



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00831

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He feels his pattern of misconduct started directly after his tour in [Work-Product]. He is service connected for Post Traumatic Stress Disorder (PTSD) which is directly related to his time in service. After being awarded PTSD from the Department of Veterans Affairs (DVA), he is seeking an upgrade of his characterization.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 24 Jun 07, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2 for a pattern of misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 12 Dec 06, Letter of Reprimand (LOR) was issued for making a false official statement about making payments on his government travel card (GTC), which he failed to do, on 19 Oct 06.
- b. On 7 Nov 06, LOR was issued for making unauthorized purchases on his GTC, totaling \$547.04 for personal use between on or about 27 Jul 06 and 2 Sep 06.
- c. On 4 Nov 06, LOR was issued for failing to make payments on his GTC from on or about 1 Sep 06 to 31 Oct 06, (payment 60 days overdue).

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- d. On 2 May 06, Letter of Counseling (LOC) was issued for failing to obey a lawful order given to him by a staff sergeant, by failing to do his assigned duties and using a swear word directed towards the staff sergeant on or about 29 Apr 06.
- e. On 24 Apr 06, LOR was issued for failing to go to his anger management class appointment on or about 4 Apr 06.
- f. On 20 Jan 06, LOR was issued for failing to go to his appointed place of duty between 25 Sep 05 and 28 Nov 06.
- g. On 8 Jun 04, AF Form 3070, *Record of Nonjudicial Punishment Proceedings (AB thru SSgt)*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for dereliction in the performance of his duties in that he, by culpable inefficiency, failed to follow proper aircraft operations and movement procedures on or about 5 May 04. He received 15 days of extra duty.

On 5 Feb 07, the Staff Judge Advocate found the discharge action legally sufficient.

On 18 Apr 07, the discharge authority directed the applicant be discharged for a pattern of misconduct: conduct prejudicial to good order and discipline, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 26 Apr 07, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Other)" and he was credited with 4 years, 4 months, and 22 days of total active service.

On 2 Sep 20, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge. He made no contentions of inequity or impropriety, but contended he has matured since discharge and has realized his actions were inappropriate. He also indicated his achievement of a degree in biology and the goal to pursue medical school. He highlighted an upgrade would improve his chances of getting accepted.

On 15 Oct 20, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. The board concluded the misconduct outweighed the positive contributions he made during his time in service. It is noted, the board considered inputs from the board's psychiatrist/ psychologist; however, found no conclusive indication any mental health issues had a direct impact on the applicant's misconduct or discharge.

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

POST-SERVICE INFORMATION

On 2 May 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 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 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 2 May 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 an upgrade of his discharge based on his mental health condition. A review of the available and submitted records finds the applicant's contentions are not fully corroborated by his objective military records. There is evidence the applicant had deployed to [Work-Pr...] Air Base (AB), [Work...] sometime in 2006. The exact dates of when he was in [Work...] were not identified in his available military records, but the applicant did report in his response to his administrative discharge action he had spent roughly 60 days at [Work-Pr...] AB and one of his LORs reported he utilized his GTC for personal use at the base exchange (BX) from 27 Jul 06 through 2 Sep 06, which was roughly 60 days. He reported during his first mental health evaluation at the DVA in Oct 08 he was in [Work...] for four months from the summer through fall of 2006. The applicant contended his pattern of misconduct started directly after his tour of [Work...]; however, using the timeline of summer to fall of 2006, his contention is not supported by his records. The applicant had numerous misconduct problems predating his deployment to [Work...], an Article 15, an LOR, and an LOC. Since these misconducts had occurred before his deployment, then it is not possible his mental health condition including PTSD developed from his deployment experiences in [Work...], caused these misconducts. There is no nexus between his condition of PTSD and these pre-existing misconducts. His documented misconducts occurring during and after his deployment mostly involved his GTC. He also failed to go to his appointed place on at least one occasion after he returned from [Work...]. There is no evidence his mental health condition including PTSD caused any of these post-deployment misconducts. The applicant's entire service treatment records are not available (most likely because of the transition to electronic medical records from paper records during this time) or submitted by the applicant for review. There are, however, records reflecting he sought mental health treatment at Life Skills Support Center (LSSC) in May 06 for depression caused by his relationship/marital problems. His LOR dated 24 Apr 06 reported he failed to attend his Anger Management Class from the Family Advocacy Office or Family Advocacy Program (FAP) on 4 Apr 06 despite being reminded of the appointment by this office and having a conversation with

his first sergeant. His treatment from LSSC and FAP involvement also occurred before his deployment to [Work...] and was not related to his deployment experiences but to his marital problems. The applicant had spoken about his personal problems in his response to his LOC and referral enlisted performance report (EPR) affecting his poor attitude, but he never spoke about having any traumatic experiences from his deployment experiences causing his poor attitude or misconduct. There is no evidence or records he had PTSD or a similar condition during service. There are records he had completed several depression self-assessments from 7 Nov 06 to 20 Apr 07 with various reports. He had endorsed having depressive symptoms of feeling down, depressed, or hopeless, trouble with sleeping, feeling tired or having little energy, and feeling bad about himself, and at other times, he had denied experiencing any depression or depressive symptoms. The causes or triggers for his depressive symptoms were not reported and could be related to his traumatic experiences, but it is noteworthy to mention he was having misconduct problems and was being processed for discharge during this time frame which could cause his depression as well. His records were not clear, and the applicant did not address his various reports. As stated, there are no records he had PTSD during service and no records he had PTSD symptoms of avoidance behaviors, nightmares, hypervigilance, exaggerated startled responses, intrusive thoughts, flashbacks, anxiety, and isolation from others to name a few. There is no evidence or records his mental condition had a direct impact or was a contributing factor to his numerous misconducts and discharge as he claimed. Giving the applicant the benefit of the doubt his traumatic experiences from his deployment in [Work...] and marital problems may have caused some of his behavioral problems, these problems did not cause most of his misconduct of not following proper aircraft operations and procedures, failing to go on more than one occasion, failing to obey a lawful order given to him and failing to do his assigned duties, making unauthorized purchases with his GTC, failing to pay his GTC, and making a false official statement. There is no evidence he had a mental health condition including PTSD or was in emotional distress impairing his judgment at the time of any of these misconducts. It is acknowledged the applicant was diagnosed with PTSD in Oct 08 by his DVA provider, about 18 months after his discharge and 2 years after his traumatic experiences in [Work...], and was given service connection for PTSD, Generalized Anxiety Disorder (GAD), and Major Depressive Disorder (MDD) effective 8 Sep 22, 15 years after discharge. He was assigned a 70 percent rating for having problems or symptoms of anxiety, chronic sleep impairment, depressed mood, difficulty in adapting to work-like settings, stressful circumstances, and work, disturbances of motivation and mood, inability to establish and maintain effective relationships, near-continuous depression and panic affecting the ability to function independently, appropriately and effectively, occupational and social impairment with deficiencies in most areas such as work, school, family relations, judgment, thinking or mood, suicidal ideation, and suspiciousness. Except for depressed mood or depression, there is no evidence or records he experienced the remaining problems and symptoms during service. It appeared he had developed these remaining problems and symptoms after service as his symptoms may have taken time to develop and were exacerbated by his post-service stressors. It is possible he had a delayed onset of PTSD, which is not an uncommon occurrence, but there is no evidence he had PTSD, GAD, or MDD during service. Furthermore, receiving service connection from the DVA does not indicate causation or mitigation of his discharge but merely suggests the condition(s) was somehow related to his military service. In conclusion and based on a review of the available records, the Psychological Advisor finds no error or injustice with his discharge from a mental health

perspective, and his request for an upgrade of his discharge based on his mental health condition is not supported by his records.

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

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

The applicant contended his pattern of misconduct started directly after his tour of Work... He had been service-connected for PTSD related to his time in service by the DVA and is seeking relief, an upgrade of his characterization of service to honorable.

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

There is no evidence the applicant's mental health conditions of PTSD had existed or occurred during his military service. There is evidence he had deployed to Work... sometime from summer to fall of 2006 but no records he had developed PTSD from his traumatic experiences in Work... during service. He was diagnosed with PTSD in Oct 08, a little over a year after his military discharge and about two years after his traumatic experiences in Work... in 2006. It appeared he had a delayed onset of PTSD. He was given service connection for problems and symptoms of anxiety, chronic sleep impairment, depressed mood, difficulty in adapting to work-like settings, stressful circumstances, and work, disturbances of motivation and mood, inability to establish and maintain effective relationships, near-continuous depression and panic affecting the ability to function independently, appropriately and effectively, occupational and social impairment with deficiencies in most areas such as work, school, family relations, judgment, thinking or mood, suicidal ideation, and suspiciousness. Apart from his depression, there is no evidence or records he experienced the remaining problems and symptoms during service. There are records he received mental health treatment at LSSC for depression caused by his relationship problems and was scheduled to attend an anger management class held by FAP which he did not attend during service. His treatment from LSSC and FAP involvement was related to his relationship problems and occurred before his deployment to Work....

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

The applicant had numerous misconduct problems that predated his deployment so his contention his pattern of misconduct started after his tour in Work... is contrasted by his objective military records. While it is possible his depressed mood developed from his deployment experiences and relationship problems could have caused his attitude problems and some of his misconducts, his mental health condition did not cause most of his misconducts such as not following proper aircraft operations and procedures, failing to go on more than one occasions, failing to obey a lawful order given to him and failing to do his assigned duties, making unauthorized purchases with his GTC, failing to pay his GTC, and making a false official statement. There is no evidence or records he had a mental health condition including PTSD or was in emotional distress impairing his judgment at the time of any of these misconducts and no evidence or records his mental health condition had a direct impact or was a contributing factor to his discharge. Therefore, his mental health condition from his traumatic experiences in Work... does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition from his traumatic experiences from [Work...] does not excuse or mitigate his discharge, his mental health condition 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 9 Oct 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 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. Aside from depressed mood or depression, there is no evidence or records indicating he experienced any mental health conditions during service which contributed to the majority of his misconduct. It appeared the majority of his mental health symptoms/conditions developed post-service, which took some time to develop and were exacerbated by post-service stressors. Furthermore, receiving service connection from the DVA does not indicate causation or mitigation of his discharge, but merely suggests the condition(s) were somehow related to his military service. The DVA under Title 38, U.S.C., is empowered to offer compensation for any mental health or medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. Nevertheless, the Board applied liberal consideration to the applicant's petition; however, it finds no error or injustice with his discharge from a mental health perspective, as the majority of his misconduct was not excused or mitigated by a mental health condition. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. The Board considered the applicant's post service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition; however, the applicant provides no evidence of a successful post-service transition to warrant a discharge upgrade. 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.

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-2024-00831 in Executive Session on 15 Jan 25:

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: Application, DD Form 149, w/atchs, dated 1 Mar 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 2 May 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Aug 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Oct 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.

1/22/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

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