



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-2021-02269

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her Bad Conduct Discharge (BCD) be changed to an honorable discharge.

APPLICANT'S CONTENTIONS

She served honorably throughout her military career and had several life altering experiences that caused Post-Traumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD), Anxiety Disorder, and other things that were severely triggered in her last year. She sought help but was not given any and she still struggles with these issues and was the reason for the delay with submitting this application. She was unaware she could apply for an upgrade until someone informed her.

The applicant's complete submission is at Exhibit A.

APPLICABLE AUTHORITY

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

STATEMENT OF FACTS

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

On 2 Feb 95, according to Special Court-Martial Order (SCMO) Number Mo. dated 14 Nov 96, the applicant's sentence to a BCD and reduction to the grad of airman basic was affirmed.

On 24 Feb 97, according to the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant was discharged with a BCD with a narrative reason for separation of "Court-Martial." She was credited with 15 years, 9 months, and 9 days.

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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

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

POST-SERVICE INFORMATION

On 4 Jan 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, she 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 (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 paragraphs 6 and 7 of the Wilkie memorandum.

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On 4 Jan 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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 completed a review of all available records and finds insufficient evidence to support the applicant's request for an honorable discharge. A review of the applicant's available military personnel records revealed she was convicted at a SPCM for marijuana use and was the reason for her discharge. The date(s) and frequency of her marijuana use were not reported in her records. The applicant claims she had several life altering experiences causing her to develop PTSD, MDD, and Anxiety Disorder and "other things" during her last year in service. She did not clarify these life altering experiences and how her mental health condition from these experiences caused her misconduct and discharge. She did not submit any mental health records or a letter from a duly qualified mental health professional confirming these diagnoses and conditions. Her service treatment records were also not available for review and so there was no records (to include in her military personnel records) to corroborate she experienced any emotional distress, developed, or had any mental health conditions/issues from her experiences, and/or her mental health condition had a direct impact to her discharge. There was no evidence substantiating her claim she sought help and did not receive any help. Her personal testimony was found to be insufficient and not compelling enough to support her contention and request especially since she was convicted at SPCM. The burden of proof is placed on the applicant to submit the necessary documents and information. Thus, the Psychological Advisor

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finds no error or injustice identified with her discharge from the available records to support her request for a discharge upgrade from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are answers to the four questions from the Kurta Memorandum 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 she had several life altering experiences causing her to develop PTSD, MDD, Anxiety Disorder and other things that were severely triggered in her last year. She did not submit any records to corroborate her contention.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant's mental health condition of PTSD, MDD, Anxiety Disorder, had existed or occurred during military service. Her service treatment records were not available or submitted for review. She did not submit any records from a mental health professional to confirm these reported mental disorder diagnoses.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant did not adequately or compellingly discuss how her mental health condition caused her misconduct and subsequent discharge. She did not clarify the alleged life altering experiences she endured during service causing her to experience emotional distress and develop mental health issues. Her mental health condition(s) does not excuse or mitigate her discharge.
4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition(s) does not excuse or mitigate her discharge, her mental health condition(s) also does not outweigh her discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Jan 23 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. 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 limitations 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 injustice.

The Board finds no evidence that the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. However, the Board finds no basis for clemency in the case. Therefore, 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence her mental health condition had a direct impact on her behaviors and misconduct resulting with her discharge, her condition or experience does not excuse, mitigate, or outweigh her discharge. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision. Should the applicant provide additional post-service information (FBI Report, Character/Personal Statements, etc), the Board would be willing to reconsider his request.

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 the 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-2021-02269 in Executive Session on 22 Mar 23:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 14 Apr 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request, Clemency and Liberal Consideration Guidance), dated 4 Jan 02.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 10 Nov 02.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 18 Jan 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.

12/27/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by *Work-Product*