



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01903

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He experienced racial disparity resulting in an error and injustice with his discharge. Specifically, in regards to his misconduct during service, he was wearing a civilian garment over his military uniform which was common practice for military personnel. There were policies and practices in place enacted by the base commander due to the ongoing *Work-Product* War to protect military personnel from possible attack and abduction on foreign soil. For his misconduct of not initialing the duty roster, no security police personnel initialed the duty roster because of the location of the law enforcement (LE) desk, many were unaware of the necessity to initial the roster and there were inconsistent practices within Security Police personnel for this procedure. Lastly, he struggled with anxiety and depression caused by being in a highly stressful occupation and he was thousands of miles away from home. He had coped with his anxiety and depression with alcohol; the Employee Assistance Program was not available at the time to provide needed mental health services. He is currently a licensed Clinical Social Worker and suffers from co-occurring disorders of depression and substance abuse disorder which occurred during service. These explanations, in addition to his post-service achievements, should be considered to upgrade his discharge to honorable based on the liberal consideration policy.

In support of his request for clemency, the applicant provides a personal statement, numerous character reference letters, college graduation certificates, and information on his non-profit community youth program.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

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Controlled by: SAF/MRB
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On 18 Oct 90, AF Form 286A, *Notification of Personnel Reliability Program Decertification Action*, indicates the applicant was entered into the Substance Abuse Reorientation and Treatment Program to which he successfully completed on 2 Nov 90.

On 14 Mar 91, AF Form 286A, indicates the applicant was entered into the Substance Abuse Rehabilitation Program to which he successfully completed on 1 May 91.

On 6 Dec 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-46 for minor disciplinary infractions. The specific reasons for the action were:

a. On 22 Oct 90, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for absence from his place of duty and intoxication. He received a reduction in grade to airman basic (E-1), suspended until 21 Apr 91, and forfeiture of pay of \$150.00 for 2 months.

b. On 7 Nov 91, a Letter of Reprimand (LOR) was issued for failure to initial duty roster.

a. On 3 Dec 91, AF Form 3070, indicates the applicant received NJP, Article 15 for failure to go and wearing civilian clothes with his military uniform. He received a reduction in grade to airman basic (E-1), and forfeiture of pay of \$250.00 and 30 days of base restriction, which were both suspended until 2 Jun 92.

On 18 Dec 91, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered but not offered.

On 23 Dec 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Minor Disciplinary Infractions" and he was credited with two years and two months of total active service.

On 5 Jun 92, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 1 Oct 92, 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 advisories at Exhibits C and D.

POST-SERVICE INFORMATION

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On 25 Apr 22, 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 assist the Board in evaluating his case. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process. Although the applicant did supply post-service information with his original application (Exhibit A), he did not include 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 and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and

principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 25 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

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

AIR FORCE EVALUATION

AFPC/DP2STM recommends denying the applicant's request for a discharge upgrade finding no error or injustice with the discharge processing. The commander provided ample evidence to the Base Discharge Authority (BDA) to support discharge and the character of service. The BDA determined that the negative aspect of the applicant's behavior outweighed any positive aspects of the applicant's brief military career.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his record. A review of the available evidence finds his mental health condition was able to mitigate one of his misconduct incidents, but not all of them. Although there was no evidence the applicant reported struggling with anxiety and depression causing him to cope with alcohol during service, his personal testimony was found to be sufficient to explain his alcohol related incident/first Article 15. He had two documented alcohol related incidents during service, but the second incident was reported to have been provoked by a fellow airman and no disciplinary actions against the applicant were warranted according to his commander. His mental health condition was not found to have caused this second incident. Co-occurring conditions/disorders are not uncommon occurrences and it is possible his mental health condition caused his first alcohol related incident as he contended. His mental health condition however, was not found to have a direct impact to his other numerous misconduct behaviors contributing to his discharge. He had explained wearing his civilian clothes over his military uniform was standard practice for safety reasons and service members tend to not initial their roster. However, he did not explain why he was late two hours or more to work, missed his firing appointment, and failed to go to his appointed place of duty, which were also documented misconduct behaviors contributing to his

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discharge. He believed he was racially discriminated against for these minor infractions but there was no substantive evidence submitted to demonstrate his discharge was made in error or was an injustice. The Psychological Advisor opines his discharge could not be mitigated in whole or in part by his mental health condition based on guidance from the Kurta memorandum. The Board however, may choose to upgrade his request based on clemency as outlined by the Wilkie memorandum due to length since discharge as he was discharged over 30 years ago, job history and post service academic and employment achievements, post service community service activities, and character references. This decision is at the Board's discretion.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he suffered from anxiety and depression causing him to cope with alcohol causing his alcohol related misconduct and discharge. He did not attribute his mental health condition causing his remaining misconduct.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant experienced anxiety or depression during service. He stated in this petition he felt anxious and depressed caused by occupational stress and being away from home causing him to cope using alcohol during service. He had two alcohol related incidents, but only one resulted in disciplinary action, and he completed the alcohol rehabilitation program twice during service.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant's mental health condition was found to have caused at least one of his documented misconducts but did not cause his remaining and other numerous misconduct behaviors. Therefore, his mental health condition does not excuse or mitigate his discharge.

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

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 20 Apr 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application

as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).

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 and recommendations of the offices of primary responsibility and finds a preponderance of the evidence does not substantiate the applicant's contentions. In the interest of justice and fundamental fairness, the Board considered upgrading the discharge based on clemency; however, given the evidence presented and in the absence of a criminal history report, the Board finds no basis to do so. Furthermore, the Board notes the applicant's contention that he believes he experienced racial disparity, and his coping mechanism of using alcohol to mitigate his anxiety and depression, led to his minor infractions resulting in a general discharge. However, the Board does not find the evidence presented sufficient to conclude that his mental health condition excuses, mitigates, or outweighs his original discharge. Therefore, the Board is satisfied that the application of liberal consideration does not warrant relief. Accordingly, 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-2021-01903 in Executive Session on 25 May 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 20 Apr 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 11 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Apr 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Apr 22.

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Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 25 Apr 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.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF