

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01242

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

Correct his official military records to reflect an upgrade to his Reentry (RE) Code that will allow him to reenlist.

### APPLICANT'S CONTENTIONS

What happened is incorrect and unjust. After receiving a concussion on his sixth day at Basic Military Training (BMT), he was sent to an incorrect medical specialist who had no knowledge of his injury. The Air Force psychologist was unaware of his concussion and misdiagnosed him with a General Adjustment Disorder. The Air Force medical staff member did not perform appropriate evaluations and [it was] medical malpractice according to the DSM-IV. The Air Force doctor abused his medical authority and diagnosed him after a five-minute interaction in his office. He did not ask about the applicant's concussion, nor was he aware of the applicant's concussed state. If given the option, he would have stayed until he was cleared from his concussion and returned to training with his Battlefield Airman flight.

He has supporting medical documentation including evaluations from five different psychiatrists and psychologists who have all performed evaluations and agree he was misdiagnosed, was a victim of medical malpractice, according to DSM-IV, and should have stayed in training.

He has complete confidence in his mental and physical ability and wishes to reenlist and continue pursuing his calling in Special Operations.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 9 Apr 19, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Regular Air Force.

On 18 Apr 19, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section 5B, *Involuntary Convenience of the Government Discharge*, paragraph 5.11., *Conditions that Interfere with Military Service*, specifically, paragraph 5.11.2., *Mental Disorder*. The specific reason for the action was receipt of a mental health evaluation that diagnosed a mental disorder.

On 19 Apr 19, the Staff Judge Advocate found the discharge action legally sufficient.

On 23 Apr 19, the discharge authority directed the applicant be discharged with an Entry Level Separation.

On 23 Apr 19, the applicant received an Entry Level Separation with Uncharacterized service. His narrative reason for separation is “Condition, Not a Disability” and his RE Code is 2C [Involuntarily Separated – Ineligible to Reenlist]. He was credited with 15 days of total active service.

On 18 Apr 21, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his RE Code to allow reenlistment.

On 14 Sep 21, the AFDRB denied the applicant’s request and 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 and the advisory at Exhibit D.

### **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 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 15 Sep 22, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

## **AIR FORCE EVALUATION**

BCMR Psychological Advisor recommends denying the application. The psychological advisor finds insufficient evidence to support the applicant's request for the desired change to his records.

According to the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, he entered active duty service on 9 Apr 19, and on 23 Apr 19, was discharged with an Entry Level Separation (ELS), an Uncharacterized character of service, and an RE Code of 2C.

The applicant was diagnosed with Adjustment Disorder, Unspecified following a mental health evaluation. This condition was determined to be so severe that his ability to function effectively in the military environment was significantly impaired and impacted his potential to complete BMT, Technical Training School, and any future assignment.

On 15 Apr 19, the applicant received a mental health evaluation after he voluntarily presented and self-referred to the Behavioral Analysis Service (BAS) for an intake evaluation for significant stress in BMT. The results of the evaluation were provided to the applicant's commander the same day. In the memorandum, the mental health provider reported, "This evaluation finds an individual with low motivation for the Air Force who reports experiencing significant distress in the context of military training. The member denies any history of pre-service mental health diagnosis or treatment. The member reports the onset of significant distress and associated symptoms (e.g., sleep disturbance, nightmares, low motivation, poor concentration, poor memory, disturbed appetite, low mood) since arriving to military training. The member indicates that he has a history of pre-service abuse, and his symptoms represent a reactivation of abuse in the military training environment. The member denies any suicidal/homicidal/morbid/non-suicidal self-directed violent ideation, plans, intent, preparatory behaviors, or attempts since arriving to BMT. The member presently reports low motivation for the military and little confidence in his ability to complete training. He denies specific dynamics within his flight contributing to a desire for discharge. Due to the member's worsening in-service symptoms including reactivation of abuse, poor prognosis in the military, and decreasing motivation for the USAF, it is best for all concerned to separate this individual from the military."

On 17 Apr 19, the applicant received a separation physical from his primary care manager (PCM) who reported, "Head: No headache"; "Neurological: No lightheadedness"; "Head: Injuries: No evidence of a head injury. Appearance: Head normocephalic."; "Neurological: Balance: Normal. Gait And Stance: Normal." The applicant was medically cleared for separation by his PCM. There were no records reporting he had sustained a concussion or received any treatment for a concussion during BMT.

The applicant submitted post-service records and letters from his providers for review. An undated, partial DD Form 2807-2, *Accessions Medical History Report*, reported, "Box 121: was

knocked in the head during Air Force basic training with a rucksack. Was evaluated and found to have no symptoms or signs of trauma to brain.” Additional entries reflect the applicant was evaluated by other providers who found him “in good mental health with no diagnosis.” A medical record reported the applicant was screened for substance abuse and concussion without loss of consciousness by a medical provider on 6 Dec 19. The record stated, “Provided pt [patient] with copy of MRI report and indicate report is normal.”

A letter from a Licensed Clinical Social Worker, dated 20 Apr 20, reported, in part, “[The applicant] states he had previously suffered a concussion prior to entering the Air Force.” Additionally, “[The applicant] says he was extremely affected by this concussion. He states he suffered constant dizziness, migraine headaches and was unable to think clearly. His coordination was off as he was unable to maintain cadence while marching. [He] notes his energy level and performance fell below what he had prior to the concussion. However, he was advised by medical personnel while doing paperwork to say he had anxiety and after separation from the Air Force to seek medical help and have an MRI.” The provider assessed the applicant and found he was not observed to have essential features of an adjustment disorder and opined complaints due to his concussion and the Adjustment Disorder, Unspecified by his military provider share similar characteristics. The provider found he appeared to be mentally and physically fit to re-enter the service.

On 1 May 20, a letter from a psychiatrist alleged the applicant was misdiagnosed with an Adjustment Disorder during BMT and claimed he suffered from a concussion and needed time to recover. Additionally, the applicant continued to have mild impairments with his working memory and was able to perform certain cognitive functions efficiently. The psychiatrist believed the applicant would require another six months to fully recover and would be re-evaluated. He had no psychiatric conditions and was assessed to be fit for duty. No follow-up evaluation was submitted for review.

This psychological advisor reviewed all available records and finds the applicant’s objective military records do not support his contentions. There was no evidence he sustained or was treated for a concussion during BMT. During his separation physical, there was no evidence of a head injury, and his neurological examination was normal. The post-service medical records submitted found his post-discharge MRI to be normal. One of his post-service mental health providers reported the applicant suffered a concussion prior to entering the Air Force and re-aggravated his previously unhealed concussion during BMT. On his Report of Medical History, completed by the applicant on 4 Jan 19, he denied any head injury, memory loss, or amnesia. If he had a concussion, he would have required an examination and waiver to enter the Air Force.

The first entry in his electronic service treatment/medical records was his mental health evaluation, performed on 15 Apr 19, when he voluntarily presented to the BAS clinic during the first week of training. The applicant never disclosed he had a head injury to his mental health provider, despite having ample time to do so. Contrary to the applicant’s contention of being seen for five minutes, his records reflect he was seen for two hours. The rationale provided by his military mental health provider was found to be sound and consistent to the diagnostic criteria for Adjustment Disorder in accordance with Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). There is no evidence the applicant was misdiagnosed as claimed. Per the DSM-5, an Adjustment Disorder is the development of emotional or behavior symptoms in response to an identifiable stressor(s) within three months of the onset of the stressor(s) causing marked distress that is out of proportion to the severity or intensity of the stressors, impacting impairment in the realms of social, occupational, and other important areas of functioning, and once the stressor or its consequences have terminated, the symptoms do not persist more than an additional six months. The applicant’s symptoms appeared to have resolved after he was discharged from service, providing further credence to the validity of his diagnosis.

His post-service mental health providers opined his symptoms during service were confused with his concussive symptoms. There was no evidence to corroborate their opinions because there was no evidence he had a concussion during service. While this psychological advisor respects his post-service providers' professional opinions, their assessments of the applicant were not confirming but were purely speculative. These providers did not evaluate the applicant at the snapshot in time of service and could not accurately attest to his functioning during his brief time in service of 15 days. Their opinions were based on the applicant's self-reports that were found to be repeatedly not consistent to his actual existing objective records.

The Board may elect to apply liberal consideration to the applicant's request. The following are responses to the four questions from the Kurta memorandum based on information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant contends he suffered from a concussion during his sixth day of training and was misdiagnosed with an Adjustment Disorder resulting in his discharge from service. He claimed he was misdiagnosed with this disorder when instead, he had a concussion.

2. Did the condition exist or experience occur during military service?  
There is no evidence the applicant sustained or experienced a concussion or received treatment for a concussion during service. He received a mental health evaluation after he had voluntarily presented to the BAS clinic for complaints of significant distress relating to his military training. He was given a diagnosis of Adjustment Disorder, Unspecified for having difficulties adjusting to the military and from the results of his evaluation. He never reported to his mental health provider he had a head injury or concussion during service.

3. Does the condition or experience excuse or mitigate the discharge?  
The applicant's unsuiting mental health condition of an Adjustment Disorder was the cause and reason for his ELS discharge from service. There is no evidence he was misdiagnosed as claimed and no evidence his Adjustment Disorder symptoms were confused for his concussion/TBI symptoms. Due to the applicant's ELS discharge, he was furnished with an RE code of 2C in accordance with regulation. His mental health condition and alleged concussion/TBI experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?  
There is no error identified with the applicant's ELS discharge and resulting RE code. His mental health condition and alleged concussion/TBI experience do 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 15 Sep 22 for comment (Exhibit E) and the applicant replied on 3 Oct 22. In his response, the applicant provided additional supporting documents, to include letters of recommendation.

The applicant's complete response is at Exhibit F.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.

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

3. After reviewing all Exhibits, to include the applicant's response, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of BCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant sustained a head injury/concussion during BMT. The Board applied liberal consideration to the new evidence submitted by the applicant and finds that his mental health condition and alleged concussion/TBI experience do not excuse or mitigate his discharge. Therefore, the Board recommends against correcting the applicant's records.

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-2021-01242 in Executive Session on 22 Nov 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, w/atchs, dated 21 Apr 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Applicant Notification of Clarifying Guidance/Clemency, dated 15 Sep 22.
- Exhibit D: Advisory Opinion, BCMR Mental Health, dated 13 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Sep 22.
- Exhibit F: Applicant's Response, w/atchs, dated 3 Oct 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**

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Board Operations Manager, AFBCMR