



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02716

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

When he was discharged, he was told his case can go before the Board for review to have his discharge upgraded, but he never received any information on how to go about doing it. He was court-martialed and was sentenced to confinement, but he did not receive a bad conduct discharge. Once his confinement was over, he returned to service as normal. Shortly after, he was presented with another situation and was given two options. Either take an Article 15 and receive a UOTHC discharge or go through another court martial with a pretrial agreement of no confinement, over charges he was never made aware of.

When he first arrived at [REDACTED] Air Force Base (AFB), he started getting in trouble for tasks he was unaware he should have been completing within the first few months. This was due to his superiors leaving within the first two to four months of his arrival. His chain of command was very limited since he worked in the commander's office. As a result, he began to be targeted and written up for subjective situations, leading to the court-martial date.

He was charged with larceny through aiding and abetting and was forced to plead guilty to avoid additional charges. Despite his guilty plea, he genuinely did not know the crime of larceny had been committed. The victim, who believed the applicant was being unfairly targeted, provided a written character statement on his behalf during the court-martial. The judge decided not to discharge him from the Air Force but sentenced him to four months of confinement. However, due to a pre-file agreement, he only served three months.

Before his confinement, he experienced significant targeting and mistreatment from Air Force members. His first sergeant had him admitted to a mental facility, claiming he was suicidal, which he was not. When the military police came to take him to the mental facility without his knowledge, he resisted, resulting in them using physical force against him. He knew he was being targeted, and this was an attempt to break him.

AFBCMR Docket Number BC-2024-02716

[REDACTED]

[REDACTED]

[REDACTED]

After serving about two months, he was granted clemency and received good time, avoiding a bad conduct discharge. Shortly after release, he faced new charges, but he never understood the circumstances. He was given two options: proceed with another court-martial with a pre-trial agreement of no confinement or take an Article 15 and be discharged. Mentally drained and suffering from post-traumatic stress disorder (PTSD) due to the physical force used against him by the military police, he chose the latter option.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 21 Mar 05, 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 5.52.3 for misconduct. The specific reasons for the action were:

- a. On 17 Mar 04 a Letter of Counseling (LOC) was issued for wrongfully and without authority, improperly wearing his uniform at an off-base retail store on or about 16 Mar 04.
- b. on 12 Jul 04 a Letter of Reprimand (LOR) was issued for failing to show for a squadron wide recall. Additionally, he failed to provide his supervisor with the correct phone number in which to be contacted, on or about 12 Jul 04.
- c. On 2 Sep 04, a Letter of Admonishment (LOA) was issued for creating a health risk to himself and other members of the unit by taking a cooler from the golf course and vomited in it. This cooler was kept full of vomit in the dormitory for a week until it was discovered by the first sergeant.
- d. On 10 Sep 04, a LOR was issued for failing to maintain a current drivers license as required by state law and Air Force regulations on or about 5 May 04. Additionally, he failed to maintain funds in his checking account in order to pay his debts and issued a worthless check in the amount of \$487.69 on or about 1 Jul 04.
- e. On 21 Sep 04, a LOR was issued for failing to show up for a scheduled military appointment on or about 16 Sep 04.
- f. On 22 Nov 04, the convening authority published Special Court-Martial Order (SPCMO) [REDACTED] The order stated the applicant pled guilty and was found guilty of one charge and three specifications of larceny (Article 121). On or about 17 Apr 04, with the intent to defraud, he stole funds of a value of \$350.00 from a fellow airman. On or about 23 Apr 04, with the intent to defraud, he stole funds of a value of \$350.00 from a bank. On or

[REDACTED]

about 24 Apr 04, with the intent to defraud, he stole funds of value of \$200.00 from a fellow airman. The applicant was sentenced to confinement for four months, forfeiture of \$795.00 pay per month for four months, and reduction to the grade of airman basic (E-1).

g. On 9 Mar 05, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for attempting to falsely obtain a credit line from an establishment by pretending to be another military member on or about 8 Jul 04; he attempted to falsely obtain a credit line from a bank by pretending to be another service member on or about 20 Jul 04; he attempted to falsely obtain a credit line from Discover financial credit services by pretending to be another service member on or about 30 Jul 04; he attempted to falsely obtain a credit line from Chase credit services by pretending to be another service member on or about 31 Jul 04; he stole an alpha roster containing squadron members' social security numbers and personal information, the property of the United States Air Force on or about 1 Jul 04; and with the intent to defraud, he falsely pretended to be another military member to obtain cellular phone services on or about 1 Sep 04. The applicant received forfeiture of \$500.00 pay per month for two months, suspended, and a reprimand.

On an unknown date, the applicant offered an unconditional waiver, waiving his rights to an administrative discharge board.

On 30 Mar 05, the Staff Judge Advocate found the discharge action legally sufficient.

On 1 Apr 05, the discharge authority accepted the unconditional waiver and directed the applicant be discharged for commission of a serious offense, with a UOTHC service characterization. Probation and rehabilitation were considered but not offered.

On 7 Apr 05, the applicant received a UOTHC discharge. His narrative reason for separation is "Misconduct" and he was credited with one year, seven months, and two days of total active service.

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

POST-SERVICE INFORMATION

On 21 Aug 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 23 Aug 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant's complete response is at Exhibit D.

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.

[REDACTED]

On 15 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.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

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 records finds no evidence to substantiate any of the applicant's contentions. There is no evidence the applicant's mental health condition had a direct impact or was a contributing factor to any of his misconduct resulting in his discharge. There is no evidence or records to corroborate he experienced any traumatic events during his time in service or he developed PTSD from his traumatic experience(s) during service. He was seen at the mental health clinic (MHC) on 7 Apr 04 for complaints of anxious mood caused by his occupational problems or causing him to have occupational problems. His medical records reported he had a history of an adjustment disorder around this time over stressors involving concern for his friend or family member and the office of special investigations (OSI) was involved at the time. He stopped receiving care because he

[REDACTED]

was feeling better in Apr 04. He was seen again at the MHC several months later as a walk-in on 24 Aug 04 for anxiety and depressed mood caused by his legal problems. He voiced potential safety problems and was vague with the information he provided about his stressors and safety risks. Due to these reasons, in addition to his behavioral changes and having considerable legal and occupational stressors, he was admitted to the inpatient unit at deaconess hospital for stabilization. Treatment notes from this hospital were unavailable for review. He was diagnosed with adjustment disorder with anxiety and depressed mood and a condition of occupational problem. He was assessed to have an adjustment disorder caused by his personal, legal, and occupational problems. There were no reports of any traumatic experiences he had in these records, and there are no records he was ever diagnosed with PTSD during service or in his lifetime. There is no evidence his personal problems caused him to develop PTSD. His personal problems were reported to have begun before he entered the Air Force per the memo written by a captain, and no evidence his military service aggravated his pre-existing personal problems.

The applicant was discharged from service for improperly wearing his uniform at an off-base retail store; failing to show up to a squadron recall and not providing adequate information to be contacted; failing to show up for a scheduled military appointment; creating a health risk to himself and his unit; failed to maintain a current driver's license; issued a check with insufficient funds; stole checks with the intent to defraud and stole funds from a fellow airman; attempted to falsely obtain services from several businesses by pretending to be another military member; and stole an alpha roster containing the squadron members' social security numbers and personal information, from the period of 17 Mar 04 to 16 Sep 04. There is no evidence or records the applicant's mental health condition caused any of this misconduct. He may have experienced anxiety and depressed mood at around the time of the misconduct, but these behaviors and misconduct are not consistent with an individual experiencing anxiety and depression. Additionally, his anxiety and depressed mood were in response to his legal and occupational problems, caused by his own misconduct, and some of his misconduct, especially stealing another airman's checks, pre-tending to be another service member to falsely obtain services, and stealing the alpha roster with service members' social security numbers and personal information were intentional and deliberate. It appeared he knew what he was doing at the time and there is no evidence he had any cognitive or intellectual deficit issues which would have caused him to have impaired judgment, leading to his misconduct and discharge. The applicant had submitted a statement to OSI and admitted he took checks from the room of another airman and his statement did not reflect he had any mental health issues or was in emotional distress at the time he deliberately took the checks. He provided no explanations for his remaining misconduct during service or in his petition to the AFBCMR. Hypothetically, if his mental health condition had caused his numerous acts of misconduct, his mental health condition would not excuse or mitigate his misconduct because they were serious offenses, some were illegal activities, and some misconduct which resulted in a special court-martial conviction. Having a mental health condition does not exempt him from assuming responsibility for his illegal activities. It appeared from his records his leadership attempted to help him with his personal problems, but he was guarded and not receptive to their efforts. Based on information documented in his military records, the Psychological Advisor finds no error or injustice with his discharge from service from a mental health perspective. His contention is not compelling or sufficient to support his request for an upgrade of his discharge based on his mental health condition.

[REDACTED]

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's petition due to his request for an upgrade of his discharge based on his mental health condition. It is reminded liberal consideration does not mandate an upgrade or a change to the records 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 marked "PTSD" on his application to the AFBCMR and did not explain how he incurred PTSD, the traumatic experience he had during service, how his traumatic experience was related to or caused by his military service, when the traumatic event occurred, when he was diagnosed with this condition, and how this condition had caused or may excuse or mitigate his discharge. He submitted no records for review. He claimed he was given two options to take an Article 15 and get out with a UOTHC discharge or go through another court-martial with a pretrial agreement of no confinement over charges he was not made aware of, and he was targeted and written up for subjective situations.

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

There is no evidence or records the applicant had experienced a traumatic event or he developed PTSD from a traumatic event during his time in service. There is no evidence his mental health condition of PTSD had existed or occurred during his military service, or in his lifetime. He was seen at the MHC in Apr 04 and then again in Aug 04 for having anxiety and depressed mood due to his personal, legal, and occupational problems. His personal issues were reported to have begun prior to his service and no evidence his military service aggravated his pre-existing personal problems. During the visit in Aug 04, he was admitted to the inpatient unit at deaconess hospital for stabilization because he voiced safety concerns, had behavioral changes, and had significant stressors with his legal and occupational problems. Treatment records from his hospital treatment were unavailable for review. He received a confinement/incarceration physical examination in Oct 04 by a medical provider and no mental health issues were reported. He was medically cleared for confinement.

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

There is no evidence the applicant's mental health condition, including PTSD had a direct impact or was a contributing factor to his misconduct, resulting in his discharge. He may have experienced anxiety and depressed mood at around the time of the misconduct, but these behaviors and misconduct are not consistent with an individual experiencing anxiety and depression. Additionally, his anxiety and depressed mood were in response to his legal and occupational problems caused by his own misconduct and some of his misconduct, especially stealing another airman's checks, pretending to be another service member to falsely obtain services, and stealing the alpha roster with other service members' personal information, were intentional and deliberate. There is no evidence he had any cognitive or intellectual deficit issues to cause him to have impaired judgment leading to his misconduct and discharge. Some of his behaviors were also serious offenses, some were illegal activities, and some misconduct resulted in a special court-

[REDACTED]

martial conviction. His mental health condition does not excuse or mitigate any of these egregious behaviors. Thus, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition 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 E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 Jan 25 for comment (Exhibit G), and the applicant replied on 16 Jan 25. In his response, the applicant contends his mental health condition did begin in the Air Force, however he was not supported by leadership, nor did he ever receive genuine mental health support or counseling. He felt targeted, was labeled a bad airman, and his mental health continued to suffer. The applicant clarified he pled guilty to a lesser charge of larceny through aiding and abetting, not larceny itself, and he maintained his innocence, explaining he did not cash or steal any checks. He felt critical facts were omitted from the advisory, including the alleged victim supported him at court-martial and wrote a character statement on his behalf, knowing he had not stolen or cashed his checks. Finally, the applicant explained the misconduct he was discharged for predated the court-martial by almost three months and he believes the Air Force deliberately brought those back up so he would not be able to get out using the force shaping program. The applicant concluded, he was targeted and harassed, and the experience left him in a state of mental distress without proper support.

The applicant's complete response is at Exhibit H.

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 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. It is possible the applicant experienced anxiety and depressed mood around the time of the misconduct; however, the Board finds his mental health symptoms were the result of legal issues caused by his misconduct. Furthermore,

some of his misconduct was calculated, deliberate and were serious offenses, particularly, stealing another airman's checks, pretending to be another airman in order to obtain services, and stealing personal information. Therefore, the applicant's contended mental health conditions does not excuse or mitigate the discharge. Additionally, the applicant 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 and finds no evidence to support his contention he was targeted or mistreated while in the service. The burden of proof is placed on the applicant to submit evidence to support his claim. 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 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.

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-2024-02716 in Executive Session on 21 May 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, dated 28 Jul 24.

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

[REDACTED]

Exhibit C: Letter, SAF/MRBC, w/atchs (FBI Bulletin with Clemency and Fundamental Fairness guidance), dated 21 Aug 24.

Exhibit D: FBI Report, dated, 23 Aug 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Jan 25.

Exhibit F: Letter, SAF/MRBC, w/atchs (Liberal Consideration and Clemency guidance), dated 15 Jan 25

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Jan 25.

Exhibit H: Applicant's Response, w/atchs, dated 16 Jan 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.

6/4/2025

X [REDACTED]

[REDACTED]
Board Operations Officer
Signed by: USAF