



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-03026

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

He had mental and physical health conditions that were found after discharge that affected his military performance and caused his minor infractions. He received a diagnosis of mild depression, anxiety, adjustment disorder and suspiciousness after his discharge. Additionally, he had physical conditions of degenerative discs, scoliosis and hypersomnia, and these conditions made it difficult to get to work on time and work on the flight line.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force senior airman (E-4).

On 29 Apr 19, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 9 Dec 16, a Letter of Reprimand (LOR) was issued for reporting late for duty.
- b. On 7 Feb 17, a LOR was issued for reporting late for duty.
- c. On 23 Mar 17, a Letter of Counseling (LOC) was issued for three counts of reporting late for duty.
- d. On 18 Aug 17, a LOR was issued for two acts of gross neglect for safety, misappropriation of mission essential resources, and failing to attend the required Fitness Improvement Program.

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- e. On 26 Jun 18, a LOR was issued for failing a dorm room inspection.
- f. On 28 Jan 19, a LOR was issued for leaving the local area before starting leave.
- g. On 28 Mar 19, a LOC was issued for failing to bring his restricted area badge to work for a third time.
- h. On 16 Apr 19, a LOR was issued for failing to complete the minimum training standards.

On 7 May 19, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 10 May 19, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 3 years, 1 month, and 19 days of total active service.

On 18 Jun 19, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 29 Oct 19, the AFDRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The Board understood the applicant's present service characterization rendered him ineligible for Department of Veterans Affairs (DVA) education benefits; however, found it was not a matter of inequity or impropriety which would warrant an upgrade. The Board also took note of the applicant's duty performance as documented by his performance reports, awards and decorations, and other accomplishments. The AFDRB determined that, through the administrative actions taken by the chain of command in this case, the applicant had ample opportunities to change his negative behavior. The Board concluded the negative aspects of the applicant's service outweighed the positive contributions he made during his Air Force career.

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

**POST-SERVICE INFORMATION**

On 5 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

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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 5 Jan 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 insufficient evidence to support the applicant's request for the desired changes to his record. The applicant vaguely reported he was diagnosed with mild depression, anxiety, adjustment disorder, and suspiciousness post-service but did not explain how these conditions or symptoms affected his functioning during service leading to his discharge. The applicant reported he had sleep issues resulting with him being late to work on multiple occasions, which he had attributed to his condition of hypersomnia. His service treatment records corroborated his report as he was diagnosed with hypersomnia from his primary care manager (PCM) during service. Hypersomnia is a symptom of depression and giving the applicant the benefit of the doubt that his depression and hypersomnia may cause his sleep issues, his mental health condition could not explain his other and more serious misconduct. He had demonstrated having poor decision-making skills but no evidence his mental health condition caused him to have impaired judgment especially pertaining to safety protocols and following directions. The applicant had consistently reported in this petition, in his personal statements at the snapshot in time of service, and in his previous AFDRB petition that he struggled with not being a proficient or skilled worker, and his physical conditions caused him difficulties working on the flight line and hindering his job performance. Thus, it appeared he was not a good fit for the military coupled with his physical conditions and not his mental health condition, that were the predominate reasons he struggled with functioning appropriately in the military, causing his behaviors and misconduct leading to his discharge from service. Additionally, the applicant made a brief statement in his LOR rebuttal dated on 1 Apr 19 claiming some of his physicians had attempted to diagnose him with depression but did not clearly identify the triggers for his depression. The applicant was never diagnosed with depression during service and it appeared his depression was likely secondary to his medical/physical conditions and family problems. There was also no evidence he experienced anxiety and suspiciousness during service, which were symptoms he was reported to have experienced post-service. He possibly had an Adjustment Disorder during service due to his difficulties adjusting to the military, but no evidence his adjustment issues had elevated to a clinical level that would warrant a mental disorder diagnosis from his PCM or referral to the mental health clinic for further evaluation or treatment. Receiving a mental health diagnosis does not mandate an upgrade of his discharge as more information is needed to demonstrate how his mental health condition may cause, excuse, and mitigate his discharge. The applicant clearly had a pattern of misconduct almost throughout his entire time in the service that does not appear to be mostly related to his mental health condition. The Psychological Advisor opines the applicant did not sufficiently provide enough information to support his request, and the burden of proof is placed on the applicant to support his contentions.

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Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. 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 mild depression, anxiety, adjustment disorder, and suspiciousness post-service. He also contends his physical conditions made it difficult for him to work on the flight line and his condition of hypersomnia caused his sleep issues during service.

2. Did the condition exist or experience occur during military service?  
There was no evidence the applicant received any evaluation, diagnosis, or treatment for depression, anxiety, adjustment issues, and suspiciousness during military service. There was evidence he was diagnosed with hypersomnia by his PCM during service and hypersomnia is one of the symptoms of depression. There was a statement in one of his LOR rebuttals referencing he may possibly experience depression during service that may be secondary to his physical conditions, and he may possibly had difficulties adjusting to the military during service. There was no evidence he experienced anxiety or suspiciousness during service.

3. Does the condition or experience excuse or mitigate the discharge?  
The applicant had identified in his personal statement at the snapshot in time of service, previous AFDRB petition, and for this current petition that it was his physical conditions and not being proficient or skilled at his job as reasons for his behaviors and struggles during service. He contends his condition of hypersomnia caused his sleep issues. His hypersomnia may excuse and mitigate his misconduct of reporting late to work on multiple occasions but does not excuse or mitigate his remaining misconduct, which were considered to be more serious. The applicant did not sufficiently explain how his mental health condition, depression, or hypersomnia may cause his other non-sleep issues related misconduct. Thus, the Psychological Advisor opines his mental health condition or experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?  
Since there is no evidence his mental health condition and/or experience may excuse or mitigate this discharge, they also do not 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 21 Jan 22 for comment (Exhibit E), and the applicant replied on 18 Feb 22. In his response, the applicant contends the advisory makes a few mistakes such as his primary care provider diagnosing him with Hypersomnia, when in fact, this diagnosis was made off-base in a clinic in the local area after a performed sleep study. He requested to undergo the sleep study after failing to make it to work on time, multiple times. His physical conditions made work on the flight line difficult; he was medically waived and removed from normal duties multiple times throughout his career. His superiors told him it was unethical to work while on a waiver. This stint greatly hindered his training, made him fall behind

his peers, and caused his weight gain which led to his fitness test failure. His pattern of misconduct was directly linked to his mental health and medical conditions. His entire military career should be taken into consideration to make a determination on his discharge upgrade request.

The applicant's complete response is at Exhibit F.

#### **ADDITIONAL AIR FORCE EVALUATION**

The AFBCMR Medical Advisor recommends denying the applicant's request finding insufficient evidence to support a discharge upgrade. There was no evidence of a material error, injustice, impropriety or inequity found in the discharge processing for misconduct stemming for a variety of minor infractions. The applicant's physical conditions taken as a single entity or in combination would not abate or remotely justify his accumulation of adverse articles of paper. In his statements, the applicant placed a great deal of emphasis on the two conditions of scoliosis and hypersomnia. Scoliosis is a condition of a sideways curve of the spine and is well known within the medical community to occur most often during the growth spurt just before puberty, usually when children are between 10 and 15 years of age. Having this known medical knowledge, the provider on 21 Aug 18 was medically accurate that the condition of scoliosis was present prior to service entry...although not identified. The applicant's ability to successfully complete basic military training, technical school and years of service would not render his intermittent lower back pain (LBP) condition as unfitting nor negate any of the parameters surrounding his disciplinary actions. Although having infrequent and subjective LBP with prolonged bending, he maintained his ability to perform his military duties. There was no evidence that his condition of scoliosis was service-aggravated above its known natural progression.

In regards to his diagnosis of hypersomnia, the applicant subjectively reported having sleep issues since early 2017 and his sleep study confirmed diagnosis was rendered in early 2018 when he was prescribed the Nuvigil medication. Nearly eight months later, upon requesting a profile for his sleep diagnosis, the applicant admitted to not taking his previously prescribed medication for wakefulness. He was instructed to take the medication and follow-up in two months. Records revealed that he did not maintain the two month follow-up. Instead, it was six months later when he requested a second sleep study referral because he [the applicant] "...would like to know if they [the first sleep specialist] misdiagnosed him." There were no records to confirm that this referral request ever occurred.

The applicant's disciplinary actions for tardiness were most prevalent in Jan, Mar, and Aug 17 which did coincide with his reported onset of sleep issues. In considering his condition of hypersomnia as it may relate to his disciplinary issues, the Medical Advisor concedes that there appeared a slight correlation in his complaints of adverse sleeping issues and the timing of his tardiness infractions. However, there also appeared to be even a greater correlation of prolonged timeframes of adherence to structured military schedules and therefore, not resulting in further tardiness infractions. Additionally, the applicant's purposeful non-compliance regarding the use of medications prescribed to him gave pause as to his willingness to achieve successful treatment. Despite conceding a minimal correlation, the vast majority of his charged infractions did not include tardiness stemming from a sleep issue and nowhere was there evidence of impaired

cognition to a point that could justify his actions leading to non-judicial punishment due to inadequate sleep. Even, when looked at from a global or cumulative viewpoint, the applicant's various physical issues were not at a level of severity that would create a logical nexus to his disciplinary infractions.

Lastly, in a case such as this whereby the applicant makes note of the DVA's approved impairment ratings for service-connected conditions, an important distinction between the DVA and the Department of Defense disability systems should be understood. For awareness sake, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member *unfit* for continued active service and were the cause for career termination; and then only for the degree of impairment pre-sent at the "snapshot" time of separation and not based on future progression of injury or ill-ness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge.

The complete advisory opinion is at Exhibit G.

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

The Board sent a copy of the advisory opinion to the applicant on 29 Jun 22 for comment (Exhibit H), 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 concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and/or recommendation of both the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the applicant's medical conditions did not excuse or mitigate his more serious misconduct nor did the applicant sufficiently explain how his medical issues may have caused his other non-sleep related misconduct. In regards to the applicant's submission showing he is receiving compensation from the DVA for a multitude of service-connected disabilities, he is advised that the military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries, which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on post-service progression of disease or injury. Furthermore, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his more serious behaviors and misconduct resulting with his

discharge, his condition or experience does not excuse, mitigate, or outweigh 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 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.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

**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-2020-03026 in Executive Session on 21 Sep 22:

*Work-Product* [redacted] Panel Chair  
[redacted], Panel Member  
*Work-Product* [redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, atchs, dated 18 Nov 21 (Originally sent Unsigned 8 May 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 5 Jan 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 20 Jan 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jan 22.
- Exhibit F: Applicant's Response, w/atc, dated 18 Feb 22.
- Exhibit G: Advisory Opinion, AFBCMR Medical Advisor, dated 27 Jun 22.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Jun 22.

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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.

5/19/2023

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Board Operations Manager, AFBCMR  
Signed by: USAF