



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01211

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her bad conduct discharge (BCD) be upgraded to honorable.

APPLICANT'S CONTENTIONS

The applicant and her counsel contend she had untreated post-traumatic stress disorder (PTSD) while serving on active duty. She had a tumultuous childhood due to her mother's substance addiction, was physically and emotionally abused as a child, and had to leave home at the age of 16 because of an unstable home environment. Her childhood trauma caused her to seek relief and comfort from illegal substances to escape her reality during service. She did not receive help from the Air Force despite asking for help. When the Office of Special Investigations (OSI) brought her in for questioning, she confessed to using drugs and helping others obtain drugs from a local civilian drug dealer. She agreed to cooperate with OSI as an informant with the hopes of mitigating her sentence and to stay in the Air Force. While helping OSI and awaiting her trial, she was sexually assaulted by her supervisor and was later hospitalized for suicide watch. The supervisor was never reprimanded or punished for his behaviors and the military failed to protect her. While she was in confinement, she learned she had many emotional disorders and was heavily medicated for her conditions.

If the Board is unable to upgrade the discharge under liberal consideration on the basis of her mental health condition, she requests the Board consider her request under clemency. Upon separation, she began getting treatment for her PTSD, completed both undergraduate and graduate programs, started a business, and gives back to the community.

In support of her request for clemency, the applicant provides a personal statement and copies of her resume, college transcripts, letters of recommendation, letter from her psychologist, community fundraisers, and a Federal Bureau of Investigation (FBI) background check, dated 24 Jul 21. According to the FBI report, the applicant has had no arrests since her discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Dec 03, the convening authority published General Court-Martial Order Number Wo... The Order stated the applicant pled guilty to one charge with five specifications and two additional

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charges as indicated below. The applicant was sentenced on 15 Oct 03 to confinement for 18 months, forfeiture of all pay and allowances, reduction to the grade of airman basic (E-1) and a BCD.

A. Charge with five specifications (Article 112a).

1. Between on or about (o/a) 1 Jul 02 and o/a 1 Sep 02, at or near the installation, wrongfully possess 17 pills, more or less of methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance commonly known as "Ecstasy," with intent to distribute.

2. Between o/a 15 Aug 02 and o/a 15 Sep 02, at or near the installation, wrongfully distribute approximately four pills of MDMA.

3. O/a 26 Sep 02, at or near the installation, wrongfully distribute four pills of MDMA.

4. O/a 26 Sep 02, at or near the installation, wrongfully introduce 14 pills, more or less of MDMA onto an installation used by the armed forces.

5. Between o/a 1 Mar 02 and o/a 3 Oct 02, on diverse occasions somewhere within the State, wrongfully use MDMA.

B. Additional Charge I with one specification (Article 81).

1. Between o/a 1 Jul 02 and o/a 3 Oct 02, somewhere within in the State, conspire with another person to commit an offense under the Uniform Code of Military Justice (UCMJ) of wrongful distribution of some amount of MDMA.

C. Additional Charge II with one specification (Article 112a).

1. O/a 3 Oct 02, at or near the installation, wrongfully distribute 19 pills, more or less of MDMA.

On 26 May 06, the applicant received a BCD with narrative reason for separation of, "Court Martial." She was credited with 3 years, 5 months, and 12 days of total active service and lost time from 14 Oct 03 to 26 Sep 05.

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 13 Sep 21, the Board sent the applicant a request for any additional post-service information she may wish the Board to consider (Exhibit C). In addition to the supporting documents submitted with her initial application, to include an FBI Identity History Summary Check, dated 24 Jul 21, the applicant provided a letter of recommendation from the OSI special agent who worked on her case (Exhibit L).

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by

this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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 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 13 Sep 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force (DAFI) 36-3211, Military Separations, describes the types of service characterization:

Honorable. The quality of the member's service generally has met DAF 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.

General (Under Honorable Conditions). If a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions (UOTHC). This is used 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 members. 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 DAF.
- 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 abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATIONS

AF/JA recommends denying the application finding the applicant's record contains insufficient evidence of an error or injustice tending to undermine her imposed punishment.

First, regarding the allegations of PTSD, no credible evidence has been provided that would warrant a discharge upgrade. According to section 19 of the memorandum: "Premeditated misconduct is not generally excused by mental health conditions... Review Boards will exercise caution in assessing the causal relationship between asserted conditions or experiences and premeditated misconduct." Accordingly, the applicant's act of using, distributing, and introducing illegal drugs to a military installation, plus her act of introducing airmen to her civilian drug dealer were all premeditated. Any alleged PTSD neither excuses/mitigates nor outweighs the discharge.

Second, regarding the allegations that the military failed to address her sexual assault, no credible evidence has been presented. The application alludes to page 114 of the record of trial, but that excerpt of the transcript does not substantiate said allegations; furthermore, nothing else in the application provides credible evidence of the alleged failure by the military.

Third, regarding allegations of risky work with OSI, no credible evidence has been presented. On the contrary, during the sentencing phase's direct examination (in other words, testimony from the defense-friendly witness who was introduced to support the defense's case), the OSI special agent who was the applicant's "handler" while she was a confidential informant specifically contradicted this allegation. The special agent testified that the applicant was terminated as an informant because "I felt it was beginning to possibly be a safety concern for her to continue working in that arena and I wasn't going to put her in any harm's way."

Fourth, to address her conduct since discharge. AF/JA did not independently review the authenticity of any records submitted, nor confirm if those who wrote support letters were

informed of all the details of her crimes. However, any claimed accomplishments do not prove error or injustice, and do not warrant a discharge upgrade. Rehabilitating a felon into a productive member of society is always one of the goals of any judicial punishment, including incarceration. Hence, its success should not be grounds for upgrading a discharge. Furthermore, it is noted that despite claims of the applicant's own personal successes since discharge, she has failed to shed light on the lives of the airmen whose careers were destroyed as a direct result of her misconduct. A review of the military justice records was conducted and noted that the airmen who she sold or distributed drugs to, the airmen who she used drugs with, and the airmen who she introduced to her civilian drug dealer all have criminal records as a result, and most were discharged from the Air Force with BCDs. (Note: This is not in reference to the airmen whom she helped OSI identify through her work as an informant.)

Finally, it is noted that the applicant began active duty in Jan 02, and her charged drug crimes began on 1 Mar 02. Although the applicant did not mention her military record, it is always relevant for the Board's consideration. In the present case, she received non-judicial punishment (NJP) for willful dereliction of duty within a half-year of joining the Air Force and began committing drug crimes within a mere two months.

The complete advisory opinion is at Exhibit D.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for an honorable discharge. The applicant's service treatment records were not available and/or submitted by the applicant and her legal counsel for review. They did, however, submit statements from the applicant and her psychologist discussing her traumatic experiences causing her to be diagnosed with PTSD post service. Her traumatic experiences were identified as childhood abuse and neglect, sexual assault prior to service, sexual assault by her supervisor during service, and stressful experiences while incarcerated during service. Two of her traumatic experiences (childhood abuse and neglect and sexual assault prior to service) were considered to have been existed prior to service (EPTS). These prior service experiences were the reasons she used illicit drugs to cope according to the applicant and legal counsel. There was no evidence her military duties aggravated her EPTS condition and therefore, liberal consideration is not required to be applied to her misconduct of drug use according to the policy. Additionally, not only did the applicant use illicit drugs, she also participated in the sale and distribution of an illegal drug, possessed the drug, introduced the substance onto a military base, and was the point of contact and communicated with a civilian drug leader several times to obtain drugs for other airmen according to her court martial documents. These conduct and behaviors were committed repeatedly over several months and were considered to be premeditated due to elements of planning. The applicant and her legal counsel reported she used drugs/MDMA to cope with her past trauma and mental health condition, which was plausible; however, there was no evidence her mental health condition caused her to engage in frequent illegal activities.

Furthermore, there was no evidence in the applicant's objective military records she reported being sexually assaulted during service and no evidence she was hospitalized as her service treatment records were not available for review. The veracity of the applicant's sexual assault by her supervisor is not in question but whether the aftermath or residual effects of her sexual assault experience may cause or mitigate her misconduct and discharge? There is no evidence to support either of these notions. The applicant's drug use, misconduct, and legal issues predated her sexual assault from her supervisor. There was no nexus between her misconduct/discharge and sexual assault experience. Lastly, the applicant was also diagnosed with PTSD due to her incarceration experiences. The applicant's misconduct and court martial conviction resulted with her incarceration, and it was already adjudged she would be sentenced to a BCD prior to her

incarceration. There was no evidence her mental health condition from her incarceration experience caused her misconduct and discharge from service.

The psychological advisor opines liberal consideration is not required to be applied to her petition due to no evidence her EPTS condition was aggravated by her military service causing her to use illicit drugs to cope, and her illegal activities and misconduct were found to be premeditated based on the policy's guidance. Should the Board elect to apply liberal consideration to the applicant's request due to her contention of a mental health condition and reported sexual assault experience during service, the following are responses based on information presented in the records to the four questions in the policy:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant and her legal counsel contend she used drugs to cope with her undiagnosed mental health condition and she was sexually assaulted by her supervisor during service.

2. Did the condition exist or experience occur during military service? There is no evidence the applicant received any mental health evaluation, diagnosis, or treatment during service. Her service treatment records were not available for review. She was diagnosed with PTSD, caused by childhood trauma, sexual assault prior to service, sexual assault during service, and incarceration experiences, post discharge.

3. Does the condition or experience excuse or mitigate the discharge? According to the applicant and her legal counsel, she used drugs to cope with her undiagnosed mental health condition that were reported to have been EPTS. There was no evidence her EPTS condition was aggravated by her military duties and service. The applicant may have used substances to cope with her EPTS mental health condition but no evidence her mental health condition caused, excused or mitigated her illegal activities and behaviors resulting with her court martial conviction and BCD. In terms of her sexual assault experience, the assault had occurred after her drug use and misconduct. There was no evidence her sexual assault experience caused her behaviors and misconduct resulting with her BCD and therefore, does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge? Since there was no evidence her mental health condition and/or sexual assault experience may excuse or mitigate her discharge, they also do not outweigh her discharge. The applicant knew her recurring behaviors and activities were illegal. There was no evidence her illicit behaviors were impulsive as they had occurred repeatedly over an extended period of time, were premeditated, and were not caused by her mental health condition. The serious nature of her misconduct could not be overlooked or outweighed.

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 6 Dec 21 for comment (Exhibit F), and the applicant replied on 4 Jan 22 (Exhibit G). On behalf of the applicant, counsel requested the case be administratively closed to allow extra time to compile their rebuttal. On 31 Jan 22, the Board staff closed the applicant's case (Exhibit H). On 11 Feb 22, the applicant and her counsel provided a response to the advisory opinions (Exhibit I). On 22 Mar 22, counsel requested the case be temporarily removed from consideration to allow more time to provide additional evidence (Exhibit J). On 23 Mar 22, the Board staff closed the applicant's case (Exhibit K).

On 22 Jun 22, the applicant and her counsel provided an additional response to the advisory opinions (Exhibit L). The applicant and her counsel reiterated their contention that liberal consideration should be applied to her case based on her mental health condition and military sexual assault experience. They restate that there were no records supporting the applicant received any mental health evaluation, diagnosis or treatment during service because the applicant was denied this service. The same way the military declines to investigate her credible report of sexual assault. Furthermore, the military did in fact aggravate her mental health condition by denying her mental health care, forcing her to use controlled substances as a “self-soothing” strategy.

Additionally, OSI put her in danger as a young 19-year-old female by asking her to go undercover with drug trafficking rings, incarcerating her with the very same people OSI had her provide information on, and incarcerating her in a co-ed facility with men convicted of sexual assault.

Lastly, if the Board finds that no error occurred, her request merits clemency consideration. She has done great work in rehabilitating herself and made measurable impacts on her community to warrant clemency consideration. The applicant is a graduate from Harvard and was selected to serve as the Interim Executive Director for a non-profit organization over the course of five months, which provides transformational trauma responsive programs for women who are or who have been incarcerated to promote healing and empowerment.

In support of her request, the applicant provided additional evidence consisting of two counsel briefs, two personal statements, letters from her social worker and nurse practitioner, and two letters of recommendation.

The applicant’s complete responses are at Exhibits G, I, J and L.

FINDINGS AND CONCLUSION

1. The application is timely. 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 limitations period established by 10 U.S.C. § 1552(b).

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. The Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, § 1552, the Board's actions are limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. Additionally, the Board has a Congressional mandate which permits consideration of other factors, such as the applicant's background, the overall quality of service, and post-service activities and accomplishments. Under this broader mandate and after careful consideration of all the facts and circumstances of the applicant's case, the Board believes it is clear the applicant has successfully transitioned to civilian life and the BCD no longer serves a useful purpose.

After careful consideration of the applicant's complete submission and the evidence of record, the Board finds her post-service accomplishments do not fully override the seriousness of her misconduct to warrant an upgrade to honorable, but they do warrant an upgrade to a general (under honorable conditions) service characterization. While the Board notes AF/JA’s recommendation to deny the request and the AFRBA Psychological Advisor finds insufficient evidence to support an upgrade, the Board opines the applicant’s post-service accomplishments, her work with the

community, and letters of support together support upgrading her service characterization to general (under honorable conditions) under clemency. The Board considered liberal consideration but finds it does not apply in her case nor did her mental health condition mitigate or excuse her misconduct that led to her discharge.

Furthermore, although the applicant did not specifically request it, in the interest of justice, the Board also recommends changing the applicant's separation code and corresponding narrative reason for separation to JFF and Secretarial Authority. In view of the foregoing, the Board recommends the applicant's records be corrected as indicated below.

4. The applicant has not shown that a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 26 May 06, she was discharged with service characterized as general (under honorable conditions) with a narrative reason for separation of "Secretarial Authority" and separation code of "JFF."

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-01211 in Executive Session on 8 Sep 22:

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Panel Chair

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Panel Member

Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 16 Apr 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 13 Sep 21.
- Exhibit D: Advisory Opinion, AF/JA, dated 18 Oct 21.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Nov 21.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Dec 21.
- Exhibit G: Applicant's Response, dated 4 Jan 22.
- Exhibit H: Notification of Case Closure, SAF/MRBC to Applicant, dated 31 Jan 22.
- Exhibit I: Applicant's Response, w/atchs. dated 11 Feb 22.
- Exhibit J: Applicant's Response, dated 22 Mar 22.
- Exhibit K: Notification of Case Closure, SAF/MRBC to Applicant, dated 23 Mar 22.
- Exhibit L: Applicant's Response, w/atchs, dated 22 Jun 22.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

11/1/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2021-01211

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