



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03715

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was in a toxic relationship at the time of Operation [REDACTED]. He was married to an unfaithful woman who was abusive and untrustworthy with personal funds and property of others. He suffered mentally, and at times, considered suicide. Considering the times, it was no easy thing to admit to others, as it might show weakness.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 8 Nov 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-47b for a pattern of misconduct (conduct prejudicial to good order and discipline). The specific reasons for the action were:

- a. On 6 Mar 90, a Letter of Reprimand (LOR) was issued for failing to pay his German bundespost phone bill in the amount of 436,72 deutsche mark (DM) on or about 5 Dec 89, for which he received a request for permission to execute on his property, dated 2 Mar 90.
- b. On 5 Jun 90 an LOR was issued for deliberately disregarding the restriction of using government vehicles for personal use, when he drove the shop truck off base to pay his car insurance, on or about 30 May 90. Additionally, he failed to go to his appointed place of duty at the appointed time, then left his appointed place of duty without authority, on or about 31 May 90.

AFBCMR Docket Number BC-2023-03715

[REDACTED]

[REDACTED]

[REDACTED]

c. On 21 Feb 91, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for driving a motor vehicle while having the knowledge of a lawful order issued by a superior officer, to not drive for 180 days due to the accumulation of 12 traffic violation points within a 12-month period on or about 8 Feb 91. He received a reduction to the grade of airman, suspended, forfeiture of \$95.00 pay, and 14 days extra duty.

d. On 9 Jul 91, an AF Form 366, *Record of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant's NJP, Article 15 suspended punishment was vacated for failing to go at the time prescribed to his appointed place of duty on or about 28 Jun 91.

e. On 18 Oct 91, an AF Form 3070 indicates the applicant received NJP, Article 15 for driving his privately owned vehicle while having the knowledge of a lawful order issued by a superior officer to not drive any motor vehicle on or about 4 Oct 91. He received a reduction to the grade of airman basic and forfeiture of \$100.00 pay per month for two months, suspended.

On 13 May 92, the AF Form 1359, *Report of Result of Trial*, indicates the applicant pled not guilty to one charge and one specification of stealing the property, totaling about \$2000.00 on divers occasions, from 13 Aug 91 to 26 Oct 91. He was found not guilty of the specification but was found guilty of wrongful appropriation. The applicant was sentenced to three months confinement.

On 29 Jul 92, an addendum to the notification memo indicates the separation authority advised the applicant the conviction by court-martial would be included as a basis for discharge.

On 6 Aug 92, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 Aug 92, the discharge authority directed the applicant be discharged for 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 21 Aug 92, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern Conduct Prejudicial to Good Order and Discipline" and he was credited with three years, five months, and nine days of total active service.

On 25 Aug 92, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge and contended it was inequitable because his conduct and efficiency ratings were good, he received letters of commendation, and his off-duty employers had high impressions of him. Additionally, he contended his ability to serve was impaired due to racial discrimination.

On 11 Mar 93, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. The Board recognized

[REDACTED]

the applicant's duty performance was satisfactory, however, his misconduct was a significant departure from the conduct expected of an airman. Additionally, the applicant did not provide evidence his infractions and impaired ability to serve was a result of racial discrimination. Therefore, the Board determined an upgrade was not warranted.

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

POST-SERVICE INFORMATION

On 7 Aug 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 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?

[REDACTED]

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 7 Aug 24, the 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge from a mental health perspective. A review of the available records finds the applicant's contentions were partially corroborated by his objective military records. There is evidence the applicant was physically abused by his wife or experienced interpersonal partner violence (IPV) during service. The applicant had family advocacy program (FAP) involvement beginning on 17 Apr 90 due to allegations of mutual abuse. FAP had investigated the abuse and determined, per FAP notes dated 16 May 90, the applicant's abuse toward his wife was unsubstantiated, but the abuse from his wife towards him was substantiated. He would attend and complete the recommended classes and his FAP case was closed on 17 Oct 90. His wife was noted to not participate in these classes. While it is conceivable the applicant may have experienced emotional distress or depression including suicidal ideation from being abused by his wife, there is no evidence or records his mental health condition including depression developed from his wife's abuse had a direct impact or was a contributing factor to his misconduct resulting in his discharge from service. There are several statements from the applicant and his leadership

[REDACTED]

at the time of service explaining his behavior and situation. He claimed the NCO club erroneously deducted money from his paycheck which caused an inability to pay his debts. He eventually paid his debt/phone bill but there was a discrepancy with the paperwork. He believed the deducted funds were caused by a lack of communication. Additionally, this issue of not paying his phone bill occurred in Dec 89 and occurred before his abuse incident in Apr 90. There are no records of when his wife began to abuse him, but from his statement explaining his financial issues, his debt was not caused by being abused by his wife. He also wrote a statement explaining he was misinformed of the time to report to the retreat ceremony on 28 Jun 91 by a technical sergeant. He was given two different report times and did the best of his ability to determine when he should report. His explanation was supported by an airman who attested the two different times given to him would cause confusion. In another statement for an extension appeal, he claimed his problems were attributed to his former first sergeant, whom he did not get along with, and they had a great deal of animosity toward each other. He believed had it not been for his first sergeant's negative involvement, he would have been cleared of any wrongdoing, and he was innocent. His leadership had reported on his behaviors and situations which the applicant did not address in his statements or this petition. Two non-commissioned officer (NCO)s reported he failed to report to work on 31 May 90 because the applicant claimed a technical sergeant said they/the shop did not need to report to work if they had any appointments in the morning. He reported separately to the NCO of the shelter maintenance shop, he was under the impression the counselor did not think he should go to work before taking an assessment, and then later acknowledged the counselor did not tell him to stay home. This occurred after the NCO confronted him about a phone call received to confirm his appointment, but no information about him staying home. This NCO also discussed a separate incident in which the applicant used a government vehicle for personal use to visit his auto insurance company. The applicant admitted to the act but claimed he thought only jeeps could not go off base. The applicant was also reported to have not returned to work later the same day and was observed by others to have left the shop in a car with his wife when he was not authorized to leave. Lastly, his commander and first sergeant wrote memorandum for record (MFR)s to report the applicant was informed, acknowledged, and understood he was not to drive any vehicles effective 08 Feb 91. Despite this acknowledgment, he drove a motor vehicle shortly thereafter as evidenced by his Article 15 received on 21 Feb 91. There was no explanation for why he wrongfully appropriated \$2,000.00 from an airman, a misconduct/offense which he was convicted of at a court-martial. None of the explanations provided by the applicant nor the reports from his leadership at the time of service indicated his behaviors and misconduct were caused by his mental health condition or having a mental health condition. The applicant did not discuss having any mental health conditions in any of his statements. He did reference "mental" distress in a couple of his statements, but they were in response or reaction to the consequences of his disciplinary action, punishment, and stressors. There is no evidence or records the applicant had any mental health conditions including depression or was in emotional distress which would impair his judgment at the time of any of his misconduct. Providing further support he did not have a mental health condition during service; there are no records he received any mental health treatment for a mental health condition like depression, there are no records he received any mental disorder diagnosis during service or in his lifetime, he was evaluated by a medical provider for confinement and no mental health issues were reported, and he denied having any mental health issues during his separation physical examination with his primary care manager (PCM). During the latter

[REDACTED]

examination, he had endorsed himself, he did not have any mental health issues including depression or excessive worry, nervous trouble of any sort, or frequent trouble sleeping. The applicant contended, considering the time, it was not easy for him to admit he had mental health issues because it might show a sign of weakness. Although this is a comprehensible explanation for why he did not report his emotional distress, depression, and/or suicidal ideation during service, there is still no evidence his behaviors and misconduct were consistent with having any of these issues from being abused. Considering the applicant's available records and his petition, the Psychological Advisor finds his contention is not compelling enough to sufficiently demonstrate his mental health condition had caused his discharge.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's request due to the contention of having a mental health condition. It is reminded liberal consideration does not mandate an upgrade per policy guidance. 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 marked "other mental health" on his application to the AFBCMR and contended he was in a toxic marriage at the time of Operation [REDACTED]. He was married to an unfaithful woman, and she was abusive and untrustworthy with personal funds and property of others. He suffered mentally and at times, considered suicide. He said, considering the time, it was not easy to admit to others he had these problems as it might show weakness.

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

There is evidence the applicant was abused by his wife or experienced IPV during service. He was evaluated and investigated by FAP, and they determined he was abused by his wife. He participated in and completed classes offered through FAP. There is no evidence or records he had depression or suicidal ideation during service. There are no records he received any mental health treatment for a mental health condition like depression or suicidal ideation during service. He denied during his confinement physical evaluation and administrative separation physical examination of having any mental health issues including depression and excessive worry.

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

There is no evidence the applicant had any mental health conditions including depression and suicidal ideation or was in emotional distress impairing his judgment from being abused by his wife causing any of the documented acts of his misconduct resulting in his discharge from service. His mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

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

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

[REDACTED]

The Board sent a copy of the advisory opinion to the applicant on 21 Nov 24 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 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 and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there is no evidence of a mental health condition or that he was in emotional distress, impairing his judgement during his military service or at the time of discharge which would excuse or mitigate the applicant's misconduct. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of a criminal history report and other evidence showing the applicant made a successful post-service transition, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of an FBI criminal history report, a personal statement, character statements, and/or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03715 in Executive Session on 19 Mar 25:

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

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

- Exhibit A: Application, DD Form 149, dated 14 Nov 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 7 Aug 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Nov 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Nov 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.

4/4/2025

X

[REDACTED]
[REDACTED]
Board Operations Manager, AFBCMR
Signed by: USAF