

Work...



Work... Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01481

Work-Product

COUNSEL: Work-Prod...

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

During his period of service, he served honorably and encountered various conditions which have greatly impacted his mental and physical well-being. Post-traumatic stress disorder (PTSD) and other disabilities have affected him in multiple areas of his life. As a combat veteran, he faithfully and honorably fulfilled his duties as a member of security forces and was deployed to countries in defense of his home nation. He made significant sacrifices and believes he deserves to receive an honorable characterization.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 3 Dec 03, 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. The specific reasons for the action were:

- a. On 2 Aug 02, a Letter of Reprimand (LOR) was issued for his involvement in an argument with his spouse, which created a disturbance, and he subsequently made a false official statement to a senior non-commissioned officer (SNCO) on or about 16 Jul 02.
- b. On 2 Apr 03, a Letter of Counseling (LOC) was issued for dereliction of duty by making an unauthorized phone call on a class A government telephone on or about 20 Mar 03.
- c. On 25 Jun 03, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for unlawfully

AFBCMR Docket Number BC-2024-01481

Work... Work-Product

Work...

Work-Product

pushing and kicking another airman on the stomach with his hands and feet on or about 29 May 03. The applicant received a reduction to the grade of airman first class (E-3), suspended, 14 days extra duty, and a reprimand.

d. On 4 Sep 03, an AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant's previous suspended punishment was vacated for unlawfully striking an airman on the face with his fist and wrongfully using provoking words towards him on or about 26 Jul 03. The applicant received a reduction to the grade of airman first class (E-3).

e. On 9 Oct 03, an LOR was issued for being drunk and disorderly and disobeying a lawful order to stay put issued by a security forces patrolman on or about 7 Oct 03.

f. On 3 Nov 03, an AF Form 3070 indicates the applicant received NJP, Article 15 for violating a no-contact order on or about 7 Oct 03. Additionally, he failed to go at the time prescribed to the appointed place of duty on or about 24 Oct 03. The applicant received a reduction to the grade of airman (E-2), 14 days of extra duty, and a reprimand.

On 10 Dec 03, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 Dec 03, the discharge authority directed the applicant be discharged for a pattern of misconduct, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 31 Dec 03, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with three years, six months, and three days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibit C and F.

POST-SERVICE INFORMATION

On 26 Feb 25, 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 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 26 Feb 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 change to his records based on his mental health condition. A review of the available records finds the applicant's contentions plausible, but there are no objective records available to corroborate any of his contentions. The applicant's available military records are scant, and he did not submit any of his military records for review. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, the official discharge paperwork, and service treatment records are all absent from his records. Due to these vital missing records, it is unknown at this time, the actual reason(s) for his discharge from service. Thus, this psychological advisor cannot determine with a degree of certainty whether his mental health condition could excuse or mitigate his discharge without these records.

The applicant claimed he was a combat veteran and developed PTSD and other disabilities which had affected multiple areas of his life. Again, there are no objective military records available to substantiate his contentions. His DVA treatment records revealed one of his providers at the DVA had reported he had no combat deployment and other treatment notes reported his primary traumatic experiences occurred while he was in Germany and had anxiety stemming from a divorce. It was also reported he had close encounters with the Taliban, but no additional information was provided about this experience. It appeared he was inconsistent with his reporting and his DVA providers documented his reports and did not confirm his reports by comparing them with his military records. From his DVA treatment records, he claimed he began to have anxiety around 2003 when he was in the service. There are no records to confirm this report besides his own self-report. It also appeared from his DVA treatment records he had developed and met the diagnostic criteria for PTSD years after his discharge from service. He most likely had a delayed onset of PTSD, which is not an uncommon occurrence. His existing military records revealed he received at least one Article 15 in Jun 03 for physically assaulting another airman, who may have possibly been his spouse due to this airman having the same last name as him. Anger and irritability are symptoms of anxiety, depression, and PTSD, conditions he was diagnosed with years after his military service. There is no evidence or records he had any of these conditions during service. To give the applicant the benefit of the doubt his anger and irritability may have been symptoms of his mental health condition, his mental health condition may explain and cause his behavior but does not excuse or mitigate his behavior. This is an egregious act, and it is inappropriate and unacceptable to physically assault another individual.

An exhaustive review of the available records finds no error or injustice with his discharge from a mental health perspective, especially since his discharge paperwork is missing, so the presumption of regularity is applied. The burden of proof is placed on the applicant to submit the necessary records to support his claim and request. The Psychological Advisor finds his contentions, available military records, and DVA treatment records not compelling or sufficient to support his request for an up-grade of his discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Feb 25 for comment (Exhibit E) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor has reviewed the newly discovered records and continues to find insufficient evidence to support his request for an upgrade of his discharge. The newly discovered records revealed he was discharged from service for violating a no-contact order, failing to go to his place of duty, being drunk and disorderly, physically assaulting another airman and using provoking words to this individual, physically assaulting his wife who was also another service member, dereliction in the performance of his duties, and creating a disturbance with his wife and subsequently making a false official statement to a senior non-commissioned officer (SNCO). There is no evidence the applicant's mental health condition, including PTSD, had caused or was a contributing factor to his decision to engage in any of his acts of misconduct, resulting in his discharge. The applicant had submitted a couple of statements at the time of service to explain his behavior and reported being intoxicated when he pushed his wife out of anger during an argument and admitted to knowingly violating a no-contact order. There is no evidence he was using alcohol to cope with having a mental health condition, such as anxiety, depression, or PTSD, when he assaulted his wife, and no evidence his mental health condition impaired his judgment to violate a no-contact order. He provided no explanations for his remaining misconduct, and some of his misconduct, such as knowingly violating a no-contact order, making unauthorized phone calls on a government telephone, and making a false official statement to a SNCO, were willful behaviors, indicating he was aware of his actions. There is no evidence he had any cognitive or intellectual impairment concerns at the time of any of the misconduct. Moreover, the applicant had engaged in some rather serious misconduct, especially physically assaulting two different individuals/service members on different occasions, and his misconduct is not excused or mitigated by his mental health condition, even if he had a condition at the time of the misconduct. This misconduct is too egregious and inappropriate, particularly for a member of security forces. As discussed in the original advisory, the available records indicated he developed PTSD years after his discharge from the Air Force. There is no evidence he had PTSD during service, having a direct impact on his discharge. Therefore, the Psychological Advisor finds no error or injustice with his discharge from a mental health perspective.

LIBERAL CONSIDERATION: Liberal consideration was applied to the applicant's request in the original advisory. The following are answers to the four questions from the Kurta Memorandum that were slightly revised based on the available records to include the newly discovered records:

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

The applicant contended he was a combat veteran who had served in security forces and explained, "During my period of service, I served honorably and encountered various conditions that have greatly impacted my mental and physical well-being, including PTSD and other disabilities that affect me in multiple areas of my life. As a combat veteran, I faithfully and honorably fulfilled my duties as a member of security forces and was deployed to other countries in defense of my home nation. I made significant sacrifices and believe (sic) I deserve to receive an honorable characterization." He did not submit any records to support his contentions and request.

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

The applicant's service treatment records are not available or submitted by the applicant for review. From the available records, there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. Specifically, there is no evidence or records his condition of PTSD had existed or occurred during his military service.

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

The applicant was discharged from service for violating a no-contact order, failing to go, being drunk and disorderly, physically assaulted another airman and using provoking words to this individual, physically assaulted his wife who was also another service member, dereliction in the performance of his duties, and creating a disturbance with his wife and subsequently made a false official statement to a SNCO. There is no evidence the applicant's mental health condition, including PTSD, had caused or was a contributing factor to his decision to engage in any of his acts of misconduct, resulting in his discharge. Some of his misconduct was also willful, indicating he was aware of his actions. Therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

The applicant's misconduct of physically assaulting two different service members on two different occasions is egregious misconduct/offenses. These serious acts of misconduct outweigh any mitigation from having a mental health condition, nor is it the intent of liberal consideration for providing relief under such circumstances (Kurta #18). Thus, the applicant's mental health condition does not outweigh the discharge.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 2 Jul 25 for comment (Exhibit G) 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 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. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. There is no evidence the applicant's mental health condition, had caused or was a contributing factor to his decision to engage in any of his acts of misconduct. Some of his misconduct was willful, indicating he was aware of his actions. Furthermore, he committed assault, which is egregious and outweighs any mitigation by a mental health condition. 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 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 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.

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-2024-01481 in Executive Session on 18 Jul 25:

AFBCMR Docket Number BC-2024-01481

Work...

Work... Work-Product

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 19 Apr 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Sep 24.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 26 Feb 25.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Feb 25.
- Exhibit F: Supplementary Advisory Opinion, AFRBA Psychological Advisor, dated 1 Jul 25.
- Exhibit G: Notification of Supplemental Advisory, SAF/MRBC to Applicant, dated 2 Jul 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.

8/11/2025

X

Work-Product

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-01481

Work... Work-Product

Work...