

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

Work-Product

RECORD OF PROCEEDINGS**IN THE MATTER OF:****DOCKET NUMBER:** BC-2019-03636

Work-Product

COUNSEL: Work-Product**HEARING REQUESTED:** YES

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APPLICANT'S REQUEST

His discharge Under Other than Honorable Conditions (UOTHC) be upgraded to a discharge Under Honorable Conditions (General).

APPLICANT'S CONTENTIONS

He suffered from Post-Traumatic Stress Disorder (PTSD) from a forgotten childhood sexual assault, which is the reason he turned to marijuana as a youth. He was not involved in a second offense and there was no way to prove otherwise based on the urinalysis test used. He joined the military to escape from his abusive father and his unknown PTSD caused him to fail in service to his country.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (AB).

On or about 21 May 1979, the applicant wrongfully used marijuana, as evidenced by the Article 15 and the forfeiture of \$100.00 pay per month for 2 months.

On or about 8 June 1979, the applicant wrongfully used some quantity of marijuana and on or about 13 June 1979, the applicant wrongfully possessed some quantity of marijuana, as evidenced by the Article 15 and forfeiture of \$209.00 pay per month for 2 months.

On 26 June 1979, the applicant requested he be discharged under the provisions AFM 39-12, *Discharge for Unsuitability, Unfitness or Misconduct, Resignation or Request for Discharge for the Good of the Service and Procedures for Rehabilitation Program*. The applicant acknowledged that he understood if his request was approved it could result in him receiving an UOTHC discharge.

On 6 July 1979, the applicant's commander recommended the applicant's request for discharge in lieu of court-martial for his use of marijuana be approved. The commander stated the applicant's

repetitive nature of drug abuse; his prior disciplinary record; and the fact that approval of the applicant's request for discharge will not have an adverse disciplinary effect upon the organization.

On 6 July 1979, the discharge was found legally sufficient, and the deputy staff judge advocate recommended the applicant's request for discharge be approved without the offer of probation and rehabilitation. On this same date, the discharge authority approved the applicant's request and indicated the applicant would be furnished a discharge under other than honorable conditions.

On 11 July 1979, the applicant received an UOTHC discharge. He served 6 months and 16 days of active duty 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 6 August 2019, 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 27 October 2020 [sic] and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, medical visit summary, Master of Business Administration and Bachelors of Business Management degree certificates, and various Information Technology certificates.

The applicant's complete response is at Exhibit G.

APPLICABLE AUTHORITY/GUIDANCE

On 3 September 2014, 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 August 2017, 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.

CUI//SP-MIL/SP-PRVCY

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 July 2018, 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 the supplemental guidance, paragraphs 6 and 7.

On 25 July 2018, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

Under Other than Honorable Conditions. 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 airmen. 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 Air Force.
- 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 assault of a child, sexual abuse of a child, forcible sodomy 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 warrant the desired change of the record, indicating there is no objective evidence to substantiate the applicant's claim of suffering PTSD at the time of his military service or post-service. In addition, the applicant's brief military career was marked by not one but three instances of cannabis use. Furthermore, it has been over 40 years since the applicant's discharge from the Air Force.

The Psychological Advisor recognizes the sacrifices the applicant has made for this country and appreciates his service. However, unless additional clinical information is presented for review, the psychiatric advisor would not be able to determine that an error or injustice took place in the decision rendered.

The Board applied liberal consideration to the applicant's request due to the applicant's contention of a mental health condition. The following are responses based on information presented in the records to the four pertinent questions in the policy:

1. Did the veteran have a condition or experience that may cause or mitigate the discharge?
There is no evidence that the applicant suffered from PTSD at the time of the military service.
2. Did the condition exist or experience occur during military service?
There is no substantiated evidence that the condition or experience occurred during military service.
3. Does the condition or experience excuse or mitigate the discharge?
Since there is no substantiated evidence that the condition exists, it is not possible to postulate if it mitigates the discharge.
4. Does the condition or experience outweigh the discharge?
Since there is no substantiated evidence that the condition exists it is not possible to determine if the condition outweighs the 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 13 March 2020 for comment (Exhibit F), but received no response. Subsequently, by DD Form 149, dated 27 October 2020 [sic], the applicant replied. In his response, the applicant contends he fell into the wrong crowds, which led to his temptation of marijuana. However, since his discharge, he has bettered himself and served the community.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency 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. It appears 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. Therefore, 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. Additionally, the Board did not find the applicant had a mental health condition during his military service that should be considered as a mitigating factor for his misconduct. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. Further, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim that a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. Therefore, the Board recommends against correcting the applicant's records.
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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2019-03636 in Executive Session on 17 June 2020 and 24 March 2022:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 27 October 2020 [sic].
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: FBI Bulletin, w/atch, dated 6 August 2019.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 22 November 2019.
- Exhibit E: Advisory Opinion, BCMR Psychiatric Consultant, dated 9 February 2020.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 13 March 2020.
- Exhibit G: Applicant's Response, w/atchs, dated 27 October 2020 [sic].

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

11/23/2022

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Board Operations Manager, AFBCMR

Signed by: USAF
