



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET **Work-Product** BC-2024-01453

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

During her time in service, she was experiencing an undiagnosed mental health illness, which led to uncharacteristic actions. As seen in her military records, she was a hardworking and devoted airman with a record of awards and volunteer service. The mistake she made was attributed to her mental health illness she was suffering from. After the discharge decision, she received many letters of support from both enlisted and officers for support of her retention in service. She was recently diagnosed with a service-connected mental health disability in Nov 23, with a 70 percent rating for adjustment disorder with mixed anxiety and depressed mood, chronic, with panic disorder and opioid use disorder in early remission.

In support of her request for a discharge upgrade, the applicant provides numerous letters of support, and a Department of Veterans Affairs (DVA) rating decision related to her request for an upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-1).

On 13 Jan 06, the convening authority published Special Court-Martial Order (SPCMO) **Work-Product** **W**. The Order states the applicant pled guilty and was found guilty of one charge and one specification of wrongfully using 3, 4-Methylenedioxymethamphetamine (ecstasy) (Article 112a). The applicant was sentenced to the reduction in grade to airman basic (E-1) and confinement for one month. The sentence was adjudged on 29 Nov 05.

On 27 Apr 06, 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 5.54 for drug abuse. The specific reason for the action was between on or about

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24 Aug 04 and on or about 1 Jan 05, she wrongfully used 3, 4-Methylenedioxymethamphetamine (ecstasy), a schedule 1 controlled substance.

On 9 May 06, the Staff Judge Advocate found the discharge action legally sufficient.

On 9 May 06, the discharge authority directed the applicant be discharged for drug abuse, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered. Additionally, it was found she did not meet all seven retention criteria as outline in AFI 36-3208, paragraph 5.55.2.

On 19 May 06, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct" and she was credited with 3 years, 3 months, and 19 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 17 Sep 24, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating her case. Although the applicant did reply to the request for post-service information (Exhibit F), her response did not include an FBI background check or other criminal history data.

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 Post Traumatic Stress Disorder (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 17 Sep 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 has been presented to support the applicant's request for an upgrade of her discharge. There is insufficient evidence to suggest the applicant had any mental health condition during her time in service or at discharge. The applicant was not diagnosed with any mental health condition until 2023, 17 years after military service.

While she may have been experiencing personal issues, there is no evidence she met the criteria for any mental health diagnosis while she was in the military. Additionally, the applicant contends her drug usage while she was in the military was due to uncharacteristic actions. Her records indicate she used marijuana for two years (Jun 97 – Jun 99) as evidenced by the SF86, *Questionnaire for National Security Positions*, establishing a pattern of drug usage before her military enlistment and service. While the applicant is service-connected for a mental health condition, there is insufficient evidence she met any mental health diagnosis while in service. She was diagnosed with a mental health condition 17 years after her military service as evidenced by the Compensation and Pension (C&P) exam in 2023. The applicant had a previous C&P in 2017 that determined she did not have any mental health diagnosis. As the more recent C&P diagnosed a mental health condition secondary to her medical issues, it is likely her medical issues worsened her mental health symptoms post-military after some time. It should be noted the DVA is empowered to offer compensation for any 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, DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may improve or worsen over the lifetime of the veteran. In the applicant's case, her diagnosis of adjustment disorder is secondary to her irritable bowel syndrome (IBS). While she appears to have been diagnosed with IBS while in the military, she did not develop mental health symptoms related to IBS until after her military service. Medical encounters in 2014 and her C&P examination in 2017 determined she had no depressive anxiety, or Post Traumatic Stress Disorder (PTSD) symptoms. After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate her 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:

W. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends that she had an undiagnosed mental health illness, which led her to use ecstasy.

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

The applicant was diagnosed with a mental health condition 17 years after her military discharge in 2023. She was diagnosed with adjustment disorder with mixed anxiety and depressed mood, chronic with panic disorder, and opioid use disorder, in early remission as secondary to the service-connected disability of IBS.

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

There is insufficient evidence to suggest the applicant had any mental health condition during her time in service or at discharge. The applicant was not diagnosed with any mental health condition until 2023, 17 years after military service. While she may have been experiencing personal issues, there is no evidence she met the criteria for any mental health diagnosis while she was in the

military. The Psychological Advisor concludes the applicant did not have any mental health conditions at the time of her drug usage (ecstasy) that would mitigate or excuse her misconduct.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his 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 24 Sep 24 for comment (Exhibit E), and the applicant replied on 24 Oct 24. In her response, the applicant did not rebut the advisory but provided additional background information regarding her contentions of medical and mental health issues.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

W. 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 that a mental health condition was a contributing factor for her actions as she was not diagnosed with any mental health condition until 2023, 17 years post-service. While she may have been experiencing personal issues, there is no evidence she met the criteria for any mental health diagnosis while in service. Therefore, the Board concludes she did not have any mental health conditions at the time of her use of ecstasy that would mitigate or excuse her misconduct. 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 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 an FBI report, nor any post-service information that would demonstrate her character or 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, 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 [REDACTED] BC-2024-01453 in Executive Session on 15 Jan 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 17 Apr 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 17 Sep 24.
- Exhibit D: Advisory, AFRBA Psychological Advisor, dated 24 Sep 24.
- Exhibit E: Notification of Advisory / Supplemental Letter (Liberal Consideration), dated 24 Sep 24.
- Exhibit F: Applicant's Response, dated 24 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

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Board Operations Manager, AFBCMR
Signed by: USAF