

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-03114

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His entry level separation be changed to a medical discharge.

APPLICANT'S CONTENTIONS

He had an unknown mental health condition at the time of his separation in 1985. In 2007, he was diagnosed with Bipolar Disorder and Attention Deficit Hyperactivity Disorder (ADHD) while serving a term in the Arizona Department of Corrections from 2002 to 2013. He would like to use the G.I. Bill [sic] to provide a home for his family.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 12 Jun 85, the applicant was notified of his commander's intent to recommend he be discharged from the Air Force for Entry Level Performance and Conduct, under the provisions of AFR 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency, and Hardships*. paragraph 5-22b. The applicant was informed the action would result in an entry level separation and if discharged he would be ineligible for reenlistment in the Air Force. The applicant acknowledged receipt and waived his rights to consult counsel and submission of statements on his own behalf. The specific reasons for this action was:

- a. On 12 Apr 85, the applicant received an Article 15 for being drunk on duty.
- b. On 15 May 85, the applicant received an Article 15 for signing an official form with a false name and failing to carry at least two properly initiated ATC Forms 341, *Excellence/Discrepancy Report*.
- c. On 28 May 85, the applicant failed to progress satisfactorily in the alcohol rehabilitation program.
- d. On or about 10 Jun 85, the applicant received a Letter of Reprimand (LOR) for being drunk and disorderly on station.

On 28 Jun 85, the discharge authority approved the discharge recommendation with an entry level separation.

On 5 Jul 85, the applicant received an entry level separation, with a narrative reason for separation of "Entry Level Performance and Conduct." He was credited with 5 months and 13 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 4 Jun 21, the Board sent the applicant a request for post-service information, however, he has not replied.

APPLICABLE AUTHORITY/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 4 Jun 21, the Board staff provided the applicant a copy of the liberal consideration guidance. (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's desired change to his record. The applicant states he was diagnosed with Bipolar Disorder and ADHD in 2007, but there was no evidence that his behaviors during his military service were caused by his condition of Bipolar Disorder or ADHD which was 22 years post discharge. The applicant did not submit any records to substantiate his claim and no clarifying explanations were provided for how his mental health condition caused his misconduct and discharge. The applicant's records do not show that he was evaluated, diagnosed or received any mental health treatment during service. His records show that he was in fact qualified for worldwide duty. In reference to his condition of ADHD, this condition is considered to be an unsuited condition and does not meet the criteria for a medical discharge but rather for

an administrative discharge, which he received. As a result, there is no error or injustice with his discharge from service.

The Board may elect to apply liberal consideration to the applicant's request. The applicant contends he was diagnosed with Bipolar Disorder and ADHD in 2007, 22 years post-service, which may cause his behaviors and discharge. There is no evidence any of these conditions existed during service. The applicant was diagnosed with these conditions 22 years post discharge according to the applicant's statement. Since there is no evidence any of these conditions existed or occurred during service and no evidence to corroborate the applicant's claims, his condition or experience does not excuse or mitigate his discharge. There is no evidence he had any unfitting mental health conditions to include Bipolar Disorder that would meet criteria for a medical discharge. The applicant's condition of ADHD is considered to be unsuiting for service meeting criteria for an administrative discharge, which the applicant already appropriately received. There is no error or injustice identified with the applicant's entry level separation; his mental health condition or experience 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 21 Jan 22 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. Finally, the Board is satisfied that the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.
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-2020-03114 in Executive Session on 27 Apr 22:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, dated 26 Aug 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 4 Jun 21.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Jan 22.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jan 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.

X

Board Operations Manager, AFBCMR