



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-04038

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He is requesting the upgrade in order to further his education and improve his chances with employment with the Department of Defense. He has made great strides since the discharge and is looking to reassert himself into a government contractor position, he has been offered. He has been a nonproblematic veteran, has maintained a clean record, and has volunteered with many military affiliated organizations. An upgrade would enable him to continue his education and aid in career advancement. While he does not contend or cite and mental health issues/contentions, he check marked Other Mental Health on his application.

In support of his request for a discharge upgrade, the applicant provides supporting work history, and a North Carolina State Bureau of Investigation criminal history check related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 8 Oct 04, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54 for drug abuse. The specific reason for the action was between on or about 17 Apr 04 and 17 May 04, he wrongfully used marijuana and received nonjudicial punishment (NJP), Article 15. He received a reduction in grade to airman basic (E-1) and forfeiture of pay of \$278.00.

On 15 Oct 04, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 18 Oct 04, the discharge authority directed the applicant be discharged for drug abuse with a general (under honorable conditions) service characterization.

AFBCMR Docket Number BC-2023-04038

Work-Product

Work-Product

On 21 Oct 04, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 11 months, and 23 days of total active service.

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

POST-SERVICE INFORMATION

On 22 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 D). The applicant replied on 26 Mar 24, but did not provide a Federal Bureau of Investigation Identity History Summary Check; However, the applicant provided a criminal background check from the state of [REDACTED] Work-Product According to the report, the applicant has had no arrests since discharge. The applicant also provided employment history in his response.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness 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 Nov 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

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 completed a review of all available records and finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge from a psychological perspective. While the applicant check marked Other Mental Health on his application, he does not contend or cite any other mental health issues or contentions. Furthermore, there is insufficient evidence to suggest the applicant had any mental health condition during his time in service or at the time of discharge. He does not have any mental health encounters while in service and does not have a service-connected mental health condition. An encounter by a Licensed Clinical Social Worker on 13 Jul 17, which was 13 years after discharge, indicated he did not have any mental health issues. The applicant was later diagnosed with

depression and PTSD in 2023, which is 19 years post-discharge. Despite these mental health conditions, he is not service-connected for any mental health issue. His records indicate he had no mental health issues until around 2016 when he fell and struck his head after smoking a 'laced' cigarette. The Psychological Advisor concludes his misconduct of marijuana usage on diverse occasions in the military is not mitigated or excused by a mental health condition. The applicant did not appear to have any mental health condition until after his military discharge, and records indicate on 8 Mar 23 his mental health symptoms were not caused or exacerbated by his military experience. Furthermore, there is evidence the applicant used marijuana prior to entering the military on at least two occasions. This additionally demonstrates his marijuana usage was not caused by any military experience.

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 Other Mental Health on his application.

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

There is insufficient evidence to suggest the applicant had any mental health condition during his time in the military or at discharge.

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

The Psychological Advisor concludes his misconduct of marijuana usage on diverse occasions in the military is not mitigated or excused by a mental health condition. The applicant did not appear to have any mental health condition until after his military discharge, and then records indicate his mental health symptoms were not caused or exacerbated by his military experience. Furthermore, there is evidence the applicant used marijuana prior to entering the military on at least two occasions. This demonstrates his marijuana usage was not caused (potential self-medication for symptoms) by any military experience.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate the 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 a copy of the advisory opinion to the applicant on 14 Nov 24 for comment (Exhibit G) 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 10 U.S.C. § 1552(b).

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

3. After reviewing all Exhibits, the 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. Since the applicant checked other mental health on his application, the Board applied liberal consideration to his petition; however, finds no evidence he used drugs to cope with a mental health condition. The Board notes that there was no evidence of a mental health condition during the applicant's service, nor at the time of his discharge. The applicant was first diagnosed with PTSD and depression 19 years post-service and these conditions are not service-connected. The applicant did not provide any evidence or records to substantiate his claim that a mental health condition in service caused his drug abuse, thus his condition does not mitigate or excuse his discharge. In the interest of justice, the Board also considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, evidence he provides lacks references that demonstrate his character, post-service rehabilitation, service to the community, or any degree of remorse pertaining to his in-service conduct. 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 a personal statement, character statements, 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-2023-04038 in Executive Session on 18 Dec 24:

Work-Product, Panel Chair

AFBCMR Docket Number BC-2023-04038

Work-Product, Panel Member

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

Exhibit A: Application, DD Form 149, dated 27 Nov 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance) dated 22 Mar 24.

Exhibit D: Applicant's Response, w/atchs, dated 26 Mar 24.

Exhibit E: Letter, SAF MRBC (Liberal Consideration) w_eApp Number, dated 13 Nov 24

Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 14 Nov 24

Exhibit G: Notification of Advisory, SAF MRBC, dated 14 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.

1/3/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF