



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-2021-02074

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His honorable discharge be corrected to reflect a medical discharge and retirement.

APPLICANT'S CONTENTIONS

His discharge was procedurally and substantively defective. He was seriously injured during military service and should have been medically evaluated and separated as service-connected and unfit for duty. He should have been referred to the Medical Evaluation Board (MEB) or considered for the temporary disability retired list (TDRL) or a military retirement. His service-connected injury should have been deemed in the line of duty (ILOD). The Department of Veterans Affairs (DVA) approved his Post-Traumatic Stress Disorder (PTSD) service-connected disability claim with a 70 percent disability rating.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force captain (O-3).

On 9 Mar 84, the applicant's commander initiated action against him under the provisions of AFR 36-3, *Officer Personnel, Administrative Discharge Procedures*. The specific reasons for the action were:

- a. The applicant failed to demonstrate acceptable qualities of leadership required of an officer of his grade, in that after being placed in the weight management program, he failed, neglected, or refused to maintain his weight in accordance with acceptable standards under AFR 35-11, *Air Force Physical Fitness Program*.
- b. The applicant failed to conform to prescribed standards of personal appearance.

On 20 Apr 84, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

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On 8 Aug 84, the discharge authority directed the applicant be discharged under the provisions of AFR 36-3, section E with an honorable service characterization without the offer of probation and rehabilitation.

On 25 Oct 84, the Air Force Personnel Board found the applicant failed to establish he should be retained in the Air Force.

On 1 Nov 84, the Secretary of the Air Force ordered the applicant be terminated as a Reserve officer pursuant to AFR 36-3 and be issued an honorable discharge certificate.

On 16 Nov 84, the applicant received an honorable discharge. His narrative reason for separation is "Involuntary Discharge – Substandard Performance." He was credited with 14 years, 9 months, and 22 days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C and D.

POST-SERVICE INFORMATION

On 5 Jan 23, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit G). The applicant replied on 12 Apr 23 and provided an FBI report. According to the report, the applicant was arrested on 22 Nov 92, 20 Jun 94, and 27 Feb 95 for possession with intention to distribute marijuana.

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

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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 paragraphs 6 and 7 of the Wilkie memorandum.

On 5 Jan 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

DAFI 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.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor finds no objective medical evidence of a physical or physiologic impediment or disease, beyond or within the applicant's span of control, that warrants a medical basis for separation or retirement. To justify a medical retirement, there must be service evidence of a compensable medical condition that prevented or interfered with the service member's ability to reasonably carry out the duties of his or her office, grade, rank, or rating. The Medical Advisor finds no evidence of a medical condition that supports the applicant's petition for a medical retirement.

The complete advisory opinion is at Exhibit C.

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The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request. Based on a review of the available records, the Psychological Advisor finds the applicant has not met the burden of proof to support his request for a medical discharge, retirement, or placement on the TDRL. There is no evidence the applicant had PTSD or similar conditions during service. Even though there was no evidence the applicant had PTSD during service, there is evidence he was stressed and depressed caused by his family and occupational problems during service causing him to gain weight and have difficulties losing weight that eventually led to his discharge for not meeting weight standards. There was no evidence his condition of PTSD had caused or impacted his weight issues. However, his depression was a factor, but not primary or sole reason for his eventual discharge. His depression (or any other mental health condition) was never determined to have elevated to potentially unfitting for him to be referred to the MEB. Having a mental health condition or receiving a mental disorder diagnosis does not automatically render a condition as unfitting.

There was no indication from his records he should have received an LOD determination. The applicant's traumatic experience occurred when he was an active duty service member in the Regular Air Force and so technically his injury/PTSD had occurred In Line of Duty (ILOD). However, his condition is considered as a prior service impairment because he had a break in service and later commissioned into the Air Force Reserve (AFR). There is no evidence his military duties with the AFR had permanently aggravated his prior service impairment or pre-existing condition of PTSD.

Therefore, the Psychological Advisor finds no error or injustice with his discharge from a mental health perspective and insufficient evidence has been presented to support his request for a medical discharge, medical retirement, or placement on the TDRL for his mental health condition.

Liberal consideration is applied to the applicant's petition. The following are responses from information presented in the available records to the four questions from the Kurta memorandum:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant and his legal counsel contend the applicant developed PTSD from witnessing a fatal bus accident in 1974 when he was deployed to *Work-Product*. They believe he should have been found unfit and received a medical discharge or retirement or be placed on the TDRL for this condition. He was discharged due to not meeting weight standards.

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

There is evidence the applicant was stationed/deployed to *Work-Product* when the bus accident had occurred and witnessed this traumatic incident as he contended. However, there was no evidence his condition of PTSD or similar conditions from this incident had existed or occurred during military service. The applicant was diagnosed with PTSD by his post-service mental health provider and the DVA decades after discharge. It appeared he had a delayed onset of PTSD causing him to meet diagnostic criteria for this condition post-service. There is evidence he had received a mental health evaluation during service and the results found he had depression that was resolving and was a factor to his academic difficulties and weight issues.

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

There is no evidence the applicant had any unfitting mental health conditions to include PTSD and depression that would result with a referral to the MEB and Disability Evaluation System (DES) for a medical discharge or retirement. The applicant's traumatic experience had occurred during his prior service as an active duty airman and his experience and PTSD from this experience would be considered as a prior service impairment. He had a break in service and later commissioned into the AFR. He was able to meet accession standards and so he was determined to be fit for duty when he entered the Reserve. There is no evidence his prior service impairment or condition of PTSD was service aggravated by his military duties with the Reserve. There is no indication he should have received an LOD determination but if he did, the results would yield ILOD-not service aggravated (NSA). There was no error or injustice with his discharge and so his mental health condition from his traumatic experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition from his traumatic experience does not excuse or mitigate his discharge, his condition or experience 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 15 Dec 22 for comment (Exhibit E), and the applicant replied on 3 Jan 23. On behalf of the applicant, counsel contends the applicant was young at the time and has experienced lifelong effects of PTSD and behavioral health issues. The applicant has been diagnosed with PTSD and depression after experiencing a traumatic incident while deployed to Thailand.

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 clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such 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/or opinion of the AFBCMR Medical Advisor and AFRBA Psychological Advisor. The Board notes the applicant provided an FBI report indicating he has had some criminal activity since his discharge. However, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness and liberal consideration; however, given the evidence presented, and in the absence of post-service

information 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02074 in Executive Session on 26 Apr 23:

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 12 Apr 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 7 Dec 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Dec 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Counsel dated 15 Dec 22.
- Exhibit F: Applicant's Response, w/atchs, dated 3 Jan 23.
- Exhibit G: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 5 Jan 23.
- Exhibit F: Applicant's Response, FBI Report, dated 4 Mar 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.

12/28/2023
Work-Product
Board Operations Manager, AFBCMR
Signed by: *Work-Product*