



FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-03282

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

He was going through depression at the time of his release, which was noted on his separation papers. He was never given any medical assistance at the time of his separation for his depression. If he had received the medical treatment to handle his depression, he could have had a full military career.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 17 Mar 81, an Unfavorable Information File (UIF) was established for the applicant due to three Letters of Reprimand (LOR) being issued. The LORs were issued on 17 Dec 79 for unauthorized charges of numerous long-distance phone calls; on 17 Sep 80 for operating a motor vehicle in an unsafe manner; and on 9 Mar 81 for disobeying a direct order and failure to go.

On 26 Feb 82, a LOR was issued for exceeding ration authorization.

On 18 Aug 82, a Letter of Counseling (LOC) was issued for exceeding ration authorization.

On 10 Nov 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5.49d for other serious offenses. The specific reasons for the action were:

- a. Dated 27 Oct 82, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment (NJP)*, indicates the applicant received NJP, Article 15 for absence without authority for an entire day. He received a reduction in grade to airman first class (E-3).

**AFBCMR Docket Number BC-2020-03282
FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES**

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES

b. Dated 4 Nov 82, AF Form 3070, indicates the applicant received NJP, Article 15 for failure to show continued possession or proper disposition of purchased items. He received a reduction in grade to airman (E-2), forfeiture of pay of \$144.00, 14 days of extra duty and base restriction.

On 23 Nov 82, the Staff Judge Advocate found the discharge action legally sufficient.

On 15 Dec 82, the discharge authority directed the applicant be discharged for other serious offenses, with a UOTHC service characterization. Probation and rehabilitation was considered, but not offered.

On 10 Jan 83, the applicant received an UOTHC discharge. His narrative reason for separation is “Misconduct – Other Serious Offenses” and he was credited with 6 years, 1 month, and 18 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 3 Feb 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.

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES

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 3 Feb 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.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES

- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

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 did not specifically discuss or sufficiently explain how his depression may have caused his behaviors and misconduct resulting with his discharge. There was evidence he reported feeling depressed following his mother's terminal illness causing him to drink excessively in 1980 during his separation physical as he contended. This information however, was presented as a history of his mental health occurring in 1980. It was declared his psychiatric condition was "normal" during his separation physical in Nov 82, which was two years since the onset of his depression and drinking issues. This information signified he did not have any mental health issues to include depression at the time of his discharge process, as this proclamation was based on his report to this medical provider and disputing his contention. There were no records the applicant had any alcohol related misconduct. The applicant was discharged for engaging in two serious misconducts, failing to maintain and obtain proof of purchase for items and being absent without authority for an entire day. There was no nexus established by the applicant that these behaviors were caused by his depressive state. This Psychological Advisor could make speculative deductions from his records and statement however, any inferences drawn fall outside the scope of responsibility of this advisor. The burden of proof and responsibility to provide sufficient information or an adequate explanation lie with the applicant. The applicant also claimed he was never given treatment for his depression. This claim could not quite be substantiated. There was evidence he voluntarily sought substance abuse treatment for his excessive alcohol use from the Social Actions program starting in Jan 81 and ending in Jul 82. While receiving this alcohol treatment from Social Actions, he also received concurrent individual psychotherapy services at the Mental Health Clinic (MHC). His treatment records were rather vague and limited, which unfortunately is rather common in those times, but nevertheless, there were no reports he had complaints of depression. This could be due to poor documentation. Since he received continuous alcohol abuse/mental health treatment for over a year, it is very likely his depression and family health problems were discussed at some point during his treatment. Furthermore, substance abuse treatment commonly focuses on identifying triggers for alcohol use and so it was more likely than not, he had disclosed his depression from his mother's health issues was the cause of his excessive drinking to his mental health care providers especially since he had disclosed this information to his medical provider during his separation physical. Additionally, co-occurring conditions (substance abuse and depression) are very common and so he may have very well received treatment inadvertently or indirectly for depression. His treatment notes reported he was initially uncooperative with substance abuse treatment but with engagement and time, he was able to benefit from treatment and was reported to be doing well resulting with his successful completion of the program. The applicant's condition of alcohol abuse was noted to be "in remission" indicating he had been able to abstain from alcohol for a considerable period of time. Since it was

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES

indicated he used alcohol to cope with his depression deriving from his mother's illness, his abstinence from alcohol would also imply his depression may have also improved or resolved as he did not need additional treatment after termination. The applicant's discharge was not initiated until 10 Nov 82, about three months after completing treatment, for his two misconduct that produced two Article 15s. There was no evidence he was depressed or had mental health issues at the time these misconduct had occurred triggering his discharge process. Again, his physical separation examination corroborates this notion as his psychiatric condition was reported as "normal." As such, this psychological advisor finds no error or injustice with his discharge.

Liberal consideration is applied to the applicant's request. The following are answers to the four questions from 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 depressed at the time of his discharge and received no mental health treatment for this condition.

2. Did the condition exist or experience occur during military service?
There is evidence he reported experiencing depression and worry due to his mother's illness causing him to drink excessively in 1980 during his separation physical. The applicant received rehabilitation treatment and individual psychotherapy services for his alcohol use during service.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant did not clearly explain how his depression caused his behaviors and misconduct leading to his discharge in his petition. There was no evidence he was depressed or had any other mental health conditions at the time of his misconduct and so his condition could not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since his mental health condition does not excuse or mitigate his discharge, his condition also does 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 14 Apr 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).

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES




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. 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 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.

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-2020-03282 in Executive Session on 22 Jun 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, dated 13 Oct 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 3 Feb 21.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 1 Mar 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Apr 22.

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES

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.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF