



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-02223

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

At the time of his discharge, he had an undiagnosed service-connected mental health condition of post-traumatic stress disorder (PTSD) which caused his financial issues leading to his general (under honorable conditions) discharge. On 3 Apr 20, the Department of Veterans Affairs (DVA) assigned him a 50 percent rating for his service-connected PTSD.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Feb 97, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.26.4. The specific reasons for the action were:

- a. On 20 Apr 94, the applicant wrongfully and unlawfully uttered a dishonorable check with the intent to defraud in the amount of \$110.00 to the Base Exchange. For this misconduct, no action was taken.
- b. On or about 6 Jun 94, the applicant was delinquent upon payment to his Club Card. For this misconduct, no action was taken. On this same date, the applicant wrongfully and unlawfully uttered a dishonorable check with the intent to defraud in the amount of \$150.00 to the Base Exchange. As a result, on 23 Jun 94, the applicant received a verbal counseling.
- c. On 17 Nov 94, the applicant was delinquent upon payment of his credit program account (Deferred Payment Plan/DPP).

**AFBCMR Docket Number BC-2020-02223
CUI//SP-MIL/SP-PRVCY**

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- d. On 12 Sept 95, the applicant received a verbal counseling for being delinquent upon payment to his finance company.
- e. On 19 Sep 95, the applicant received a Letter of Reprimand (LOR) for failing to contact his apartment's management office and the housing referral office to terminate the lease on his former apartment.
- f. On 9 Nov 95, the applicant received a LOR for making false official statements to his finance company, apartment management, Flight Chief, and First Sergeant by stating all payments were made, on debts which were owed, but in fact none of the payments had been sent. As a result, the LOR was used to establish an Unfavorable Information File (UIF). On this same date, the applicant received a LOR for being delinquent in payments to his apartment and finance company. As a result, the LOR was placed in his UIF.
- g. On 11 Dec 95, the applicant received a LOR for being delinquent in payments of just debt. As a result, the LOR was placed in his UIF.
- h. On 21 Mar 96, the applicant wrongfully and unlawfully uttered a dishonorable check with the intent to defraud in the amount of \$100.00 to the Base Exchange. As a result, he received a verbal counseling.
- i. On 8 Apr 96, the applicant received a LOR for wrongfully and unlawfully uttered a dishonorable check with the intent to defraud in the amount \$100.00 to the Base Exchange. As a result, the LOR was placed in his UIF and he was placed on the Control Roster.
- j. On 17 Apr 96, the applicant was delinquent upon payment of his credit program account by over 60 days. According to the Notification of Involuntary Discharge Memo, dated 10 Feb 97, the applicant received a verbal counseling for this misconduct.
- k. On 21 Jun 96, the applicant received an Article 15 for failing to obey a lawful general regulation by wrongfully using his Government Travel Charge Card while he was on leave by withdrawing a cash advance for personal, non-official expenses. As a result, the applicant was reduced to the grade of airman first class and ordered 30 days of extra duty. In addition, the Article 15 was placed in his UIF.
- l. On 28 Aug 96, the applicant received a LOR for failing to pay his debts. As a result, the LOR was placed in his UIF.
- m. On 8 Nov 96, the applicant received a Vacation of Suspended Article 15, for dishonorably failing to pay the Tag Office the sum of \$313.75 for car registration fees. As a result, his suspended reduction to the grade of airman first class which was imposed upon him on 21 Jun 96 was vacated.

On 13 Feb 97, the Staff Judge Advocate found the discharge action legally sufficient.

CUI//SP-MIL/SP-PRVCY

On 19 Feb 97, the discharge authority directed the applicant be discharged for irresponsibility in the management of personal finances under the provisions of AFI 36-3208, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 21 Feb 97, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsatisfactory Performance." He was credited with 6 years, 1 month, and 24 days of total active service.

On 29 Aug 10, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 2 Mar 12, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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 Jan 21, 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.

On 22 Jan 21, 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 completed a review of all available records and finds no evidence of an error or injustice with the applicant's discharge. There were no records available or submitted by the applicant showing he was evaluated, received mental health treatment, had any mental health conditions to include PTSD, or received a mental disorder diagnosis during service. The applicant claims his financial irresponsibility was caused by his compulsive and erratic behaviors stemming from his undiagnosed mental health condition of PTSD. While it is possible his mental health condition may have caused some of his behaviors, it could not completely explain most or all of his behaviors. The applicant was provided with service connection for PTSD by the DVA also over 20 years post discharge, but service connection does not demonstrate causation or mitigation. The Psychological Advisor opines the information provided for this petition was insufficient to demonstrate his mental health condition was a mitigating factor to his pattern of misconduct precipitating his discharge. Therefore, the Psychological Advisor finds no evidence of any error or injustice with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request. The following are responses to the four questions from the Kurta Memorandum from the information presented in the records for review:

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

The applicant contends he had an undiagnosed mental health condition of PTSD causing his compulsive and erratic behaviors leading his financial problems and general discharge. He did not identify his traumatic experiences causing him to meet diagnostic criteria for PTSD.

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

There is no evidence he had any mental health conditions to include PTSD during service. His service treatment records were not available or submitted for review. He was diagnosed with PTSD by his DVA provider over 20 years post discharge for various alleged traumatic experiences during service such as his near death experience with falling, his father's unexpected death, froze/burned his hand while repairing an airplane, and sexual assault/military sexual trauma (MST). There are no records to validate any of these reported experiences had existed or occurred during his military service.

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

Giving the applicant the benefit of the doubt that his mental health condition may have caused some of his misconduct, his mental health condition could not sufficiently explain or was demonstrated to have had a direct impact to his discharge. Based on his explanations to his leadership at the snapshot in time of service, previous contention to the AFDRB, reports to his DVA providers, and his personal testimony provided for this petition to the BCMR, his mental health condition to include PTSD and/or his traumatic experiences to include MST do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition and traumatic experiences do not excuse or mitigate his discharge, his condition also does not outweigh his original 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 2 Mar 23 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 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. The Board concurs with the rationale and opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board does not find the evidence presented sufficient to conclude that his mental health condition excuses, mitigates or outweighs his general (under honorable conditions) discharge. The Board is satisfied that the application of liberal consideration does not warrant relief. In the interest of

justice and fundamental fairness, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of substantial post-service information and a criminal history report, the Board finds no basis to do so. 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-2022-02071 in Executive Session on 21 Jun 23:

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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 31 Jul 20.
- 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 Jan 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Feb 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Mar 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.

1/28/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product