

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-00081

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NOT INDICATED

### APPLICANT'S REQUEST

His NGB Form 22, *Report of Separation and Record of Service*, be amended to change his character of service.

### APPLICANT'S CONTENTIONS

At the time of his service, he was not allowed housing to make drill. He was told he fell short of the distance. He was the only person of color in his unit. He had no transportation, and his spouse left him. He wanted to remain in the Air National Guard and further his career as active duty. This caused a major hardship, and a feeling of neglect and despair from his unit and spouse. He wanted to end his life but continued to trust God. He tried several times to get reenlisted but was told his NGB Form 22 did not allow this. He spoke with a wing representative, and she mentioned for him to appeal the decision.

This rating has hindered him as an African American to further his career in the military and civilian employment. At the time of this service, he lost his fulltime job and vehicle. He requested lodging but was denied for falling three miles short of the required milage. The discrimination he suffered at this unit caused Post-Traumatic Stress Disorder (PTSD) and other mental health issues to this day.

He has been trying since 2001 to get reenlisted as active duty Air Force. The tools that are available to him now were not made available through the Department of Veterans Affairs (DVA). He felt as if no one cared to assist and the care he is receiving today is through the DVA.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former [State] Air National Guard (ANG) airman first class (E-3).

On 1 Oct 99, according to the NGB Form 22, the applicant received a general (under honorable conditions) discharge. The Authority and Reason is "AFI 36-3209, Para 3.21.2, Pattern of Misconduct", Reenlistment Eligibility is "Ineligible", and he was credited with 2 years, 3 months, and 25 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 15 Apr 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; 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?

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).

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 the desired change to his records from a mental health perspective.

A review of the applicant's available records finds his mental health condition, including PTSD, had no direct impact or was a contributing factor to his discharge from the ANG. His discharge paperwork is not available or submitted by the applicant for review so the details of his pattern of misconduct resulting in his discharge are unknown at this time. It is unknown if he had engaged in minor or serious misconduct or whether his mental health condition could excuse or mitigate his discharge. His service treatment records are also not available or submitted for review so there are no records confirming he received any mental health evaluation, treatment, or mental disorder diagnosis during service. There is also no evidence he developed a mental health condition during his military service. The applicant contends he developed PTSD and other mental health conditions from being discriminated against and there is no evidence to support his claim. He did not clarify his other mental health condition. There are no records he had, or was ever diagnosed with, PTSD or a similar condition during or after service. The applicant was evaluated by a mental health provider at the DVA about 22 years after his military discharge and his presenting problems were his relationship and financial problems causing him to be diagnosed with Adjustment Disorder with Anxiety and Depression. This disorder was not caused by, or related to, his military service. His presenting problems were his post-service stressors and had no nexus to his military duties or service. His Adjustment Disorder is different than PTSD. From his contentions, the applicant had personal stressors of his spouse leaving him, having no transportation, and not being authorized lodging causing him to miss drills. These personal stressors were not caused by his mental health condition or his military duties/service, and he was not on orders or drill status at the time these stressors had developed. It appeared he developed mental health issues or was in emotional distress as a result of the consequences of these stressors. Again, there is no evidence his mental health condition caused his discharge. Without the vital records of his discharge paperwork and service treatment records, the presumption of regularity is applied and there is no error or injustice identified with his discharge from a mental health perspective. The burden of proof is placed on the applicant to submit the necessary records to support his contention and request. His contention is determined to be not compelling or sufficient enough to support his request for an upgrade of his discharge based on his mental health condition.

Liberal consideration is applied to the applicant's request due to his contention of a mental health condition. The following are answers to the four questions from the Kurta Memorandum from the available records for review. It is reminded liberal consideration does not mandate an upgrade per policy guidance:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contends he was not allowed housing to make drill because he fell short of distance, he had no transportation, and his spouse had left him. This caused him major hardship

and he felt neglected and despaired by his unit and spouse. He wanted to end his life but continued to trust in God. The applicant claims he was also discriminated against and suffered from PTSD and other mental health issues to this day. He did not discuss how his mental health condition may excuse or mitigate his discharge.

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

The applicant's service treatment records are not available for review. There is no evidence or records he received a mental health evaluation, treatment, or mental disorder diagnosis during service. There are no records to confirm his mental health condition of PTSD or other mental health conditions had existed or occurred during his military service. The applicant was given a diagnosis of Adjustment Disorder with Anxiety and Depression by a DVA provider over 20 years after discharge caused by his post-service stressors and not related to his military service. There are no records reflecting he was ever diagnosed with PTSD in his lifetime.

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

The applicant's service treatment records and discharge paperwork are not available for review. Without these records, there is no evidence or records his mental health condition had a direct impact or was a mitigating factor to his discharge. Presumption of regularity is applied and there is no error or injustice with his discharge. 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**

The Board sent a copy of the advisory opinion to the applicant on 2 Jul 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 are no records he had, or was ever diagnosed with, PTSD or a similar condition during or after service. The applicant did not discuss, or provide evidence to support, how his mental health condition may excuse or mitigate his discharge. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

Further, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Given the presumption of

regularity and the discharge reason of “Pattern of Misconduct” the Board finds it unlikely the discharge was 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 lack of specifics regarding the circumstances of the applicant’s misconduct, 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.

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-2024-00081 in Executive Session on 16 Oct 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 19 Dec 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, AFRBA Psychological Advisor, dated 15 May 24.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jul 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.

**X**

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Board Operations Manager, AFBCMR