

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXXXXXX

DOCKET NUMBER: BC-2021-01386

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He is requesting a correction of misconduct separation to hardship as he was told he was receiving in 1995 due to his request to separate because of Post-Traumatic Stress Disorder (PTSD) related to the loss of his father and sister in a tragic car accident in Dec 94. He recently found he was not given the hardship he was promised by his commanding officer during separation. He had consulted his First Sergeant on many occasions requesting mental health and spiritual assistance from the Chaplain in dealing with his PTSD as a result of the trauma of losing his dad and sister. All requests were denied and resulted in his misconduct/discharge. He spoke with his commander, and he told the applicant that he could request a hardship discharge on a medical basis to be excused from active duty. He also had a mother and three minor sisters who had lost their husband/father. He is asking for this review to remedy this miscarriage of justice. He provided copies of the death certificates as well as a copy of the death notification for each that clearly states he is the surviving brother and confirming his statement above.

In support of his request for clemency, the applicant provides a personal statement and letter of support from his mother.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 19 Jul 95, the applicant's commander recommended the applicant be discharged from the Air Force for a pattern of misconduct, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2.. The specific reasons for the action were:

- a. On or about 25 Oct 94, the applicant wrongfully communicated a threat to another airman, and on or about 2 Nov 94, made a false official statement to a noncommissioned officer (NCO). He received an Article 15, a copy of which was placed in his unfavorable information file (UIF).
- b. On or about 27 Nov 94, applicant failed to go to his place of duty on time. He was given a letter of reprimand (LOR), a copy of which was placed in his UIF.
- c. On 27 Feb 95, the applicant violated the standards of dress and appearance as established in AFI 36-2903, *Dress and Personal Appearance*. He was counseled and this incident was documented on his Student Record of Academic/Nonacademic Counseling and Comments.

d. On 6 Mar 95, the applicant violated the standards of dress and personal appearance as established in AFI 36-2903 and was also observed sleeping in class. He was counseled and these incidents were documented on his Student Record of Academic/Nonacademic Counseling and Comments.

e. On 5 Apr 95, the applicant was late for class. He was counseled and this incident was documented on his Student Record of Academic/Nonacademic Counseling and Comments.

f. On 19 Apr 95, the applicant was late for class. He was counseled and this incident was documented on his Student Record of Academic/Nonacademic Counseling and Comments.

g. Between on or about 25 Mar 95 and 4 Apr 95, the applicant wrongfully made telephone calls using the telephone card of another military member. He received an LOR, a copy of which was placed in his existing UIF.

h. On 11 May 95, the applicant failed two separate dormitory inspections. He was given an LOR.

i. On or about 15 May 95, it was discovered the applicant was delinquent in the payment of his DPP account. He was verbally counseled and a memorandum for record was accomplished.

j. On 16 May 95 and again on 17 May 95, the applicant failed to maintain his dormitory room in inspection condition. He was given an LOR, a copy of which was placed in his existing UIF.

k. On 17 May 95, the applicant violated the standards of dress and personal appearance as established in AFI 36-2903. He was given an LOR, a copy of which was placed in his existing UIF.

l. On or about 1 Jun 95, it was discovered the applicant was delinquent in the payment of his enlisted club account. He received an LOR, a copy of which was placed in his existing UIF.

On 1 Aug 95, the Staff Judge Advocate found the discharge action legally sufficient.

On 11 Aug 95, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 11 months, and 18 days of total active service.

On 3 Dec 09, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 28 Jun 11, 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 and the advisory at Exhibit D.

POST-SERVICE INFORMATION

On 8 Nov 23, 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 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 issued supplemental guidance, known as the Wilkie Memo, 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 paragraphs 6 and 7 of the Wilkie Memo.

On 8 Nov 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the 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.

General (Under Honorable Conditions). 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 member's military record.

Under Other than Honorable Conditions. This characterization 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 EVALUATION

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge from a mental health perspective.

This psychological advisor has reviewed the available records, his personal testimonies, and his mother's statement and finds that while his contentions are compelling and plausible, the information presented was insufficient to support his request. His experiences are not doubted, but it is whether his mental health condition from his grief and loss could have caused his misconduct or mitigated his discharge. His contentions do not quite match his military records. The applicant was in the Air Force for less than a year and he had misconduct problems throughout his time in the service. At least two of his documented 12 misconducts had occurred prior to his family members' deaths in Dec 94 and one of these two misconducts was his most serious misconduct resulting in him receiving an Article 15. This misconduct was for communicating a threat to another airman and making a false official statement to an NCO. The applicant addressed these misconducts in his personal statement and claimed he confided in another airman about his stepfather physically and sexually abusing his younger siblings who then spread rumors about him leading him to threaten the airman. He then claimed he knowingly made a false statement to an NCO that he never committed the act. His available records do not support any of these claims. Even if his contentions were true and corroborated by his records, his circumstances may have explained his behaviors, but they do not excuse his behaviors. His behaviors were inappropriate leading to serious consequences. Furthermore, his behaviors were not the result of a mental health condition. He was angry and stressed from this situation but does indicate he suffered from an actual mental health condition impairing his judgment at the time. There is no evidence he had a mental health condition at the time of these misconducts causing his behaviors. He admitted he knowingly made a false statement to an NCO, and this indicated he was aware of his behaviors and knew what he was doing at the time. His circumstances did not excuse or mitigate his inappropriate behaviors.

The applicant contends during the next few months after the death of his family members his career went on a downward spiral as he received numerous reprimands for failing to shave properly, adhere to dorm standards/failed room inspections, attend class on time, and arrive to work on time. There are records that he did have these problems after his family members' deaths but no documentation of the reasons why he engaged in these behaviors. It is possible his grief and loss caused these behaviors despite no actual evidence to support his contention. In such a situation to give the applicant the benefit of the doubt, his adjustment to, and his grief and loss of, the death of his family members may excuse and mitigate at least some of these behaviors. This psychological advisor could not confidently determine whether his grief and loss could excuse or mitigate all of his behaviors due to a lack of evidence and records. His

adjustment problems and grief and loss could not excuse or mitigate his delinquent payments and wrongfully making phone calls on another airman's telephone card. He offered no explanations for these misconducts and there is no evidence his grief and loss caused these behaviors.

The applicant claims he had PTSD during service from the death of his family members. There is no evidence he had PTSD or a similar condition during service or after service. He reports he received counseling for several years after service and did not submit any counseling records to substantiate he was diagnosed with PTSD, and if he had PTSD, symptoms of PTSD, or any mental health condition during service that may cause or affect his discharge. His statement in response to his discharge action at the time of service was not available for review, but the legal review summarized his response to his discharge action. There was no mention of his family members' deaths, his difficulties coping with their deaths, or him having any mental health condition in the summary. There was, however, an explanation that was provided for his difficulties, "He stated that he has tried but failed to adapt to the Air Force way of life." From this statement, it was his difficulties adapting to the Air Force life, and this reason is rational and more likely the reason for his misconduct problem, considering he was in the Air Force for less than one year, it was a new environment for him to adapt to, and many service members do have difficulties adapting to the Air Force within the first year of service. This explanation provided at the time of service signifies it was not his mental health condition from his grief and loss that caused his difficulties but was his inability to adapt to the Air Force. The applicant alleges he requested emotional and spiritual help but was denied by his First Sergeant. There is no evidence he was denied counseling services. His service treatment records are not available or submitted by the applicant for review to support or dispute this contention. Mental health treatment or meeting with a chaplain for his situation is voluntary and one does not need permission from leadership to receive these services, especially if his leadership was aware of his situation. He claims his commander told him he could request a hardship discharge on a medical basis to be excused from active duty but in order to do this, he would need to meet with a provider for his problems to support the hardship discharge on a medical basis. Thus, his contention is a bit contradictory. Moreover, in the applicant's previous petition to the AFDRB, he contended at the time he had grown up and wished he would have done things differently. He did not make any contentions about his family members' deaths or having any mental health condition and did not discuss whether he was supposed to be discharged for hardship. Lastly, he alleges he thought he was discharged for hardship reasons but the fact that he was reported to have consulted with legal counsel and provided a response to his discharge action indicated he knew he was discharged for misconduct and not for hardship reasons.

As mentioned previously, this psychological advisor finds his personal testimony compelling but finds there is not enough evidence to support his request. It is possible that his grief and loss may have contributed to his behavioral and misconduct problems as contended, but his reports have been inconsistent, and his statements were not substantiated by any actual military or treatment records. Anything is plausible, but this psychological advisor opines more substantive records and information are needed in order to demonstrate a nexus between his mental health condition and discharge. Therefore, there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his contention of a mental health condition. It is noted that liberal consideration does not mandate an upgrade per policy guidance. The following are responses to the four questions from the Kurta Memorandum from 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 developed PTSD from the death of his stepfather and sister and from other family problems and was denied mental health or spiritual help by his First Sergeant when he requested help. He believes his problems and mental health condition caused a downward

spiral of his behaviors causing his misconduct and discharge. He claims he had spoken to his commander for a hardship discharge and was told he would receive this discharge but later found out he was discharged for misconduct and furnished with a general discharge.

2. Did the condition exist or experience occur during military service?

There is evidence the applicant's stepfather and sister had passed away from a car accident on 10 Dec 94 via submitted death certificates and newspaper articles, which had occurred during his military service. There is, however, no actual evidence he had any mental health condition, including PTSD, from his family members' deaths during his time in service. His service treatment records are not available for review. There is no evidence he was diagnosed with PTSD from his family members' deaths after service as well.

3. Does the condition or experience excuse or mitigate the discharge?

Although the applicant's personal testimony is compelling and it is possible the effects of his stepfather's and sister's deaths had an impact on him, the available records do not support his mental health condition, including PTSD, had a direct impact or was a contributing factor to his discharge. He reported at the time of service he had difficulties adapting to the Air Force life and his reason is rational and more likely the reason for his misconduct problems. There is no evidence he was supposed to be discharged due to hardship for medical reasons. There is no actual evidence the applicant's mental health condition, including PTSD, had a direct impact or was a contributing factor to his misconduct and subsequent discharge from service. His mental health condition does 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 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 20 Nov 23 for comment (Exhibit E), and the applicant replied on 8 Dec 23. In his response, the applicant provided a chronology of the misconduct for which he was discharged. Specifically addressing the two incidents of misconduct that occurred prior to the death of his family members, the applicant stated his threat against another airman and subsequent lie regarding this behavior was the result of his immaturity. He stated he was raised to handle conflicts himself and not get adults or command staff involved. When the airman submitted the written threat to the command staff, he became defensive and decided to lie, and immediately regretted it. He met with his commander, accepted his punishment, and would take the lesson and move forward. He had recently learned of the news of his stepfather's behavior regarding his sisters, and his Article 15 led him to sulk and feel sorry for himself, choosing to sleep and avoid people hoping his problems would go away. Unfortunately, he received an LOR because instead of seeking help, he chose to deal with it his own way and ended up late for class.

Regarding his conduct after his family members' deaths, his violations of dress and personal appearance were the result of his heavy drinking after returning from leave. There were a couple of months later where he was still drinking excessively, practically living at the NCO club after work and during non-academic hours. He would wake up and not even know how he got back to his dorm. This is no excuse, just relating the facts about what he was going through at that time. His misconduct of being late for class was also the result of excessive drinking, and he was now taking Triazolam to help him sleep. So, he was mixing alcohol with a Class IV narcotic.

His use of another airman's telephone card was during the time he was trying to get his First Sergeant to let him seek help for mental health but was refused. The only reprieve he had outside of drinking was speaking with his mother. The other airman allowed him to use his telephone card a couple of times, but he wrote down the card number and started using it without permission. He could not afford his own telephone card because he was spending all his pay on alcohol at the NCO club. He was delinquent on his account because he was flat broke and was more interested in purchasing alcohol than taking care of his priorities. Alcohol and Ambien were the only ways he was surviving. He failed his dormitory inspections because, by this time, he was buried with depression and feeling sorry for himself and just did not care. Additionally, he felt his senior NCO did not care about him and was doing everything he could to make the applicant miserable.

He was too focused on drinking his troubles away. The bartender at the NCO club let him run up a tab because he could not afford to pay for his drinks. Unfortunately, he got so far over his head he had an extensive outstanding payment. It was during this time the NCO club manager found out he was not even 21 years old and legal to drink and told the applicant to never step foot in his club again. The NCO club manager reported him to the First Sergeant. By this time, he was taking Triazolam (not prescribed to him) and Ambien (prescribed by an Air Force doctor) to help him sleep, mixing two Class IV narcotics with alcohol. Combining Ambien and Triazolam with benzodiazepines, opioid painkillers, marijuana, alcohol, or other addictive substances leave individuals vulnerable to cognitive and psychological side effects such as the following: memory loss, learning problems, psychological dependence, delusional thinking, hallucinations, anxiety, depression, dependence, and addiction.

During his time in service, PTSD was not a thing he recalled. He was dealing with a lot of mental anguish and self-loathing and did not understand how or why losing a family member could affect a person's day-to-day lifestyle so drastically. It took many years of ups and downs in life for him to decide he needed to fight. During these years, he suffered two nasty divorces, his children despising him, thoughts of suicide, job loss, bankruptcy, etc.. He heard the term PTSD and lived in denial that he could suffer from it. It was not until he met a veteran counselor that he figured it out. He stated the psychological advisor in this case has downplayed his mental health, because his experience is the same way he felt with his command staff while he was active duty. It is this unprofessional analysis and opinion why this country has 22 soldiers a day committing suicide. People in positions of power, including this board, truly need to take the time to weigh every aspect of an individual's history and mental awareness.

Regarding the advisory opinion statements on adaptation issues versus mental health condition, the applicant states it is a "he said/she said" issue. He requested mental health and religious support every chance he had because that was all he knew to do. His father was career Air Force and explained that was how things worked, and he was the reason the applicant wanted to be in the Air Force. His First Sergeant was an arrogant NCO who had personality issues. He was belligerent with the applicant and his mother. The First Sergeant refused to allow him to get help. Looking back, he wasn't worthy of "his Air Force." His father told him he would possibly have to deal with this type of simple-minded individual during his career.

He provided his medical records that clearly show a history of mental health, lack of sleep, pain medication, and sleep medication being prescribed, placement in occupational duty during correctional custody for stress and mental-induced trauma. He spent the last 25 years seeking help, mental health, and psychological professional help from doctors, independent providers, and religious leaders. He has no access to these records if there are any. He would change providers on a regular basis because he was ashamed and did not like what he was being told. It was not until the past 10 years that he finally started owning up to everything and talking about it. He is trying to put his life back together and rectify his military history.

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 discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade 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, to include the applicant's rebuttal, 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. To the contrary, the applicant's medical records documented by the Chief, Behavioral Health Psychiatrist, dated 6 Jun 95, provided by the applicant in rebuttal, states, "...the patient denies any anxiety, depression, violence or suicidality." It also states, "Since enlisting has avoided drinking. Sober for the last 10 months. Denies abusing drugs or past psychiatric treatment." Further, it states, "no disabling neurosis, or depression, no abnormal mental trends." The provider charted DSM IV, Axis I: no mental illness, Axis II, no sufficient information regarding personality disorder, and Axis III: no physical illness. Finally, the provider documented, "no psychiatric intervention warranted at this time."

Further, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board finds no basis to do so. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-01386 in Executive Session on 17 Apr 24:

, 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 19 Apr 23.
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 8 Nov 23.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Nov 23.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Nov 23.
Exhibit F: Applicant's Response, w/atchs, dated 8 Dec 23.

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.

X

Board Operations Manager, AFBCMR