



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01367

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

The punishment was severe, he was young and immature. He understands he was in a responsible position but it was too soon for his age. He feels he could have been rehabilitated and returned as a more responsible airman. While he appreciates not receiving a dishonorable discharge, being sent to confinement was mentally disturbing to him and his family. Today, there are resources to help service members and veterans. However, before the Gulf War, the United States was trying to figure out how to help service members who served in Vietnam and other conflicts. He was not a problem until he made one mistake, which he has had to live with ever since. He wishes he could have fixed it, but now he is 60 years old and still bleeds blue despite the general (under honorable conditions) discharge. He does not have medical benefits or base exchange privileges.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 12 Feb 90, the convening authority published General Court-Martial Order (GCMO) Number Work... The applicant was arraigned at court-martial for the following offenses:

Charge: Article 92

Specification: Violated a lawful general regulation by wrongfully making sexual advances toward an airman on or about 30 Jun 89. Plea: not guilty. Finding: guilty.

Charge: Article 134

Specification: Wrongfully had sexual intercourse with a woman, not his wife on or about 30 Jun 89. Plea: guilty. Finding: guilty.

Charge: Article 86

Specification: Without authority, failed to go at the time prescribed to his appointed place of duty on or about 9 Sep 89. Plea: not guilty. Finding: guilty.

Charge: Article 91

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Specification: Willfully disobeyed a lawful order of a non-commissioned officer (NCO) to wear his blues on Monday on or about 11 Sep 89. Plea: not guilty. Finding: not guilty, but guilty of Article 92, dereliction of duty.

The applicant was sentenced to confinement for three months, forfeiture of \$100.00 pay per month for three months, and a reduction to the grade of airman (E-2).

On 9 Mar 90, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-46 for minor disciplinary infractions. The specific reason for the action was his pattern of misconduct as evidenced by GCMO Number Work...

Although not considered in the reasons for discharge, the applicant's military personnel file included a Letter of Reprimand (LOR), issued on 26 Feb 88. This LOR indicated the applicant, a permanent staff member, charged with enforcing military discipline, passed a note to a female trainee expressing his personal feelings towards her, violating the standards of conduct, between on or about 1 Feb 88 through on or about 24 Feb 88.

On 24 Apr 90, the Staff Judge Advocate found the discharge action legally sufficient. On the same date, the discharge authority directed the applicant be discharged for a pattern of minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 25 Apr 90, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Minor Disciplinary Infractions" and he was credited with 7 years and 26 days of total active service.

According to the Air Force Discharge Review Board (AFDRB) brief, dated 4 Oct 90, the applicant submitted a request to the AFDRB for an upgrade to his discharge on 15 Jul 90. The applicant contended the discharge was unfair because he was not given the opportunity to prove himself after confinement. Additionally, the applicant contended the discharge was improper. He felt the discharge board was biased because the individual who pressed charges against him convened the discharge board. Lastly, the applicant contended his discharge was inequitable. His punishment was not equal to what the other military members had received.

On 14 Oct 90, 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 applicant was a student training advisor and knew fraternization with students was in violation of policy. This misconduct was a serious violation of trust, and the commander was well within his rights to accept the administrative discharge board's recommendation for discharge. Additionally, the applicant's allegation of a biased administrative discharge board was not supported by evidence and the AFDRB determined the discharge was equitable and proper. Lastly, the fate of the other military member has no bearing on what the applicant received for his misconduct. The board concluded there was no legal or equitable basis for an upgrade of his discharge.

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

POST-SERVICE INFORMATION

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On 20 Nov 24, the Board staff 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 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 27 Jan 25, 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 recommends denying the application, finding insufficient evidence to support the applicant's request for the desired changes to his record. A review of the applicant's available records finds his contentions are not supported by the objective military records. The applicant contends the punishment was harsh and he did not get an opportunity for rehabilitation. It is not the role of the Psychological Advisor to determine the appropriateness or severity of sentencing for convicted offenses. Nonetheless, the applicant demonstrated a pattern of poor judgment in how he conducted himself with female trainees as evidenced by an LOR given approximately three to four months prior to the misconduct which formed the basis for his court-martial conviction and discharge. The reprimand was clearly written with a warning, indicating severe disciplinary action would be taken for any subsequent infractions. The acknowledgment of wrongdoing, remorse, and desire to change for the better that the applicant expressed during his court-martial testimony, administrative discharge board hearing, and in this petition are noteworthy. The applicant is now in his 60s. Thus, from a human lifespan developmental perspective, middle to late adulthood is marked by assessing one's contributions to society and a desire to make sense of one's life. It is opined the applicant is demonstrating a normal emotional response to feeling regret after wrongdoing and his response is consistent with his particular phase of life.

The applicant contends he was "very young and immature" at the time of the incident. The applicant was promoted to sergeant, which suggests he demonstrated solid leadership abilities. Also, his performance records prior to the misconduct were consistently above average. Furthermore, he was a 25-year-old NCO, with approximately 1 month until his 26th birthday at the time of the sexual encounter with a trainee, who was under his immediate scope of responsibility. There is a consensus in the scientific literature the human brain matures at approximately 26 years old, the age which executive functions associated with inhibition, impulse control, and decision-making are intact. Thus, it is deemed by the Psychological Advisor that youthful indiscretion and lack of maturity do not excuse or mitigate the misconduct or discharge. The applicant contends going to confinement was mentally disturbing to him and his family. It is agreed confinement is "mentally disturbing." By design, confinement is a psychologically distressing situation for an inmate and distress can extend as well to the inmate's family. The applicant does not make a connection between his confinement experience and a specific mental health condition. Confinement alone does not cause a mental health condition, nor does it excuse or mitigate the applicant's pattern of poor judgment at any time when the misconduct was occurring. Based on the medical examination conducted on 14 Mar 90, he was able to distinguish

right from wrong and adhere to the right. Additionally, this report also found there were no physical or mental defects which would warrant processing under AFR 35-4, *Physical Evaluation for Retention, Retirement, and Separation*. By the applicant's own admission in the available case file, he made a "mistake." It is opined he had a lapse in judgment before, during, and after the commission of the misconduct. After engaging in the misconduct, the applicant stated during his various testimonies, he did not feel right and he felt disgusted about what had happened and he did not want to face the situation so he solicited another airman to walk the female airman to her room. It lacks credibility the applicant was not aware the female airman was intoxicated. Furthermore, it is concerning the applicant, while married and on official duty, engaged in sexual relations with a subordinate who was intoxicated and seemed intermittently unconscious or semi-conscious. A lapse in judgment does not constitute a mental health condition, nor does it excuse or mitigate the misconduct which formed the basis for his discharge. There is no evidence the applicant had a mental health condition which existed or impaired his judgment at the time of any of his misconduct.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition. It is reminded, liberal consideration does not mandate an upgrade or a change to the record per policy guidance. The following are responses based on the available records to the four questions from the Kurta Memorandum:

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

Yes. The applicant contends "going to confinement was mentally disturbing." The applicant did not identify the mental health condition he had or when he was diagnosed with a mental health condition by a provider. Furthermore, he did not provide any medical records to corroborate his contention and did not discuss how his mental health condition may have caused, excused, or mitigated his conduct and discharge.

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

No. The applicant was sentenced to confinement by a court-martial which was a result of misconduct occurring during his military service. During the applicant's separation physical, the examiner determined he was able to distinguish right from wrong and adhere to the right. It was also determined there were no physical or mental defects. There are no records to substantiate he received a mental health evaluation, treatment, or mental health disorder diagnosis during service.

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

No. While confinement is a distressing experience, it did not cause him to develop a mental health condition which would actually excuse the misconduct at the time of the offense or mitigate the reason for discharge. The applicant acknowledged making a "mistake" and lapse in judgment through various statements made during criminal and administrative proceedings. A lapse in judgment does not excuse or mitigate the discharge. There is no evidence his mental health condition caused his misconduct, or he had a mental health condition impairing his judgment at the time of his misconduct of having sexual intercourse with an intoxicated trainee who was not his wife. His mental distress was the result of the punishment of his own misconduct. There is no evidence he had a mental health condition which preceded his misconduct.

4. Does the condition or experience outweigh the discharge?

No. The applicant's mental health condition or traumatic confinement experience does not excuse or mitigate his discharge. His condition or experience also does not outweigh the 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 3 Apr 25 for comment (Exhibit F) 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. 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 concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board applied liberal consideration; however, it is not sufficient to grant the applicant's request. There is no evidence his mental health condition caused his misconduct, or he had a mental health condition impairing his judgment at the time of his misconduct. There is also no evidence he had a mental health condition prior to his misconduct. While confinement is distressing, it did not cause him to develop a mental health condition that would excuse or mitigate the misconduct at the time of the offense. Therefore, his contended mental health condition does not excuse or mitigate his discharge. Additionally, the applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading his discharge based on fundamental fairness; however, 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 demonstrates 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 personal statement, character statements, and/or testimonials from community leaders/members 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.

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.

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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-2024-01367 in Executive Session on 26 Jun 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, dated 11 Apr 24.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (FBI Bulletin + Fundamental Fairness guidance), dated 20 Nov 24.

Exhibit D: Letter, SAF/MRBC, w/atchs (Liberal Consideration + Clemency), dated 27 Jan 25.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 1 Apr 25.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Apr 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.

8/12/2025

X

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-01367

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