

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-02996

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was diagnosed with Post-Traumatic Stress Disorder (PTSD).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 12 Jun 73, the applicant received a Psychiatric evaluation and was diagnosed with passive dependent personality and pre-alcoholic state, the applicant declined rehabilitation.

On 16 Jul 73, the applicant was notified of his commander's intent to recommend he be discharged from the Air Force under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, paragraph 2-4b, for his character and behavior disorder diagnosis.

On 24 Jul 73, the staff judge advocate found the discharge action legally sufficient and recommended the applicant receive a general (under honorable conditions) discharge without the offer of probation and rehabilitation.

On 26 Jul 73, the commander approved the discharge recommendation with a general (under honorable conditions) discharge.

On 27 Jul 73, the applicant received a general (under honorable conditions) discharge with a separation code of 264 which denotes "Unsuitability - Character and Behavior Disorders - Individual Evaluation Authority, AFM 39-12, chapter 2, Sec A, paragraph 2-4b." He was credited with two years and nine days of total active service.

On 24 Jan 79, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 16 May 79, the AFDRB concluded the applicant's 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. The applicant was identified as an alcohol abuser and prior to his separation, the applicant attributed his decrease

in job performance to the use of alcohol. However, even with the acknowledgement that alcohol was the primary causative factor for his misconduct, the applicant refused rehabilitation and treatment which, if successful, might have altered his behavior and restored his effective functioning as an airman.

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

POST-SERVICE INFORMATION

On 28 May 21, the Board sent the applicant a request for post-service information, 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 28 May 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 AFRBA Psychological Advisor completed a review of all available records and finds sufficient evidence to support the applicant's request based on liberal consideration. The Psychological Advisor also recommends the Board change his narrative reason for separation on his DD Form 214 to a "Condition Not a Disability" to correct an identifiable error and to properly align with his records should the Board grant his request for an upgrade. The applicant did not provide supporting documents to clarify his PTSD diagnosis and how it is connected to his behaviors and discharge. However, he was diagnosed with an unsuiting mental condition of Passive Dependent Personality and Pre-Alcoholic State during military service. His personality disorder has not been proven to be valid due to not standing or enduring through time, which is a required criteria for any personality disorders. The applicant was instead, found to have an unsuiting condition of an Adjustment Disorder in addition to alcohol issues due to his ability to adapt and adjust to his new environment and situational stressor caused by his military service leading him to cope with alcohol. The applicant stated that while he served in Vietnam, he reported that he had problems with alcohol due to his stressful and combat experiences and working long hours. The Psychological Advisor finds this statement plausible and compelling and it appeared he had used alcohol to cope with his stressful military duties. Therefore, liberal consideration should be applied to the applicant's request to support his request for an upgrade of his discharge. Liberal consideration was initially enacted for individuals like the applicant due to their experiences and its residual effects on their behaviors from Vietnam.

Liberal consideration is applied to the applicant's petition. The following are responses to the four questions in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he was diagnosed with PTSD.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant was diagnosed with PTSD or similar conditions during or post service. He was however, diagnosed with an unsuiting mental condition of Passive Dependent Personality and Pre-Alcoholic State during military service.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant was found to have alcohol issues caused from his experiences while in Vietnam that continued to escalate following his return from Vietnam resulting with his discharge from service. The applicant was discharged due to having unsuiting conditions of a personality disorder and alcohol issues. This psychological advisor finds his personality disorder has not been proven to be valid due to not standing or enduring through time, which is a required criteria for any personality disorders. The applicant was instead, found to have an unsuiting condition of an Adjustment Disorder in addition to alcohol issues due to his inability to adapt and adjust to his new environment and situational stressor caused by his military service leading him to cope with alcohol. Therefore, his condition and experience may excuse and mitigate his discharge.

4. Does the condition or experience outweighs the discharge?

Since there is evidence in the objective records the applicant used alcohol to cope with his experiences from Vietnam causing his behaviors and misconduct, his condition and experience would outweigh 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 3 Feb 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. While the Board finds no error in the original discharge process, the Board recommends relief based on liberal consideration due to the applicant's mental health history. Although the applicant has not provided evidence showing he was ever diagnosed with PTSD, there is evidence he had difficulties adjusting to his experiences in Vietnam and coping with those experiences following his return from Vietnam that more likely than not, mitigated his misconduct. As such, the Board believes the applicant's discharge should be upgraded to fully honorable and his narrative reason for separation be changed to a "Condition Not a Disability" with the corresponding separation code of JFV. 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 27 July 1973, he was honorably discharged with a narrative reason for separation of "Condition not a Disability" and the corresponding separation code of JFV and was furnished an Honorable Discharge Certificate.

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-2020-02996 in Executive Session on 27 Apr 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, dated 9 Sep 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 28 May 21.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 11 Jan 22.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Feb 22.

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.

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Board Operations Manager, AFBCMR