured being harassed by numerous people/sergeants while she was in the Army and these experiences caused her to be diagnosed with PTSD, as attested by her civilian psychologist, and by her report during the compensation and pension exam with the DVA. The applicant was service-connected by the DVA for a condition she developed during her time with the Army, and not the Air Force.

The applicant had difficulties adapting to the Air Force which caused her to develop anxiety and depressed mood, and possibly her poor conduct. She was discharged from the Air Force for the reason of entry-level performance and conduct. Although the applicant's adjustment difficulties most likely contributed to her ELS discharge, her Air Force records also reflected she had misconduct problems with being late to rehearsal on numerous occasions and not wearing a proper uniform and was counseled each time for these behaviors. These behaviors may be derived from her Adjustment Disorder but could also be from her dissatisfaction with being in the Air Force. Her conduct or behavioral problems are consistent with her narrative reason for separation listed on her DD Form 214. She was furnished with an uncharacterized character of service under ELS because she served less than 180 days of continuous active military service, and this characterization is consistent with past regulation of AFI 36-3208, the regulation she was discharged under, and to present regulation of DAFI 36-3211. Even if her mental health condition may have contributed to her discharge, her time in service was too brief to be able to characterize her service as honorable or general. A discharge for a mental health condition such as an unsuiting Adjustment Disorder under ELS would result in an uncharacterized character of service according to regulation. Therefore, there is no error or injustice identified with her discharge from a mental health perspective, so her request for an honorable or general service characterization could not be supported.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. 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 and her legal counsel are requesting an upgrade to honorable or general under honorable conditions because she endured harassment from her superior, causing her to feel anxious and depressed. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood during her time in service.

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

There is evidence and records that the applicant was seen by a mental health provider on 13 Sep 99 during service for her presenting problem of anxiety and depression related to her position in the band. She was given a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood. There is no evidence or records she reported experiencing harassment from her superior causing her to feel anxious and depressed.

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

The applicant's mental health condition of Adjustment Disorder with Mixed Anxiety and Depressed Mood most likely contributed to and caused her discharge but does not excuse or mitigate her discharge. She also engaged in acts of misconduct of being late on numerous occasions and her performance was poor causing her discharge. The applicant was discharged under ELS because she served less than 180 days of active military service, and this characterization is consistent with past and present regulations including for ELS for having an unsuiting mental health condition like Adjustment Disorder.

4. Does the condition or experience outweigh the discharge?

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

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 6 Jun 24 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade 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 Title 10, United States Code § 1552(b).

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

3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant experienced harassment during her Air Force service. Further, despite counsel's contentions, evidence shows the applicant was not quiet and fearful, avoiding confrontation, but instead had repeatedly expressed her disdain for her Air Force experience, with complaints ranging from issues with authority and Air Force uniforms, to the type of music she was required to perform. Further, this disdain expressed itself in minor misconduct such as reporting late for rehearsal. Additionally, the applicant did not perform more than 180 days continuous active military service and was in entry level status. The type of separation and characterization of service was in accordance with AFI 36-3208 in effect at the time of her discharge.

Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate her discharge. While the applicant was diagnosed with the unsuiting condition of Adjustment Disorder while in the Air Force, according to counsel and the DVA, the applicant was diagnosed and service-connected for PTSD due to her experience in the Army Reserve from 2011 to 2015, not for her Air Force service. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, 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-2023-01954 in Executive Session on 12 Sep 24:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 May 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 15 Apr 24.
Exhibit D: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.
Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 23 May 24.
Exhibit F: Notification of Advisory, SAF/MRBC to Counsel, dated 6 Jun 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