



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00273

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His dismissal due to court martial be upgraded to general.

APPLICANT'S CONTENTIONS

He incurred many medical disabilities throughout his honorable service which have gotten worse after his discharge. He is now fully rehabilitated from his lapse in judgement and is the father of two with a career. He continues to live his life honorably, is a member of his company's veteran network, and is involved in volunteer events.

In support of his request for a discharge upgrade, the applicant provides copies of military kudos, character references from 2016, and his medical records. The character references he provided discuss his career in the military and the way he has lived his life since discharge. One letter discusses his volunteer efforts at the infant crisis center on 12 Jan 16.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force first lieutenant (O-2).

On 18 Jul 16, the applicant's duty status changed from present for duty to military confinement.

On 20 Aug 16, the applicant's duty status changed from confinement to present for duty.

Dated 11 Sep 18, the convening authority published General Court-Martial Order (GCMO) Number [REDACTED]. The Order stated the sentence of dismissal and 40 days of confinement as promulgated in GCMO Number [REDACTED] has been affirmed and the dismissal will be executed.

AFBCMR Docket Number BC-2024-00273

Controlled by: SAF/MRB
CUI Categories: [REDACTED]
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 1 Mar 19, the applicant was dismissed from the Air Force. His narrative reason for separation is “Court-Martial (Other)” and he was credited with 5 years, 10 months, and 8 days of total active service.

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 14 Jun 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 28 Aug 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement and two-character statements attesting to the way he has lived his life since discharge, showing great character and integrity. In this personal statement, he takes full responsibility for his behavior which led to his discharge. He further goes on to explain the medical issues he incurred that had an impact on his life. Lastly, he states since his discharge, he has worked diligently to rehabilitate himself, maintaining steady employment, furthering his education, and engaging in volunteer work within his community. Due to the significant and lifelong impact of his service-connected medical issues and the substantial punishment he already endured, he believes an upgrade to his discharge would provide him with the opportunity to access the benefits necessary to manage his medical conditions and continue his journey of personal and professional development.

The applicant’s complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ); for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record; and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 19 May 25, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

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

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. There is no evidence the applicant had any mental health diagnosis during the time of his misconduct. He was determined to have a partner relational problem in 2013, which was resolved that same year after he spoke with his wife and she was highly supportive of his issues. He was not seen by mental health until after he committed misconduct and was being court-martialed. He was determined to have several mental health conditions that began after his misconduct, in which he was being disciplined (court-martialed). His mental health diagnosis of adjustment disorder was added as a result of being jailed following his court-martial. The Psychological Advisor concludes his mental health issues began after his misconduct as a result of his court-martial and confinement. Therefore, any mental health conditions the applicant may have been experiencing are not mitigating factors for his misconduct since they were a reaction to his punishment.

Even if the applicant had prior mental health conditions, problems related to other legal circumstances, other problems related to employment, phase of life problem, partner relational problem, or adjustment disorder, these would still not be a mitigating factor for his misconduct. Larceny and making false statements to a law enforcement officer are not part of the sequelae of symptoms associated with his mental health conditions. While the applicant contends he incurred

several service-connected medical conditions related to his service, there is no evidence he has a service connection in his available electronic records or from submitted documents.

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 marked Other Mental Health on his application.

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

There is no evidence the applicant had any mental health diagnosis during the time of his misconduct. He was determined to have a partner relational problem in 2013, which was resolved that same year after he spoke with his wife and she was highly supportive of his issues. He was not seen by mental health until after he committed misconduct and was being court-martialed. He was determined to have several mental health conditions that began after his misconduct, in which he was being disciplined (court-martialed). His mental health diagnosis of adjustment disorder was added as a result of being jailed following his court-martial. The Psychological Advisor concludes that his mental health issues began after his misconduct as a result of his court-martial and confinement.

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

The mental health conditions the applicant may have been experiencing are not mitigating factors for his misconduct since they were a reaction to his punishment, not the cause of his misconduct. Even if the applicant had prior mental health conditions, these would still not be a mitigating factor for his misconduct. Larceny and making false statements to a law enforcement officer are not part of the sequelae of symptoms associated with his mental health conditions.

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 E.

AF/JAJI recommends denying the application. Based on the relatively short timeframe of the applicant's service before the allegations related to his court martial surfaced, it appeared his service was meritorious. His career was on an upward trajectory at the time he committed the misconduct for which he was convicted. With this most recent request for relief, it appears the applicant only submitted three new documents for consideration: his personal statement and two new character references. The AFBCMR always has the authority to grant clemency in the form

of a discharge upgrade. However, AF/JAJI's review did not identify any information warranting clemency from a legal perspective.

A military judge sentenced the applicant to a dismissal and 40 days of confinement, after finding him guilty of providing three false official statements to a military investigator and stealing money from the Army and Air Force Exchange Service (AAFES) on divers occasions, in violation of Articles 107 and 121 of the UCMJ. The applicant developed and executed a scheme of placing clearance stickers on items from the base exchange and purchasing them at a discounted price, only to return the items without a receipt for full price. The exchange would issue the applicant refunds on gift cards. The store's loss prevention manager stopped the applicant after he was caught on video placing clearance stickers on regularly priced items, and when questioned by a military investigator, the applicant lied about his misconduct.

The applicant does not request correction of a record to reflect an action taken by review authorities. Therefore, clemency on the applicant's sentence is the only option available for consideration. In accordance with the Wilkie Memo, when determining whether to grant relief on the basis of clemency, BCMRs should consider a variety of factors to include character references, evidence of rehabilitation, severity of misconduct, the applicant's meritorious service, character, and reputation. Of note in this case, the AFBCMR should also consider the applicant's candor, and whether the punishment, including any collateral damages, was too harsh. The applicant also requests the AFBCMR consider his mental health in deciding whether to grant relief. AF/JAJI recommends the BCMR review these matters consistent with the Wilkie Memorandum, and in light of the guidance for liberal consideration of mental health issues in the Kurta Memorandum. With that said, the AFBCMR's psychological advisor provided an extensive overview of the mental health considerations in this case, and has made a recommendation against relief on that basis.

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 19 May 25 for comment (Exhibit G) and the applicant replied on this same day. In his response, the applicant contends he seeks clemency and leniency based on his post-service conduct, lifelong service-connected medical issues he incurred, and how he has already been sufficiently punished for his actions. He was released from confinement six days early due to good conduct, never causing any further problems. He paid the debt he incurred with AAFES and continues to utilize their services. He continues to struggle with the manner in which he was discharged and understands the severity of the bad decision. The three false official statements to the military investigator happened because he was scared at the time. Furthermore, the mental health advisory has some inconsistencies. He has no recollection of a post-confinement mental health visit but did meet with the Chaplain to discuss his mental health. Being in the service generated many underlying mental health conditions which led to his misconduct even though he did not officially confide with a mental health professional.

The applicant's complete response is at Exhibit I.

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. 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 injustice. The Board finds no evidence the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board contemplated the many principles included in the Wilke Memo to determine whether to grant relief based on an injustice or clemency; however, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant has presented some supporting statements indicating a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, the supporting statements from the applicant's friends and co-workers indicate their admiration for the applicant and the way he has lived his life during service and since his separation. However, these statements do not show an impact on the community that is so admirable it would justify how an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. Lastly, the Board concurs with the rationale and recommendations of the AFRBA Psychological Advisor and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions as the Board finds no evidence the applicant was diagnosed with a mental health disorder during service. In this regard, the Board believes his mental health issues began after his misconduct and as a result of his court-martial and confinement. Nonetheless, in the interest of justice, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. 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 clemency.

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-2024-00273 in Executive Session on 18 Jun 25:

[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, w/atchs, dated 18 Jan 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, (Post-Service Request and Clemency Guidance), dated 14 Jun 24.
- Exhibit D: Applicant's Response, w/atchs, dated 28 Aug 24.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Feb 25.
- Exhibit F: Advisory Opinion, AF/JAJI, dated 17 Apr 25.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 19 May 25.
- Exhibit H: Letter, SAF/MRBC, (Liberal Consideration Guidance), dated 19 May 25.
- Exhibit I: Applicant's Response, w/atchs, dated 19 May 25.

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.

7/8/2025

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

AFBCMR Docket Number BC-2024-00273