



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-2021-02085

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

At the time of his discharge, he was unaware that the trauma received in the military caused him post-traumatic stress disorder (PTSD). He believed he was self-medicating and not handling the trauma and was unaware it was affecting his behaviors while in the military. He did not receive the treatment needed after he suffered the trauma. He was diagnosed with PTSD in 2013.

In support of his request, the applicant provides a personal statement and a Department of Veterans Affairs (VA) Rating Decision.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 15 Aug 89, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were two convictions in British courts for driving while under the influence (DWI) of alcohol and driving without due care and attention for failing to stop after an accident and failing to report an accident.

On 23 Aug 89, the Staff Judge Advocate found the discharge action legally sufficient.

On 23 Aug 89, the discharge authority directed the applicant be discharged for Misconduct, with a general service characterization and determined probation and rehabilitation was not warranted.

On 11 Sep 89, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern Discreditable Involvement with Military or Civil Authorities" and he was credited with 3 years, 2 months, and 1 day of total active service.

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

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

POST-SERVICE INFORMATION

On 3 Mar 22, 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 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 3 Mar 22, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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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.

Under Other than Honorable Conditions. 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 airmen. 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 Air Force.
- 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 assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to his records. The applicant's objective military records were scarce, and there were no records supporting the applicant's contentions that he was exposed to combat and was severely injured causing him to have unresolved trauma and coped with alcohol. The applicant was quite vague with the description of his traumatic experiences in his personal statement for this petition. He claimed he had sustained physical and mental injuries during his military service but did not provide any other clarifying information such as what was the triggering traumatic event, when and where did the traumatic event occurred, what type of physical injuries did he incur, and how did he sustain those injuries, etc. The applicant reported two different traumatic experiences to the DVA. He reported at two different times that he was exposed to combat in Beirut (Lebanon) and witnessed his driver being killed (the year of occurrence was not reported), and while in England in 1988, he witnessed a friend being shot from a stray bullet while exiting a bar. These accounts to his DVA providers differ significantly than his account for this petition. His reports to his DVA providers reported no physical injuries he sustained that would result with him being hospitalized for two months. Again, his objective military records also found no information or records that either of two events he reported to the DVA had occurred during his military service. His objective military records reported the applicant had drinking issues necessitating alcohol rehabilitation treatment at least three times. His treatment records revealed he was uncooperative and refused to participate in alcohol rehabilitation treatment that was offered to him by the military. He also denied having a drinking problem. The applicant claimed he was not offered treatment or help by the military, but his records dispute this notion. There was no evidence in his military records he drank to cope with unresolved trauma as he claimed and there were no evidence of any traumatic incidents he may have experienced during military service. The applicant was

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discharged from service for his misconduct issues of receiving a DWI and failing stop and report an accident. These two incidents may have been alcohol related caused by his drinking issues, but his drinking issues is considered to be unsuited for military service. Again, there was no evidence he was drinking to cope with a traumatic experience caused by his military service. As a result, the Psychological Advisor finds no error or injustice with his discharge from service.

The Board may choose to apply liberal consideration 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 physical and moral injuries during military service. He reported he was hospitalized for two weeks for his physical injuries and had unresolved trauma in which he alluded to coping with alcohol. He reported being diagnosed with PTSD by the VA.

2. Did the condition exist or experience occur during military service?
There is no evidence in his objective military records to corroborate any of his claims and contentions. There were records reporting he had received and was offered alcohol rehabilitation treatment three times during service from as early as 1987 and until 1989. He was given a diagnosis of Alcohol Abuser by his military provider. There was no evidence he was given a diagnosis of PTSD during service and no evidence he would have met diagnostic criteria for PTSD during military service.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant was found to have alcohol issues during service causing his misconduct and discharge. There was no evidence he experienced any traumatic experiences during service in his available objective military records, and his statement of his traumatic experiences for this petition were found to be vague and insufficient. Therefore, his condition and/or experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since there is no evidence his mental health condition and/or experience may excuse or mitigate this discharge, they also do not outweigh his discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Jan 22 for comment (Exhibit D), 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 recommendation of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; 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. Finally, the Board is satisfied that the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.

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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.2, considered Docket Number BC-2021-02085 in Executive Session on 27 Jul 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 19 May 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Psychological Advisor, dated 6 Jan 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Jan 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 3 Mar 22.

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.

3/27/2023


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Board Operations Manager, AFBCMR
Signed by: USAF