



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-2020-03118

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was relieved from duty without any disciplinary actions and received a general discharge instead of honorable. The Department of Veterans Affairs (DVA) diagnosed him with a mental health condition (sustained on active duty) with a 70 percent disability rating. However, he was not properly diagnosed during military service.

In support of his request for clemency, the applicant provides numerous post service certificates of achievement and college transcripts.

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 17 Apr 78, the applicant's commander recommended 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*, for Unsuitability-Apathetic and Defective Attitude, paragraph 2-4c. The specific reasons for the action were the applicant's apathetic and defective attitude which was exhibited by his unsatisfactory performance reflected in his recent Airman Performance Report in which he received an overall rating of four and the following incidents of behavior:

- a. On 26 Apr 77, marijuana was found in the common use area of his room for which he received a Letter of Reprimand (LOR) on 7 Jul 77.
- b. On 17 Jan 78, he was derelict in the performance of his duties in violation of Article 92, UCMJ, to wit: While performing Bay Orderly/Charge of Quarters duty, he failed

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to remain on the third floor of building 2422 and properly monitor the workmen installing carpet even though he was repeatedly instructed to do so, for which he received a LOR on 31 Jan 78.

- c. On 17 Jan 78, the applicant failed to obey a lawful order in violation of Article 92, UCMJ, to wit: While performing Bay Orderly/Charge of Quarters duty, he departed his appointed place of duty to go eat at 1755 and did not return until 1909, even though he read and acknowledged written instructions that he was allowed only 30 minutes for this purpose, for which he received a Letter of Reprimand on 31 Jan 78.
- d. On or about 27 Mar 78, the applicant without authority, failed to go at the time prescribed to his appointed place of duty, to wit: Bay Orderly/Charge of Quarters, Building 2422, in violation of Article 86 UCMJ, for which he received an Article 15 action on 27 Mar 78. On 5 Apr 78, the applicant was reduced to the grade of airman (E-2) and directed to forfeit \$25.00 a month for 2 months, but the execution of that portion of the punishment, which provided for a reduction in grade was suspended until 4 Oct 78, unless it was sooner vacated.
- e. Other derogatory data in his military file indicates he received other LORs and numerous letters of counseling.

On 5 May 78, an evaluation officer found that the applicant was unsuitable for further military service in the Air Force due to acts of disobedience and apathy towards the military environment.

The staff judge advocate found the discharge action legally sufficient.

On 18 May 78, the discharge authority directed the applicant be discharged for unsuitability with a general (under honorable conditions) service characterization. The discharge authority determined probation and rehabilitation was not appropriate.

On 19 May 78, per DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a general (under honorable conditions) discharge. The reason and authority is listed as "AFM 3912 SPD JMJ" which denotes "Involuntary Discharge: Unsuitability, Apathy Defective Attitude, or Inability to Expend Effort Constructively--Evaluation Officer Hearing Authority, AFR 39-12, Para 2-4c." He was credited with one year, eight months, and five days of total active service.

On 4 Mar 81, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 30 Aug 82, 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.

POST-SERVICE INFORMATION

On 4 Jun 21, the Board sent the applicant a request for post-service information, however, he has not replied. The applicant did however, provide numerous post service certificates of achievement and college transcripts with his initial application (Exhibit A).

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 4 Jun 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 finds insufficient evidence to support the applicant's request for a change to his service characterization. Records show that the applicant had behavioral and misconduct problems during service. His military records reflect he indeed had been relieved of duty with several disciplinary actions for his behaviors and misconduct issues. When disciplined, the applicant submitted personal statements that he either denied any wrongdoings or explained it was attributed to another situation. In those statements, he made no referrals of any mental health conditions or issues that may have affected his behaviors. The applicant reported receiving compensation from the DVA but did not specify the condition. His DVA treatment records reveal that he was diagnosed with bipolar disorder and anxiety, 33 years post discharge. There is no evidence to show that there is a connection between his post service mental health condition and his behaviors that caused his discharge. The AFRBA Psychological Advisor finds no error or injustice with his discharge from service. The Board may choose to apply liberal consideration to the applicant's request. Since there is no evidence he had any mental health conditions to include bipolar disorder, anxiety, or any other mental health conditions during service, his condition or experience does not excuse or mitigate 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 16 Feb 22. In his response, the applicant contends that he was unfairly treated during his enlistment due to depression and gender identification. He was young in age and lacked the knowledge of seeking psychological care. Since his discharge, he has made many post service accomplishments to include earning his Bachelor of Science in Business degree.

The applicant's complete response is at Exhibit F.

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 recommendation 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 clemency; 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-2020-03118 in Executive Session on 27 Apr 22:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 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 4 Jun 21.

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Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Dec 21.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jan 22.

Exhibit F: Applicant's Response, w/atchs, dated 16 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.

3/13/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF