

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-02887

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

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

### **APPLICANT'S CONTENTIONS**

He had issues with nightmares and a psychological block which caused him to get high while he served as he felt guilty that he did not go into combat as his friends did.

The applicant provided no documentation in support of his request for clemency.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is a former [State] Air National Guard staff sergeant (E-5).

On 11 Mar 06, according to NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, the applicant received a general (under honorable conditions) discharge. His Authority and Reason is "AFI 36-3209, Para 3.21.3.2. (Drug Abuse) SPD: JPB [Misconduct – Drug Abuse Through Urinalysis]" and he was credited with 13 years, 8 months, and 24 days of total service for pay.

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

### **POST-SERVICE INFORMATION**

On 5 Mar 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.

### **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 Post-Traumatic Stress Disorder (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 5 Mar 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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 an upgrade of his discharge.

There is insufficient evidence to support the applicant's contention he had PTSD or any other mental health condition that would mitigate his misconduct of drug use/abuse. There is no evidence in his record he was ever diagnosed with PTSD or any other mental health condition. The applicant did not submit any evidence or encounters to support his contention of PTSD or any other mental health condition. While the applicant mentions having nightmares, guilt, and a psychological block, these symptoms alone are not sufficient for a Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) diagnosis of PTSD or any other mental health condition. This psychological advisor concludes there are no psychological factors that would mitigate his misconduct of getting high (drug usage/abuse).

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his 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 check-marked PTSD on his application. He reported he had nightmares, guilt, and a psychological block.
2. Did the condition exist, or experience occur, during military service?  
There is insufficient evidence the applicant has PTSD or any other mental health condition.
3. Does the condition or experience excuse or mitigate the discharge?  
There is no evidence in the applicant's record he was ever diagnosed with PTSD or any other mental health condition. The applicant did not submit any evidence or encounters to support his contention of PTSD or any other mental health condition. While the applicant mentions having nightmares, guilt, and a psychological block, these symptoms alone are not sufficient for a DSM-5 diagnosis of PTSD or any other mental health condition. This psychological advisor concludes there are no psychological factors that would mitigate his misconduct of getting high (drug usage/abuse).
4. Does the condition or experience outweigh the discharge?  
Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 12 Mar 24 for comment (Exhibit E) 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 finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence he was ever diagnosed with PTSD or any other mental health condition. 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. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/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-2023-02887 in Executive Session on 18 Jun 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/atch, dated 12 Aug 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 5 Mar 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Mar 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Mar 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