

## ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2018-02966-3

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

The Board reconsider his request to upgrade his discharge from under other than honorable conditions (UOTHC) to general (under honorable conditions).

### RESUME OF THE CASE

The applicant is a former airman first class (E-3).

On 12 Mar 19, the Board considered and denied his request to upgrade his UOTHC discharge, finding 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. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board found no basis to do so.

On 6 May 20, the Board considered and denied his request to upgrade his UOTHC discharge to general (under honorable conditions) and remained unconvinced the evidence presented demonstrated an error or injustice. The Board found a preponderance of the evidence did not substantiate the applicant's contentions. The Board took notice of the applicant's complete submission in judging the merits of the case; however, they did not find the evidence presented sufficient to override the previous decision of the Board. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board found no basis to do so.

For an accounting of the applicant's previous requests and rationale of the earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit G.

On 24 May 22, the applicant requested reconsideration of his request. He contends while stationed at Work-Product in 1998, he was involved with the clean-up of Hurricane Georges. The nights were unbearable with haunting flashes all in his head. This is when he confirmed his post-traumatic stress disorder (PTSD) fears. Seeing remains is still loud in his head and has been tearing him apart and he sank into PTSD which has since turned him into an impulsive [sic] with risky behaviors. He ignored the signs of PTSD which delayed the help that could get him out of his mental illness and stabilize back into service [sic]. Despite his PTSD and discharge from the Air Force, he requests his character of service be upgraded to a general (under honorable conditions) service characterization.

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Controlled by: SAF/MRB  
CUI Categories: Work-Product  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

In support of his reconsideration request, the applicant submitted the following new evidence: 1) character reference letters; 2) medical documentation; and 3) Department of Veterans Affairs (DVA) decisional documents.

The applicant's complete submission is at Exhibit H.

## **POST-SERVICE INFORMATION**

On 5 Oct 22, 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 (USD P&R) issued supplemental guidance 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 Memorandum.

On 5 Oct 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit I).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the types of service characterizations:

**Honorable.** The quality of the member's service generally has met DAF 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 a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

**Under Other than Honorable Conditions (UOTHC).** This 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for an upgrade in his discharge. The applicant maintains in his personal statement (undated) he was just helping a colleague in trouble. He noted, "In a case that saw my suspension from the forces, I had been implicated of intention to sell drugs while I was in real sense just helping a colleague in trouble, something that destroyed my reputation while in [REDACTED] Work-Product". The applicant was more than implicated in this case. A Duty Status Change dated 5 Oct 99, to Civil Confinement noted, the applicant was incarcerated and charged with possession of a controlled substance. As noted in the applicant's post-military records, he was diagnosed with in-service PTSD related to his involvement in the clean up after Hurricane Georges. Had the applicant's UOTHC discharge been for drug usage to manage his symptoms, and with applying liberal consideration, his misconduct may have been mitigated; however, his discharge was for possession, with intent to distribute an illegal substance. Distribution of illegal drugs is a willful, conscious act, perpetrated with forethought and is considered as a premeditative behavior. This behavior has no nexus to any of his mental health conditions. There is no evidence his mental health condition caused him to possess and distribute illegal substances. His premeditative behavior is not excused or mitigated by his mental health conditions per liberal consideration guidance.

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:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant, post-service, was diagnosed with PTSD that was determined to be incurred while in-service and was service connected by the DVA. The applicant has additional mental health diagnoses, to include depression, unspecified, major depressive disorder, single episode, severe without psychotic features, Insomnia, unspecified, alcohol abuse with alcohol-induced mood disorder, F10.180 Alcohol abuse with alcohol-induced anxiety disorder, and suicidal ideations that do not excuse or mitigate the discharge.

2. Did the condition exist or experience occur during military service? The applicant, post-service, was diagnosed with PTSD that was determined to be incurred while in-service and was service connected by the DVA. The applicant and medical records indicate his PTSD relates to Hurricane Georges in which he encountered dead bodies.

3. Does the condition or experience excuse or mitigate the discharge? The applicant's misconduct of distribution of illegal drugs is a willful, conscious act, perpetrated with forethought and is considered as a premeditative behavior. This behavior has no nexus to any of his mental health conditions, including PTSD. There is no evidence his PTSD or any other mental health condition caused this behavior. His premeditative behavior is not excused or mitigated by his mental health conditions.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health conditions do not excuse or mitigate his discharge, his conditions also do not outweigh his original discharge.

The complete advisory opinion is at Exhibit J.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 13 Apr 23 for comment (Exhibit K) but has received no response.

#### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates 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. Liberal consideration was applied to the applicant's request based on his service-connected mental health conditions and the Board finds insufficient evidence his conditions excused or mitigated his behavior or misconduct resulting with his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of a criminal history report, the Board finds no basis to do so. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his good citizenship since his discharge in the consideration for an upgrade of discharge characterization due to clemency based on

fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

## 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-2018-02966-3 in Executive Session on 26 Jul 23:

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Panel Chair  
Panel Member  
Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit G: Addendum Record of Proceedings, w/ Exhibits A-F, dated 6 May 20.
- Exhibit H: Application, DD Form 149, w/atchs, dated 24 May 22, 6 Oct 22, 27 Feb 23, 6 Mar 23, and 15 Mar 23.
- Exhibit I: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 5 Oct 22.
- Exhibit J: Advisory Opinion, AFRBA Psychological Advisor, dated 22 Mar 23.
- Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Apr 23.

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.

2/2/2024

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Board Operations Manager, AFBCMR

Signed by:

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