



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01776

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

She is requesting the upgrade due to undiagnosed/misdiagnosed mental health issues. She served over eleven years satisfactorily with zero discipline issues. In 2005, she was sent on a remote tour and while she was away, her children were abused. At the end of her service (2006-2007), she sought mental health services and received multiple diagnoses, which has now been declared as bipolar disorder. She feels she was continually misdiagnosed and medicated. She believes this had a direct effect on her choices and behaviors towards the end of her term. When she was in the discharge process, a general officer reached out to her attorney questioning the underlying reasons for her behaviors due to the fact she had served so many years without issue.

In support of her request for a discharge upgrade, the applicant provides her Department of Veterans Affairs (DVA) medical records.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 22 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 20 Apr 07, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for, on divers occasions, making and uttering to the Army and Air Force Exchange Service (AAFES),

AFBCMR Docket Number BC-2024-01776

Work-Product

Work-Product

checks in the total amount of \$1,203.75 and dishonorably failing to maintain sufficient funds in her bank account between on or about 11 Nov 05 and on or about 11 Oct 06. Additionally, on divers occasions, making and uttering to the commissary, checks in the total amount of \$364.08 and dishonorably failing to maintain sufficient funds in her bank account. Furthermore, altering a leave and earnings statement (LES) for the purpose of obtaining a payday loan in the amount of \$577.71 and failing to pay said debt. She was reduced to the grade of senior airman (E-3) and received a reprimand.

- b. On 10 Oct 06, an AF Form 3070, indicates the applicant received NJP, Article 15 for dishonorably failing to pay her debt with a bank in the sum of \$115.50 for goods and services between on or about 19 May 06 and on or about 16 Sep 06. Also, for failing to pay her debt with a bank in the sum of \$162.58 for goods and services between on or about 19 Apr 06 and on or about 16 Sep 06. She was ordered to forfeit \$100.00 of pay for two months and received a reprimand.

On an unknown date, the Staff Judge Advocate found the discharge action legally sufficient.

On 5 Nov 07, the discharge authority accepted the unconditional waiver of a discharge board and directed the applicant be discharged for conduct prejudicial to good order and discipline, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 7 Nov 07, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct (Other)" and she was credited with 13 years, 7 months, and 22 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 22 Oct 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, she 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 22 Oct 24 and 30 Oct 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibits C and F).

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 completed a review of all available records and finds insufficient evidence to support the applicant's request. A review of the available records finds her contention was partially corroborated by her records. There was a medical note dated 15 Feb 06 and one note from the Family Advocacy Program (FAP) dated 26 Apr 06 reporting she had family problems. These meetings could be related to the abuse of her children which she was referring to in her petition. There is evidence she received mental health treatment from civilian providers, a therapist and a psychiatrist, during service. This was because she worked at the mental health clinic, and it would be a conflict of interest for her to receive treatment services at her place of duty. Treatment records from her civilian mental health providers were not available or submitted by the applicant for review, but a military mental health provider did collaborate with her therapist on numerous occasions. The military mental health provider documented a diagnosis of depression in her records and a note dated 18 Oct 06 reported her therapist stated she had some passive suicidal ideation, was very depressed, was not sleeping or eating well, and felt isolated and unsupported. The cause or onset of these depressive symptoms was not reported, but her children were mentioned in the note because she would be meeting with her therapist again before she went on leave to see her children. When she met with her Primary Care Manager (PCM) for a separation physical examination on 27 Jun 07, her anxiety and depressive symptoms were reported to be well controlled, and she was under the care of her off-base/civilian providers. She completed the report of medical assessment form as part of her separation physical examination and identified she was being treated for depression, anxiety, and bipolar II disorder and was currently taking psychotropic medications of Lexapro, Wellbutrin, Remeron, and Lamictal. Lamictal is a medication used to treat bipolar disorder. From these reports from her PCM and the applicant at the time of service, there is evidence she was diagnosed and treated for bipolar II disorder during service. There are no records during service, however, reporting when she was diagnosed with bipolar disorder. Her mental health providers at the DVA had also diagnosed her with bipolar disorder years after her discharge so her bipolar disorder diagnosis was consistent during and after service. This information would dispute her contention she was misdiagnosed during service. She also contended being medicated in her petition, and this contention is corroborated by her service treatment records, but her PCM reported her symptoms were well-controlled indicating her treatment was effective and beneficial to her. The applicant reported during her first psychiatric evaluation at the DVA on 09 Jun 09, which was almost two years after her discharge from service, she had her first and only hypomanic episode in 2007. She described her hypomanic episode during this time as she was really hyper, shopped a lot and bought things she did not need and spent money she did not have, slept for only two hours per day but felt rested and full of energy which lasted for about 7-10 days, and spoke rapidly and going from one subject to the next. She reported having ongoing stress daily as she was told it would be her last week in the military and was threatened with a court-martial. These threats went on for 14 months. The applicant's notification memorandum reported she was discharged for issuing numerous checks with insufficient funds from the period of 11-14 Nov 05, 04-11 Oct 06, and from 19 May 09 to 16 Sep

05, altering her LES in Aug 06 to obtain a payday loan, and failing to pay her debts between 19 Apr 06 to 16 Sep 06. Using her report to her DVA provider, her only hypomanic episode up until that time had occurred in 2007, then her hypomanic episode (a symptom of bipolar disorder) which included shopping a lot and spending money she did not have, did not cause her repeated misconducts of financial irresponsibility. Her misconducts had occurred in 2005 and 2006 and were well before her only hypomanic episode in 2007. There is no evidence she had a hypomanic episode or was in emotional distress impairing her judgment at the time of any of her misconduct. Her enlisted performance reports (EPR) for the rating period of 27 Aug 05 to 26 Aug 06 and prior all reflected she had exceptional work performance, so there is no evidence or records her mental health condition impaired or impacted her overall ability to function. She did not seek mental health treatment until 26 Sep 06 and by this time, most of her misconduct had occurred and she most likely knew she would be receiving disciplinary action soon. The first note reporting she had depression/depressive symptoms was dated 18 Oct 06. She received her first Article 15 for financial problems on 10 Oct 06, which was eight days before her reported depression. Her depression could be related to or in response to receiving this serious disciplinary action. There are records she had family problems in Feb 06 and FAP involvement in April 06, but there are no records she had mental health problems or conditions at this time. Additionally, one of her misconducts of altering her LES for the purpose of obtaining a loan in the amount of \$577.71 in Aug 06 appeared to be a premeditative behavior suggesting this was not an impulsive act, and she was aware of her behaviors because it was intentional. This premeditative behavior could not be caused or excused by her mental health condition. This act also involves fraud and is an illegal activity. The applicant's financially irresponsible behaviors also began before her FAP involvement so her stressors relating to the abuse of her children did not cause her pre-existing misconduct. There is no evidence her financial problems were the result of her bipolar disorder. Although there is evidence the applicant was diagnosed and treated for bipolar disorder during service, there are no records to confirm when her mental health condition, especially bipolar disorder began and when she was diagnosed with this condition. She claimed to the psychiatrist at the DVA in Jun 09 she was diagnosed with major depressive disorder in 2005 and was prescribed psychotropic medications and there are no records to confirm this report. The psychiatrist just documented her report and did not verify her report with actual medical records. She also reported she was diagnosed with bipolar disorder in "2006 or 2007" which does not indicate any definitive date. Again, her treatment records from her civilian providers are not available for review to substantiate any of her reports. The applicant's misconducts had existed before her mental health treatment and diagnosis, but the benefit of the doubt is given to the applicant it is possible her mental health condition could have caused some of her misconducts as she contended, but her mental health condition does not excuse or mitigate most of her misconducts especially her serious misconduct of altering her LES to get money and then failing to pay this debt. Based on an exhaustive review of the available records, the Psychological Advisor finds no error or injustice identified with her discharge from a mental health perspective. Her request for an upgrade of her discharge based on her mental health condition is not supported.

**LIBERAL CONSIDERATION:** Liberal consideration is applied to the applicant's request for an upgrade of her discharge due to her contention of having a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. The following are answers 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 she lost custody of her two children due to abuse and this caused significant distress in her family. At the end of her service, she sought mental health treatment services and received multiple diagnoses which were now declared as bipolar disorder. She felt she was continually misdiagnosed and medicated and believed her condition of bipolar disorder had a direct effect on her choices and behaviors towards the end of her military service.

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

There is evidence the applicant had received mental health treatment during service and a diagnosis of depression was documented in her service treatment records by a military mental health provider. Her therapist did report to the military mental health provider that she had some passive suicidal ideation, was very depressed, was not sleeping or eating well, and felt isolated and unsupported in Oct 06. The cause and onset of her depression were not clearly defined in her records, but her children were mentioned in the note because she would be meeting with her therapist again before she went on leave to see her children. She did have FAP involvement and family problems before she received mental health treatment. During her separation physical examination with her PCM, she reported being treated for depression, anxiety, and bipolar II disorder and was currently taking psychotropic medications of Lexapro, Wellbutrin, Remeron, and Lamictal. Lamictal is a medication used to treat bipolar disorder. Thus, there is evidence she was diagnosed and treated for bipolar disorder during service. She was also diagnosed with bipolar disorder by her DVA providers. Her military and service treatment records dispute her contention she was misdiagnosed.

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

The applicant reported to her provider at the DVA in 2009, two years after her discharge from service, her only hypomanic episode, which included frequent shopping and spending money she did not have, had occurred in 2007. She had engaged in financially irresponsible behaviors and misconduct from Nov 05 to Oct 06, which was before her hypomanic episode in 2007. Her report would indicate her financial problems and misconduct were not caused by her bipolar disorder. She initiated mental health treatment in Sep 06 after most of her misconduct had occurred and probably knew she would receive disciplinary action, which she did receive her first Article 15 on 10 Oct 06. The first note reporting she had depression/depressive symptoms was dated 18 Oct 06, eight days after receiving her Article 15, and her depression could be related to or in response to receiving this serious disciplinary action. She also had some family problems in Feb and Apr 06 but no records she had a mental health condition or problems around this time. There is no evidence or records the applicant had any mental health conditions including bipolar disorder, a hypomanic episode, or was in emotional distress impairing her judgment at the time of any of her documented misconduct. The benefit of the doubt is given to the applicant her mental health condition could have caused some of her misconducts and financial problems as she contended, but her mental health condition does not excuse or mitigate most of her misconduct especially her more serious misconduct of engaging in fraudulent activity of changing her LES statement to procure a loan and then not paying this debt. Therefore, her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate her discharge, her mental health condition also does not outweigh her 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 30 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. 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. Nor was the discharge unduly harsh or disproportionate to the offenses committed. 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. 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 or records the applicant had any mental health conditions including bipolar disorder, a hypomanic episode, or was in emotional distress impairing her judgment at the time of any of her documented misconduct. She did not seek mental health treatment for depressive symptoms until after her misconduct which the Board finds was most likely due to the disciplinary action taken against her. Even if her mental health condition caused some of her misconduct and financial problems as she contends, her mental health condition does not excuse or mitigate most of her misconduct, especially her more serious misconduct of falsifying financial documents to procure a loan. Therefore, her mental health condition does not excuse or mitigate her discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, specifically the lack of an FBI report or post-service information, 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 evidence she provides lacks references that demonstrate her character, post-service rehabilitation, service to the community, or any degree of remorse pertaining to her in-service conduct. The Board considered the applicant's post service conduct and achievements, length of time since the misconduct, her character and reputation, service to the community, job history and degree of contrition; however, given the

evidence presented, the Board determined relief is not warranted. 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 an FBI report, a personal statement, character statements, or testimonials from community leaders/members specifically describing how her efforts in the community have impacted others. Should the applicant provide documentation pertaining to her post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of her 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.

### 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-2024-01776 in Executive Session on 19 Feb 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 13 May 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 22 and 30 Oct 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Oct 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Oct 24.

Exhibit F: Letter, SAF/MRBC, w/atchs (Supplemental Liberal Consideration Guidance), dated 30 Oct 24.



*Work-Product*

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.

2/25/2025

X

*Work-Product*

*Work-Product*

Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2024-01776**

*Work-Product*