

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-02933

XXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He was going through a mental breakdown due to his wife committing suicide and having to raise his three children while dealing with the stressful situation. When he got to his next duty station, he was harassed by his supervisor for being white. He was recently diagnosed by the Department of Veterans Affairs (DVA) with Post-Traumatic Stress Disorder (PTSD).

In support of his request for clemency, the applicant provides a personal statement and copies of his medical records.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman third class (E-2).

On 23 Jul 59, the applicant received an honorable discharge after serving two years, six months, and two days of total active service.

On 24 Jul 59, Special Order Work-Pro... indicates the applicant reenlisted in the regular Air Force for a period of six years.

On 25 Jul 62, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-17, *Discharge of Airman Because of Unfitness*, for frequent involvement of a discreditable nature with military authorities. The specific reasons for the action were:

- a. On 7 May 62, the applicant received an Article 15, nonjudicial punishment for wrongful use of reproachful words and was reduced in grade to airman second class (E-3).
- b. On 17 Jul 62, the applicant received an Article 15, nonjudicial punishment for failure to go and was reduced in grade to airman third class (E-2).

On 27 Aug 62, the discharge authority directed the applicant be discharged for a pattern of frequent involvement of a discreditable nature with military authorities, with a general service characterization.

On 12 Sep 62, the applicant received a general (under honorable conditions) discharge with Separation Code (SDN) of "488" which denotes "Unsuitability." His narrative reason for separation is "Frequent involvement of a discreditable nature with civil or military authorities" and he was credited with 5 years, 7 months, and 21 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 2 Mar 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 the supplemental guidance, paragraphs 6 and 7.

On 2 Mar 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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.

## **AIR FORCE EVALUATION**

The AFBCMR Psychological Advisor completed a review of all available records and finds sufficient evidence to support a discharge upgrade based on his mental health contention. If the Board grants the applicant's request, it is also recommended to change his narrative reason for discharge to "Secretarial Authority." The applicant's Airman Performance Reports (APR) prior to the death of his wife reflects no misconduct. During his 1 Oct 59 through 1 Feb 60 rating period, his Non-Commissioned Officer in Charge (NCOIC) stated "he presents a neat and pleasant appearance and always conducts himself in a military manner." In the rating period immediately preceding the death of his wife, 2 Feb 60 through 1 Feb 61, the applicant was recommended by the unit commander for a good conduct medal and was noted to have received two letters of appreciation for his skill and willingness to put in extra-long hours. In contrast, the rating period in which the applicant's wife died, 2 Feb 61 through 1 Feb 62, the applicant's supervisor stated "In the past, the attitude of the applicant was resentful and hypocritical toward

some of the airmen and NCOs. Also it was very difficult for him to report on time for duty. He was counseled on his attitude and being prompt for duty.” The applicant identified concerns with his wife prior to her death and was denied leave to address them. Although this applicant was granted a humanitarian reassignment to assist with raising his children, there is no evidence to suggest any efforts were made to address the trauma or grief incurred by the applicant due to the loss of his wife by suicide. The applicant received formal notification of his commander’s proposal to discharge him on 25 Jan 62, approximately six months after his wife died and five months after his arrival to his new duty station. The psychiatrist stated during the 5 Jul 62 psychiatric consult, that the applicant “wants help.” The discharge legal brief indicated the applicant was counseled by the Chaplain; no record of this counseling was available to review although it appears from documentation (also on the legal brief), the applicant was counseled in a disciplinary regard by the Chaplain on 14 May 62 concerning lack of military bearing and disregard for military authority. A review of the applicant’s DVA treatment records indicated he presented to the DVA requesting help 57 years post discharge. The applicant reported he retired in 2018 and began experiencing an increase in distressing symptoms including intrusive thoughts and depressed mood related to his wife’s suicide due to an increase in idle time. Suicide survivors frequently exhibit symptoms congruent with the applicant’s presentation in the weeks, months, (and often years) following the suicide death: guilt, anger, disconnection and avoidance, physiological hyper arousal, and intrusive reliving. This psychological advisor opines that after a comprehensive review of the applicant’s records, the applicant’s mental health condition following the experience of his wife’s suicide, diagnosed by the psychiatrist in service as neurotic depression reaction, caused his misconduct(s) which lead to his discharge. The Board may elect to apply liberal consideration to the applicant’s request due to his contention of a mental health condition since there is evidence the applicant’s experience and mental health condition mitigated his misconduct leading to his discharge from service. The applicant’s experience of his wife’s suicide and subsequent mental health condition in service caused his misconduct, therefore outweighing his 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 14 Dec 21 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief

based on clemency. The Board concurs with the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. In particular, there is evidence the applicant's experience and mental health condition mitigated his misconduct leading to his discharge from service. The applicant's experience of his wife's suicide and subsequent mental health condition in service caused his misconduct, therefore outweighing his discharge. Therefore, the Board recommends the applicant's records be corrected as indicated below.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 12 September 1962, he was discharged with service characterized as honorable and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

## **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-2020-02933 in Executive Session on 26 Jan 22:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 15 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 2 Mar 21.  
Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 30 Apr 21.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Dec 21.

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.

**X**

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Board Operations Manager, AFBCMR