



**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-2021-00893

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

He was diagnosed with histoplasmosis in his eyes immediately after basic training. He was treated for the severe eye condition at every base he was assigned. Based on his failing eyesight, he requested an evaluation for medical discharge but there is no record an evaluation was ever completed. If his eye problem had been recognized and adequately treated, he would have likely received a medical discharge. In addition to his failing eyesight, he was also a victim of multiple robberies and assaults, including an assault by six individuals. These events caused him to have severe trauma, and coupled with being a new airman trying to adapt to military life, he was at a tremendous disadvantage. Additionally, he was making a 2-3 hour drive, 2-3 times per week to see his ailing dad. He was going without sleep and was under a lot of stress when he finally gave up on everything and started going absent without official leave (AWOL). The applicant's counsel indicates it can be presumed that the applicant's fear of losing his eyesight, lack of command support, and extraneous issues of being physically attacked all led to a causal nexus to him exhibiting negative behaviors and post-traumatic stress disorder (PTSD) like symptoms.

The applicant is asking the Board for forgiveness so that he may be a proud and honorable veteran. Since his discharge, he has led an honorable life by being a husband for 45 years, father and grandfather, he's coached several youth teams, and is active in his church. In support of his request for the Board's consideration under fundamental fairness, the applicant provided a personal statement and several character reference letters.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 20 Sep 73, the applicant's commander recommended the applicant be discharged from the Air Force with an undesirable discharge, 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*, Chapter 2, Section B, paragraph 2-15a for frequent involvement of a discreditable nature with military authorities. The specific reasons for the action were:

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- a. From 2 Aug thru 10 Aug 72, he absented himself from his organization. As a result he was issued a Letter of Reprimand (LOR), dated 14 Aug 72.
- b. From 5 Sep thru 7 Sep 72, he absented himself from his organization. As a result, he was issued an LOR, dated 11 Sep 72.
- c. From 4 May thru 8 May 73, he absented himself from his organization. As a result, he was administered nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) with reduction to the grade of airman (E-2), suspended until 5 Nov 73, and forfeiture of \$40.00 per month for one month.
- d. On 23 May 73, he failed to go at the time prescribed. As a result, he was administered nonjudicial punishment under Article 15, UCMJ.
- e. On 30 May 73, his suspension was vacated and he was reduced to the grade of airman (E-2).
- f. On 9 Jun 73, he failed to go to his appointed place of duty. As a result, he was issued an LOR.
- g. From 12 Jun thru 18 Jun 73, he absented himself from his organization. As a result, he was administered nonjudicial punishment under Article 15, UCMJ, with reduction to the grade of airman basic (E-1), suspended until 25 Jun 73.
- h. From 16 Jul thru 26 Jul 73, he absented himself from his organization. Further investigation disclosed he absented himself again from 27 Jul thru 14 Aug 73. As a result he was administered nonjudicial punishment under Article 15, UCMJ.
- i. On 20 Aug 73, his suspension was vacated and he was reduced the grade of airman basic (E-1).

On 27 Sep 73, the applicant acknowledged the discharge action and waived his right to a hearing and elected to provide statements on his own behalf. The applicant's counsel provided a statement and requested the applicant receive a general (under honorable conditions) discharge and indicated, "it appears and he readily admits, he has an immature personality and acts on impulse."

On 6 Nov 73, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Nov 73, the discharge authority directed the applicant be discharged with an undesirable service characterization. Further probation and rehabilitation was not considered.

On 20 Nov 73, the applicant received an UOTHC discharge. He was credited with two years, one month, and two days of total active service and 83 days of total time lost.

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

**POST-SERVICE INFORMATION**

On 7 Oct 21, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would

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assist the Board in evaluating his case. Although the applicant provided a personal statement and several character reference letters with his initial application (Exhibit A), he has not provided an FBI background check or other criminal history data.

**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 & 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 7 Oct 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:

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**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.
- 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 EVALUATIONS**

The AFRBA Psychological Advisor completed a review of the available records and finds insufficient evidence to support the applicant's request for an upgrade of his character of service discharge from a mental health perspective. There was evidence the applicant had been physically assaulted and received a humanitarian assignment to be near his family during service as contended. However, there was evidence in his objective military records from the applicant's military counsel reporting the applicant had admitted it was his immature personality and impulsivity that caused him to be AWOL. There was no evidence these immature and impulsive behaviors were caused by his physical assault or mental health condition. In fact, the applicant denied having any mental health issues during service as evidenced by his own endorsement during his physical separation examination occurring over 40 years ago. It is acknowledged the applicant was physically assaulted and had other difficulties during service and these experiences may have been traumatic or stressful to him, but there was no evidence the residual effects of his experiences may have caused his numerous misconduct infractions. Furthermore, the applicant also attributed his behaviors to believing he was going blind as his reason to get away in his personal statement for this petition. This experience was highly stressful and worrisome to him and it appeared he had poor coping skills, but it could not excuse his behaviors of not following the rules and eloping without authorization or notification to his leadership. His legal counsel also reported he had PTSD-like symptoms from his physical assault but did not sufficiently clarify how his symptoms or condition caused him to fail to go to his appointed place of duty and be AWOL multiple times. He was declared AWOL at least eight times, which is excessive, and he could have been court-martialed for these offenses as reflected in his records. There was no evidence he had PTSD or PTSD-like symptoms during service and no records he was diagnosed with any mental disorder diagnosis or had mental health issues that may cause his behaviors and eventual discharge. It appeared his behaviors were caused by his immature and impulsive tendencies from being young

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as the applicant contended and being unable to adapt to the structures of a military environment. Therefore, the psychological advisor finds no error or injustice with his discharge.

Liberal consideration is applied to the applicant's request due to his claim of a mental health condition. 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's legal counsel contends the applicant experienced multiple stressors to include being physically assaulted by six individuals causing him to experience negative behaviors and PTSD-like symptoms affecting his behaviors. The applicant contends his vision issues and immaturity by age caused him to get away.

2. Did the condition exist or experience occur during military service? There is evidence the applicant was physically assaulted and had vision issues during military service, but there was no evidence he had any PTSD or PTSD-like symptoms caused by his assault. There was no evidence he had any mental health conditions, issues, or disorders during service.

3. Does the condition or experience excuse or mitigate the discharge? Although his physical assault experience and vision issues may have been traumatic and stressful to him, there was no evidence the stressors and potential symptoms from these experiences developed into a mental health condition or disorder. His objective military records and the applicant's statement attributed his behaviors to being immature and impulsive from being young and being unable to adapt to a military environment as the reasons for his numerous misconduct. There was no evidence his mental health condition caused his behaviors and misconduct, and his condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition or experience does not excuse or mitigate his discharge, they also do not outweigh his discharge. There is no error or injustice identified with his discharge.

The complete advisory opinion is at Exhibit D.

The BCMR Medical Advisor completed a review of the applicant's case file and opined the applicant was not a victim of an error or injustice in either his received medical care while on active duty or in his overall discharge processing. There was insufficient medical evidence to support the applicant's contentions or request. The burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit were assessed to not support his request for changing any aspect of his current record of military separation.

Although the clinical encounters contained in the applicant's case file make note of the applicant having a history of histoplasmosis (in the right eye) first having been noticed in Nov 71, there were no actual records in evidence of that time period and or such a diagnosis. The first evidence of being seen for any eye issue was through a specialty consultation from Ophthalmology conducted on 12 Aug 72. The diagnosis was histoplasmoptic choroiditis, activity undetermined. Evaluated again on 21 Sep 72, the diagnosis was active chorioretinitis as small hemorrhagic areas were seen on the back of the eye. His disposition was to observe and follow up with serial examinations. The last evidence of a treatment record was dated on 15 Nov 72 whereby the diagnostic impression was ocular histoplasmosis (presumed) and the applicant received ocular treatment to include eye pain relief as well as ocular steroids. His visual acuity was much improved and his vision was near normal on that visit. Given the known nature of histoplasmosis (local lung) infection and the timeframe (years) to develop scarring and hemorrhage within the eye (if the infection spreads),

then the incurrence of this condition existed prior to service (EPTS) and the eye involvement is a residual of a prior (known or unknown) lung infection. There was no evidence found within the records to show that the applicant's condition was permanently aggravated above the natural (long-term) progression of the originating infection/condition.

There was no nexus to be assumed or objectively cited whereby the applicant's residual eye condition contributed with any personal actions that fostered a UOTHC discharge. Submitted medical records were sufficient to show that the applicant did receive 'appropriate and necessary medical care' for his eye condition while on active duty with at least two specialty care providers and was provided interventional treatment. Therefore, no material error or intended injustice was identified. The simple comment of his right to request a discharge upgrade is simply a statement of fact within his rights as a discharged service member.

The complete advisory opinion is at Exhibit E.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS**

The Board sent copies of the advisory opinions to the applicant on 18 May 22 for comment (Exhibit F), 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 and BCMR Medical Advisors 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 PTSD-like symptoms; however, there was no evidence to support a nexus between his behavior (AWOL at least eight times) and relief through liberal consideration. 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 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 further post-service evidence depicting his good citizenship since his discharge, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.
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-2021-00893 in Executive Session on 27 Jul 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 21 Mar 21.
- 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 7 Oct 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Feb 22.
- Exhibit E: Advisory Opinion, BCMR Medical Advisor, dated 16 May 22.
- Exhibit F: Notification of Advisories, SAF/MRBC to Applicant, dated 18 May 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.

5/12/2023

**X** **Work-Product**

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Board Operations Manager, AFBCMR  
Signed by: USAF