



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00382

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His deployments and the stress of his job caused him to get Post-Traumatic Stress Disorder (PTSD).

In support of his request the applicant provides a Department of Veterans Affairs (DVA) benefits letter, and a recommendation letter from his father.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 4 Aug 05, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

a. On or about 4 Jun 04, he was convicted of Driving Under the Influence (DUI) in
Work-Product in Work-Product as evidenced by an incident report and judgment of conviction. His DUI was not reported to the Air Force.

b. On or about 13 Nov 04, he was aware of a lawful order to be back in
Work-Product Territory by 0130 and failed to obey the order by wrongfully returning at 0145. He received a Letter of Reprimand (LOR) for this incident.

c. On or about 7 Mar 04, he failed to vacate the premises of a civilian establishment. He was arrested by the
Work-Product Sheriff's Department and convicted by
Work-Product. For this misconduct, he received another LOR.

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d. On or about 5 Mar 05, he operated a motor vehicle while intoxicated in **Work-Product**, **Work-Product**, and was convicted of a DUI. He received another LOR and this action established his Unfavorable Information File and placed him on the Control Roster.

On 5 Aug 05, the Staff Judge Advocate found the discharge action legally sufficient.

On 10 Aug 05, the discharge authority directed the applicant be discharged for a pattern of misconduct prejudicial to good order and discipline, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 12 Aug 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 4 years, 7 months, and 12 days of total active service.

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

POST-SERVICE INFORMATION

On 1 Apr 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 Jun 24 and provided an FBI report. According to the report, the applicant was arrested on 1 Jan 21 by the Houston Sheriff's office and charged with driving while intoxicated, third or more.

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 1 Apr 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 based on his mental health condition. A review of the available records finds the applicant's contention plausible, but his objective military records do not support his contention. The applicant did not discuss his traumatic deployment experiences, when and where they occurred, and the actual PTSD symptoms he had during service. There are no records to confirm he was ever diagnosed with PTSD from his deployment experiences and/or the events of 9/11 during or after service. The only record of a deployment in his available military records was to **Work-Product** sometime in 2004 (he received an LOR in Nov 04 for failing to obey a lawful order while at this location) but no traumatic or deployment experiences were reported, not even by the applicant or his defense counsel in their responses to his administrative discharge action. It is not certain if this was the deployment he was referring to that caused him to develop PTSD as he stated "deployments" in his petition implying he may have had more than one deployment. His defense counsel mentioned his off-duty misconduct involved alcohol and he had participated in Alcohol and Drug Abuse Prevention and Treatment (ADAPT) and Alcoholics Anonymous (AA) but no mention he had any mental health conditions such as anxiety, depression, PTSD, etc., or had deployment related issues that caused his misconduct resulting in his discharge from service. The applicant claims he coped with alcohol and this contention is compelling. He did receive two DUIs during service which may be related to him coping with his mental health condition. However, for his first DUI occurring in Jun 04, this incident occurred before his only documented deployment to **Work-Product** and thus, this incident may not be related to the trauma of his deployment. Furthermore, the applicant failed to report this DUI to the Air Force and his decision could not be excused or mitigated by his mental health condition. His second DUI in May 05 occurred after his deployment to **Work-Product** and could be related to his deployment. His remaining acts of misconduct of failing to obey a lawful order and failing to vacate a civilian premise were not reported as alcohol-related misconduct but were possible. He had alcohol issues during service and this condition is unsuited for continued military service. His unsuited alcohol issues may explain some of his misconduct but do not excuse or mitigate his misconduct and discharge. There is also no evidence his mental health condition of PTSD developed from his deployment experiences had a direct impact or was a contributing factor to his discharge. The Psychological Advisor finds his personal testimony alone as not compelling or sufficient enough to support his request especially since his military records are limited and did not offer more substantive information to support his request. An exhaustive review of the available records finds no error or injustice with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition. The following are responses to the four questions from the Kurta Memorandum from the available records for review. It is reminded that 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 developed PTSD from his deployment experiences and he used alcohol to cope and sleep. He did not discuss his traumatic deployment experiences, when and where his deployment occurred, and the actual PTSD symptoms he had during service.

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

There is no evidence or records the applicant's mental health condition of PTSD had existed or occurred during his military service. There is evidence he had alcohol problems causing him to participate in ADAPT treatment and AA meetings during service as evidenced by his defense counsel's response to his discharge action. There are no records he was given any mental disorder diagnosis during service. There are records he had deployed to **Work-Product** in the latter part of 2004 and no other deployments were reported. There is no evidence or reports he developed any trauma symptoms from his deployment experiences.

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

The applicant's problem with alcohol is an unsuitable condition for continued military service. It may explain some of his behaviors/misconduct but does not excuse or mitigate his discharge. There is no evidence his mental health condition of PTSD developed from his deployment experiences had a direct impact or contributing factor to his discharge. His mental health condition from his deployment experiences does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition from his deployment experiences does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Jul 24 for comment (Exhibit F), and the applicant replied on 16 Sep 24. In his response, the applicant appeals for an upgrade to his discharge by responding to the four questions from the Kurta Memorandum.

The applicant's complete response is at Exhibit G.

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. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor. The applicant's problem with alcohol is an unsuitable condition for continued military service. It may explain some of his behaviors/misconduct but does not excuse or mitigate his discharge. There is no evidence his mental health condition of PTSD, developed from his deployment experiences, had a direct impact or contributing factor to his discharge. His mental health condition from his deployment experiences does not excuse or mitigate his discharge. The

Board found insufficient evidence to support liberal consideration or fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

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-2024-00382 in Executive Session on 16 Oct 24:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

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

- Exhibit A: DD Form 149, w/atchs, dated 30 Jan 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 1 Apr 24.
- Exhibit D: FBI Report, dated 28 Jun 24.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Apr 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jul 24.
- Exhibit G: Applicant's Response, dated 16 Sept 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.

10/25/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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