



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00778

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His G.I. Bill be reinstated.

APPLICANT'S CONTENTIONS

He is requesting an amendment to his DD Form 214, *Certificate of Release or Discharge from Active Duty*, in conjunction with the "Don't Ask Don't Tell" (DADT) policy which federal law has changed. He is not sure of what the protocol was years ago, but the discharge was done with malicious intent by his leadership. They made it their personal business to intrude in his personal life to come to a conclusion of what community he belonged to and went as far as to send him to correctional custody for thirty days because of a social gathering. Long story short, he was committed while others were given extra weekend duty. Nothing else about his career mattered to them and he was removed because of what lifestyle community he belonged to aside from their constant advances. He could not deploy, could not change duty assignments, and his GI Bill benefits were taken away. He went to military equal opportunity but a spouse of one of the people responsible for his discharge was in charge of this office.

Regardless of anyone's personal opinion of said person's lifestyle, no one should go out of their way to ruin someone's career and set them back in life. He is still living with the anguish of the malicious sexual intent they inflicted upon his life, career, and he has not recovered. He just wants his GI Bill back which was the sole purpose of joining the military at the time, so he could pursue a higher education. They went out of their way to discredit his career due to what they perceived as his sexual orientation. Meanwhile, he was an adolescent kid who was a victim to their much older age, grade, malicious actions, and intent.

In support of his request for a discharge upgrade, the applicant provides a personal statement.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 2 Feb 00, DD Form 2366, *Montgomery GI Bill Act of 1984 (MGIB)*, indicates the applicant acknowledged he must complete 36 months of active service honorably or serve honorably for 24 months and complete a minimum of 48 months in the Selected Reserve in order to qualify for the benefits.

On 14 Jun 02, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 20 Sep 00, a Record of Individual Counseling (RIC) was issued for failing to report to duty on time on 20 Sep 00.
- b. On 9 Nov 00, an RIC was issued for failure to report to duty on time on 9 Nov 00.
- c. On 4 Jan 01, a Letter of Reprimand (LOR) was issued for failing to sign in from time off on 27 Dec 00. Additionally, he failed to obey a lawful order by a noncommissioned officer (NCO) to report to work no later than 1500 on 28 Dec 00. Furthermore, he failed to contact his supervisor until 30 Dec 00.
- d. On 2 May 01, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failing to go at the time prescribed, to his appointed place of duty on or about 10 Apr 01. Additionally, he failed to refrain from drinking alcoholic beverages while under the age of 21 on or about 13 Apr 01. The applicant received 30 days correctional custody.
- e. On 31 Jul 01, an RIC was issued for failing to report to duty on time on 31 Jul 01.
- f. On 7 Nov 01, a Letter of Counseling (LOC) was issued for failing to report to duty on time on 5 Nov 01.
- g. On 16 Jan 02, an RIC was issued for failing to report for weekend duty on 12 Jan 02.
- h. On 31 Jan 02, an LOR was issued for failing to perform his duties as the weekend on call person. He also failed to report to work on time on 28 Jan 02.
- i. On 27 Feb 02, an LOR was issued for being stopped by security forces (SF) for failing to signal. In the course of the traffic stop, SF personnel detected alcohol. He was apprehended for drunken or reckless operation of a motor vehicle on 30 Nov 01.

j. On 15 May 02, an LOR was issued for failing to report to duty on time on 13 May 02.

k. On 29 May 02, an AF Form 3070 indicates the applicant received NJP, Article 15 for absencing himself from his unit on or about 20 Apr 02 until on or about 22 Apr 02. Additionally, with the intent to deceive, he made a false official statement, indicating he placed his leave form inside the desk of a non-commissioned officer (NCO) before taking leave on 19 May 02. The applicant received a reduction to the grade of airman (E-2) and forfeiture of \$150.00 pay.

On 27 Jun 02, the Deputy Staff Judge Advocate found the discharge action legally sufficient. On the same date, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 1 Jul 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 5 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 D.

POST-SERVICE INFORMATION

On 1 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 20 Sep 11, with the repeal of the law commonly known as "Don't Ask, Don't Tell" (DADT), 10 U.S.C. Section 654, the Department of Defense (DoD) issued supplemental policy guidance on correcting military records of former service members who had been discharged under that law or a precursor. The guidance applied to the following types of requests: changing the narrative reason for a discharge; re-characterizing service as honorable; changing a reentry code to one allowing immediate eligibility to reenter service. The guidance directed that such requests should normally be granted when both of the following conditions are true: (1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and (2) there were no aggravating factors in the record, such as misconduct. For meritorious cases, the guidance further directed the use of "Secretarial Authority" as the new narrative reason for separation, with Separation Program Designator (SPD) code "JFF" and reentry code "1J." Finally, the guidance noted that while each request must be evaluated individually, an honorable or under honorable conditions (general) discharge should normally be considered to indicate the absence of aggravating factors.

[REDACTED]

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 Aug 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

[REDACTED]

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 has been presented to support the applicant's request for an upgrade of his discharge. There is no evidence the applicant had any mental health condition during his military service or at discharge. The applicant was not diagnosed with any mental health condition until 2020, 18 years after his military discharge. He was diagnosed with adjustment disorder as a result of stress related to moving. This diagnosis was not related to his military service, and he is not currently service-connected for any mental health condition. The Psychological Advisor concludes the applicant does not have any mental health condition which would mitigate or excuse his misconduct while in the military.

The applicant is additionally requesting a change to his DD Form 214 in relation to the DADT policy which federal law has changed. It should be noted the applicant was not discharged as a result of the DADT policy, but as a result of his minor disciplinary infractions, which are not related to his sexual orientation. Additionally, there is no evidence he was sexually assaulted or harassed during his time in the military. While there are some critical comments related to receiving an Article 15 for underage drinking, his rater noted several positive comments concerning his performance and accomplishments. While the applicant contends he was disciplined for an underage person drinking in his room, his service record indicated the Article 15 was for his underage drinking.

While the applicant cites DADT, it is unclear this policy applies to this applicant. The DADT policy referred to a person's sexual orientation and prohibited openly homosexual individuals from serving in the military. It is unclear whether DADT protected the applicant. The applicant repeatedly and vaguely refers to his potential sexual orientation but does not directly indicate it. Regardless, medical records appear to regularly document the applicant is heterosexual. Nonetheless, even if the DADT policy applied to the applicant, his misconduct was not the result of the DADT policy, but as a result of his minor disciplinary infractions and are not related to his sexual orientation.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition which would mitigate his misconduct. A review of the

[REDACTED]

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: 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," "sexual assault/harassment," and "DADT" on his application.

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

There is no evidence the applicant had any mental health condition during his military service or at discharge. The applicant was not diagnosed with any mental health condition until 2020, 18 years after his military discharge. He was diagnosed with adjustment disorder as a result of stress related to moving. This diagnosis was not related to his military service, and he is not currently service-connected for any mental health condition.

The applicant is additionally requesting a change to his DD Form 214 in relation to the DADT policy which federal law has changed. It should be noted the applicant was not discharged as a result of the DADT policy, but as a result of his minor disciplinary infractions, which are not related to his sexual orientation. Additionally, there is no evidence he was sexually assaulted or harassed during his time in the military.

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

There is no evidence the applicant had any mental health condition during his military service or at discharge. The applicant was not diagnosed with any mental health condition until 2020, 18 years after his military discharge. He was diagnosed with adjustment disorder as a result of stress related to moving. This diagnosis was not related to his military service, and he is not currently service-connected for any mental health condition. The Psychological Advisor concludes the applicant does not have any mental health condition which would mitigate or excuse his misconduct while in the military.

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 D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Jan 25 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 finds the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Additionally, the aggravating factors in the applicant's record prevent the applicant from meeting the criteria of the DoD policy with regards to records correction following the repeal of DADT as his original discharge was not based solely on DADT or a similar policy in place prior to enactment because the applicant was discharged for his minor disciplinary infractions. While the Board notes the applicant's contention of malice intent, the evidence presented does not support this. Therefore, since no error or injustice occurred with the discharge process, the Board finds no reason to grant the applicant's request to reinstate his G.I. Bill. Furthermore, 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. There is no evidence the applicant had a mental health condition during service or at the time of discharge. He was not diagnosed with any mental health condition until 2020, 18 years after discharge. Furthermore, the evidence and records show he is not currently service-connected for any mental health condition. Therefore, his contended mental health condition does not excuse or mitigate his discharge. Finally, 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. 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, the applicant did not provide sufficient evidence to show he has made a successful post-service transition. The evidence he provides lacks references that demonstrate his character and service to the community. 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 criminal history background check, 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.

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.

[REDACTED]

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-2024-00778 in Executive Session on 21 May 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 27 Feb 24.
- 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 1 Aug 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Jan 25.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Jan 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.

6/4/2025

X [REDACTED]

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