

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03351

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His official military personnel record amended to:

- a. Upgrade his general (under honorable conditions) discharge to an honorable discharge.
- b. Restore his grade to senior airman<sup>1</sup> (E-3).
- c. Change his separation code from "JKM" [Misconduct (Other)] to "BFE" [Inactive code for Mental Disorder (Other)]. **(additional request submitted with supplemental documentation)**
- d. Change his narrative reason for separation from "Misconduct" to "Medical." **(additional request submitted with supplemental documentation)**

### APPLICANT'S CONTENTIONS

He was referred to Life Skills during his service and underwent testing only to be incorrectly diagnosed and accused of malingering, leading to a summary court-martial and 30 days confinement. This misdiagnosis was intentional, serving to make the applicant an example within the squadron. This incorrect diagnosis and the subsequent punitive measures had a profound impact on his service and well-being. Later, a thorough evaluation by the applicant's psychologist and observations by his therapist correctly identified his condition as autism spectrum disorder (ASD). The applicant requested a correction accurately reflecting his service and the challenges he faced due to undiagnosed ASD, acknowledging the unfair treatment he received due to an incorrect and intentional misdiagnosis.

The applicant delayed seeking a correction due to the severe anxieties and challenges associated with undiagnosed ASD. The complexities of ASD made communication and confrontation overwhelmingly distressing. It took extensive therapy and coping strategies to manage his anxieties and to articulate his experiences and the injustices he faced during service.

In support of his request for a discharge upgrade, the applicant provides a copy of his psychological evaluation, dated 26 Jun 17, and a Department of Veterans Affairs (DVA) summary of benefits letter.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

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<sup>1</sup> The applicant never held the grade of senior airman (E-4); however, he did hold the grade of airman first class (E-3) prior to receipt of NJP.



On 10 Feb 06, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for the following offenses:

- Violation of the UCMJ, Article 90
  - [The applicant], having received a lawful command from his superior commissioned officer, then known by him to be his superior commissioned officer, to have no contact with (another airman), or words to that effect, did, at or near the Continental United States, on divers occasions between on or about 18 Jan 06 and on or about 24 Jan 06, willfully disobey the same.

- Violation of the UCMJ, Article 134
  - [The applicant] did, at or near **Attorney-Client** Wyoming (WY), on or about 16 Jan 06, wrongfully have sexual intercourse with (another airman), a married woman not his wife.

The applicant received 30 days correctional custody and was reduced to the grade of airman basic, with reduction below airman suspended through 9 Aug 06, after which time it would be remitted without further action, unless sooner vacated. The new date of rank for airman is 10 Feb 06.

On 13 Mar 06, according to AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, the portion of the applicant's previous NJP which was suspended, was vacated for the following offense:

- Violation of the UCMJ, Article 90
  - [The applicant], having received a lawful command from his superior commissioned officer, then known by him to be his superior commissioned officer, to have no contact with (another airman), or words to that effect, did, at or near **Attorney-Client** WY, on divers occasions between on or about 16 Feb 06 and on or about 22 Feb 06, willfully disobey the same.

The applicant was reduced to the grade of airman basic, with a new date of rank of 10 Mar 06, and an effective date of rank of 13 Mar 06.

On 17 Mar 06, according to DD Form 2329, *Record of Trial by Summary Court-Martial*, the applicant was arraigned at summary court-martial for the following offense:

- Charge: Article 90. Plea: Guilty. Finding: Guilty.
  - Specification: In that [the applicant], having received a lawful command from his superior commissioned officer, then known by [the applicant] to be his superior commissioned officer, to not have contact with (another airman), or words to that effect, did, at or near **Attorney-Client** WY, on divers occasions between on or about 10 Feb 06 and on or about 28 Feb 06, willfully disobey the same.

The applicant was sentenced to 25 days confinement and restriction to base for 10 days after completion of confinement.

On 10 Apr 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2, for Misconduct: A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline. The specific reasons for the action were:

- a. [The applicant] did, at or near **Attorney-Client** WY, on or about 16 Jan 06, wrongfully have sexual intercourse with (another airman), a married woman not his wife. For this violation of



Article 134 of the UCMJ, [the applicant] received NJP under Article 15, dated 10 Feb 06. An Unfavorable Information File was created, and this information was placed in it.

b. [The applicant], having received a lawful command from his superior commissioned officer, then known by him to be his superior commissioned officer, to have no contact with (another airman), or words to that effect, did, at or near the Continental United States, on divers occasions between on or about 18 Jan 06 and on or about 24 Jan 06, willfully disobey the same. For this violation of Article 90 of the UCMJ, [the applicant] received the previously mentioned NJP under Article 15, dated 10 Feb 06.

c. [The applicant], having received a lawful command from his superior commissioned officer, then known by him to be his superior commissioned officer, to have no contact with (another airman), or words to that effect, did, at or near **Attorney-Client** WY, on divers occasions between on or about 16 Feb 06 and on or about 22 Feb 06, willfully disobey the same. For violation of Article 90 of the UCMJ, the suspended portion of the previously mentioned NJP under Article 15 was vacated on 13 Mar 06.

d. [The applicant], having received a lawful command from his superior commissioned officer, then known by him to be his superior commissioned officer, to have no contact with (another airman), or words to that effect, did, at or near **Attorney-Client** WY, on divers occasions between on or about 10 Feb 06 and on or about 28 Feb 06, willfully disobey the same. For this violation of Article 90 of the UCMJ, [the applicant] was convicted by summary court-martial, dated 17 Mar 06.

On 13 Apr 06, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.50.2, for Misconduct: A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 14 Apr 06, the applicant received a general (under honorable conditions) discharge in the grade of airman basic (E-1). His narrative reason for separation is "Misconduct" with a separation code of "JKM." The applicant was credited with 2 years, 2 months, and 27 days of total active service, with dates of time lost during this period of 17 Mar 06 through 5 Apr 06.

On 8 Jun 17, according to a psychological evaluation, provided by the applicant, he was diagnosed with major depressive disorder (MDD), recurrent, mild; generalized anxiety disorder; and social pragmatic communication disorder (SPCD).

On 14 Nov 18, according to a DVA summary of benefits letter, provided by the applicant, his combined service-connected evaluation is 100 percent.

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

## **POST-SERVICE INFORMATION**

On 13 Mar 24, 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 17 Mar 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. In his



supplemental documentation, the applicant amended his request for relief to include changes to his narrative reason for separation and his separation code. The applicant also provided a personal statement, character statements, a resume, and excerpts from his medical record.

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



AFI 51-202, *Nonjudicial Punishment*, dated 7 Nov 03, Chapter 3 – *Procedures for Initiating and Imposing Nonjudicial Punishment*:

3.17. *Permissible Punishments*. Table 3.1 and Table 3.2 set out the maximum permissible punishments, based on the grade and status of the commander and the grade of the member.

Table 3.1. *Enlisted Punishments*.

Imposed by a Lt Col or Above:

- Correctional Custody: 30 days
- Reduction: Airman first class (A1C) to airman basic (AB)

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/DPMSP recommends denying the applicant's request to restore his rank. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The applicant entered the Air Force on 29 Dec 03. His promotion date to airman first class is 29 Dec 03. His date of rank to airman basic is 10 Feb 06. According to a memorandum from the applicant's commander, Subject: Recommendation for Discharge, dated 10 Apr 06, the applicant was demoted from airman first class to airman basic under Article 15, dated 10 Feb 06.

A memorandum from the discharge authority, dated 13 Apr 06, directed the applicant to be involuntarily separated stating the discharge was based on the applicant's misconduct, not his mental health.

The applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, verified his grade at discharge as airman basic. There is no official documentation provided or located in the applicant's military record that verified the applicant was being considered for restoration of his rank back to airman first class.

The complete advisory opinion is at Exhibit E.

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

The applicant is petitioning the Board to change the characterization of his service from general (under honorable conditions) to honorable. He is also requesting his grade be restored to pre-disciplinary actions due to medical reasons. The applicant check-marked PTSD on his application. The applicant contends:



“I was referred to life skills during my service and underwent testing only to be incorrectly diagnosed and accused of malingering, leading to a summary court-martial and 30 days of confinement. This misdiagnosis was intentional, serving to make me an example within the squadron. This incorrect diagnosis and the subsequent punitive measures had a profound impact on my service and well-being. Later, a thorough evaluation by my psychologist and observations by my therapist correctly identified my condition as autism spectrum disorder (ASD). I request a correction accurately reflecting my service and the challenges I faced due to undiagnosed ASD, acknowledging the unfair treatment I received due to an incorrect and intentional misdiagnosis.”

While the applicant check-marked PTSD on his application, there is no evidence he was ever diagnosed with PTSD in service or post-service. Despite check-marking PTSD, the applicant makes no further contention regarding a PTSD diagnosis, nor did he supply any documentation that supports a PTSD diagnosis.

The applicant contends he was diagnosed with ASD, likely referring to a psychological evaluation completed by a civilian provider in 2017, 11 years after his military discharge. This provider did not diagnose him with ASD. He was diagnosed with SPCD. The provider even noted that while this diagnosis is associated with autism, it is not autism.

While he was diagnosed 11 years after his military service with SPCD, there is insufficient evidence that he meets the criteria for this disorder. The examiner who completed the psychological evaluation appears to document the history of the applicant largely from the applicant himself. This history is in direct contradiction with historical documents. While this evaluator noted the applicant struggled socially, was awkward, talked very little during school, had very few friends, kept to himself, and had difficulty with social engagements, the applicant's parents described the applicant from a very different perspective. They noted:

- He is not a person who does whatever he wants at the expense of everyone else.
- In his relationships with other people, he is a person of consciousness and consideration.
- He always tries to be in good standing with all and follow the norms and mores of society.
- Throughout [the applicant's] school years, all of his teachers found him to be a very respectful and well-mannered young man.
- He was part of the Boys Scouts growing up in [state] and participated in softball and soccer.
- He was always viewed by his teachers as a role model for others to emulate.
- In the workforce, [the applicant] has always gotten along with his coworkers and was well liked.

The parents, who know the applicant well, describe their son in opposite terms as the examiner. There is evidence to support the applicant did not exhibit these traits while growing up. Therefore, this Psychological Advisor concludes the applicant did not meet the criteria for SPCD, while in childhood, and this condition did not go undiagnosed. For clarification purposes, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, diagnostic criteria for Social (Pragmatic) Communication Disorder 315.39 (F80.89) is:

- Persistent difficulties in the social use of verbal and nonverbal communication as manifested by all of the following:
  - Deficits in using communication for social purposes, such as greeting and sharing information, in a manner that is appropriate for the social context.



- Impairment of the ability to change communication to match context or the needs of the listener, such as speaking differently in a classroom than on a playground, talking differently to a child than to an adult, and avoiding use of overly formal language.

- Difficulties following rules for conversation and storytelling, such as taking turns in conversation, rephrasing when misunderstood, and knowing how to use verbal and nonverbal signals to regulate interaction.

- Difficulties understanding what is not explicitly stated (e.g., making inferences) and nonliteral or ambiguous meanings of language (e.g., idioms, humor, metaphors, multiple meanings that depend on the context for interpretation).

- The deficits result in functional limitations in effective communication, social participation, social relationships, academic achievement, or occupational performance, individually or in combination.

- The onset of the symptoms is in the early developmental period (but deficits may not become fully manifest until social communication demands exceed limited capacities).

- The symptoms are not attributable to another medical or neurological condition or to low abilities in the domains of word structure and grammar, and are not better explained by autism spectrum disorder, intellectual disability (intellectual developmental disorder), global developmental delay, or another mental disorder.

Given the applicant's documented childhood history, his military performance, and post-military accomplishments, not only does he not exhibit these symptoms, but they did not cause any functional limitations in effective communication, social participation, social relationships, academic achievement, or occupational performance (other than his misconduct of having an adulterous affair and disobeying a no-contact order numerous times).

Additionally, there is evidence to strongly suggest the applicant's psychological evaluation results (2017) are invalid. Historically, the applicant was noted to greatly exaggerate symptoms on psychological testing (2006) making his results invalid and not interpretable. The examiner noted it suggested malingering or feigning symptoms for secondary gain. He repeated psychological testing (2006) that was valid, but the examiner noted the applicant was still over-reporting symptoms. On the Millon Clinical Multiaxial Inventory the applicant completed in 2017, he had a Debasement score of 79. This suggests the applicant presented himself in an overly negative manner. A score above 75 indicates the applicant presented himself in an overly negative manner, suggesting an exaggeration of the symptoms he is experiencing. An elevated score deserves close examination as it might be a distorted high level of reported psychological problems. The applicant's score of 79, indicates the applicant was attempting to portray himself as more socially awkward, immoral, and with poor emotional regulation than is the case. This is consistent with the past two psychological evaluations which found the applicant was exaggerating his symptoms for secondary gain (malingering).

The applicant contends his misdiagnosis was intentional, and he was accused of malingering, which led to his summary court-martial and 30 days of confinement. There is no evidence the applicant's misdiagnoses were intentional or incorrect. Further, it was not his perceived misdiagnosis that led to his court-martial or confinement, it was his misconduct.

Additionally, he was evaluated numerous times while in service and was found not to have any major mental illnesses (no history of mania, psychosis, anxiety, or PTSD), had good insight, good eye contact, good judgment, low impulsivity, understood the potential consequences of his actions, and was competent to stand trial. This again supports the conclusion the applicant did not have PTSD, autism, or SPCD while in service.



Based on the evidence, this Psychological Advisor concludes the applicant does not meet the diagnostic criteria for PTSD, autism, or SPCD. Therefore, his contended mental health conditions are not mitigating reasons for his misconduct. He was decertified from the Personnel Reliability Program (PRP), not because of mental health reasons, but based on "Other Potentially Disqualifying or Other Information" reasons (misconduct).

The applicant was diagnosed with adjustment disorder while in service. Adjustment disorder does not excuse or mitigate his misconduct. Wrongfully having sexual intercourse with a married woman, not his wife, and violating a no-contact order on numerous occasions are not part of the sequela of symptoms associated with adjustment disorder. These are seen as conscious, willful acts, perpetrated over time that have no nexus with his mental health condition.

The applicant is currently service-connected for MDD with an effective date of 29 Jun 17 (approximately 11 years after his military service). There is insufficient evidence the applicant had MDD during his time in service or at discharge. The DVA is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran. Regardless, MDD does not excuse or mitigate his misconduct for the same reasons mentioned above.

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. The applicant contends he was diagnosed with ASD in 2017, 11 years after his military discharge.

2. Did the condition exist, or experience occur, during military service?  
The applicant was diagnosed with adjustment disorder while in service.

3. Does the condition or experience excuse or mitigate the discharge?  
Based on the evidence, this Psychological Advisor concludes the applicant does not meet the diagnostic criteria for PTSD, autism, or SPCD. Therefore, his contended mental health conditions are not mitigating reasons for his misconduct. He was decertified from the PRP, not because of mental health reasons, but based on "Other Potentially Disqualifying or Other Information" reasons (misconduct).

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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 F.

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

The Board sent copies of the advisory opinions to the applicant on 2 Apr 24 for comment (Exhibit G), and the applicant replied on 29 Apr 24. In his response, the applicant contends he provided critical new evidence regarding his diagnoses, that underlines the procedural discrepancies in handling his case, and sheds lights on the severe psychological impacts of his military service experiences, notably the summary court-martial and 30-day confinement at the end of his service.

Recent scholarly discussions, such as those found in *Psychiatry, Psychology, and Law* (2023), illuminate the inherent challenges individuals with ASD face in accurately self-reporting symptoms. These challenges often mistakenly suggest malingering or intentional symptom distortion, particularly in high-stakes evaluations. Alongside his diagnoses of ASD and SPCD, it is crucial to consider the PTSD developed as a direct result of the summary court-martial and subsequent 30-day confinement he underwent at the conclusion of his service. These events significantly influenced his behavior and interactions within the service.

In light of this, the applicant submitted all relevant diagnostic documents to ensure their thorough review. Understanding the sequential development of his mental health issues, particularly the PTSD stemming from the summary court-martial and confinement, is vital for a fair assessment. Furthermore, the procedural inconsistency concerning the timeline for submitting additional evidence, as highlighted by the Board's correspondence dated 13 Mar 24<sup>2</sup> and 2 Apr 24, suggests a deviation from established protocols that has adversely affected his case.

The PTSD diagnosis, alongside his ASD and SPCD, has had a profound and lasting impact, further complicating the circumstances leading to his discharge. These conditions, especially considering the traumatic conclusion of his service, necessitate a reevaluation of his case. Given these points, the applicant requests a comprehensive review and consideration for upgrading his discharge status to fully honorable. The additional evidence, procedural concerns, and the sequence of events leading to his discharge underscore the need for a nuanced understanding of his case which would be a testament to fairness and justice.

The applicant's complete response is at Exhibit H.

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<sup>2</sup> Advisory opinions submitted to the applicant for review are dated 15 Mar 24 and 2 Apr 24.



## **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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSPP and the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's grade reduction via NJP was within his commander's authority in accordance with AFI 51-202 and was found legally sufficient. Further, there is no evidence of the commander's intent to restore the applicant's grade.

Additionally, there is no evidence the applicant was diagnosed with ASD while in service. The applicant does not meet the diagnostic criteria for PTSD, ASD, or SPCD. In fact, the applicant was evaluated numerous times while in service and was found not to have any major mental illness. While the applicant was diagnosed with adjustment disorder while in service, wrongfully having sexual intercourse with a married woman, not his wife, and violating a no-contact order on numerous occasions are not part of the sequela of symptoms associated with adjustment disorder. These are seen as conscious, willful acts, perpetrated over time that have no nexus with the applicant's mental health condition. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

Moreover, the DVA is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

Finally, 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 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-2023-03351 in Executive Session on 15 Jan 25:

, 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 10 Oct 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 13 Mar 24.  
Exhibit D: Applicant's Response, w/atchs, dated 17 Mar 24.  
Exhibit D: FBI Report, dated, 16 Mar 24.  
Exhibit E: Advisory Opinion, AFPC/DPMSPP, dated 15 Mar 24.  
Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 2 Apr 24.  
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Apr 24.  
Exhibit H: Applicant's Response, w/atchs, dated 29 Apr 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