



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-2021-02539

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, Block 4, be corrected to reflect the rank and paygrade of senior airman (E-4).

APPLICANT'S CONTENTIONS

His mental health was not taken into account when his commander separated him with a general (under honorable conditions) discharge, demoted him to the grade of airman basic, denied his promotion to the grade of staff sergeant and canceled his orders to *Work-Product*

According to his health records obtained from the Department of Veterans Affairs (DVA), he was treated for depression, inability to focus, lack of sleep, migraines, and other mental health concerns that had an effect on his job performance and ability to properly manage his finances.

No offer was made to continue treatment for ongoing depression or to obtain any further treatment before he was discharged and these issues occurred after two deployments in support of Operation *Work-Product*

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

On 15 Feb 01, the applicant entered active duty.

On 6 Feb 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen* for Misconduct: Minor Disciplinary Infractions. The specific reasons for the action were between the period of 12 Dec 01 and 20 Jan 06, the applicant received five Article 15s, multiple records of individual counseling (RICs) and letters of reprimand (LORs) for failing to pay his debts, failing to do a proper check on a weapons load crew box, failing two inspections, failing to use a spotter while backing a vehicle that caused damage to another vehicle and for reporting late for duty. One of the Article 15s dated 25 Mar 18, for failing to pay his rent and late fees resulted in him being reduced to the grade of airman first class with a new date of rank of 16 Mar 05. The applicant received another Article 15, dated 31 Jan 06, for being indebted to the Army and Air Force Exchange Services in the amount of \$500.00. As a

**AFBCMR Docket Number BC-2021-02539
CUI//SP-MIL/SP-PRVCY**

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

CUI//SP-MIL//SP-PRVCY

result, the applicant was reduced to the grade of airman basic with a new date of rank of 30 Jan 06. The applicant was also advised of his right to counsel and to submit statements in his own behalf.

On 9 Feb 06, the staff judge advocate found the discharge action legally sufficient and on the same date, the discharge authority directed the applicant be discharged for Misconduct, with a general (under honorable conditions) service characterization. The applicant was not offered probation and rehabilitation.

Dated 14 Feb 06, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates he was discharged in the grade of airman basic (E-1) with service characterized as general (under honorable conditions). His narrative reason for separation is "Misconduct" and he was credited with 4 years, 11 months, and 29 days of total active service.

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

POST-SERVICE INFORMATION

On 14 Mar 22, the Board sent the applicant a request for post-service information, however, he has not replied (Exhibit C).

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

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

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. The applicant's records show that he was treated for his mental health condition of depression, inability to focus, sleep issues, migraines, and other mental health concerns. His symptoms, were assessed to be mild, which led his psychiatrist to change his diagnosis from Dysthymia to Adjustment Disorder with Depressed Mood. His psychological testing session identified his insight to be fair, his judgment was good, and his cognition was linear and goal directed. He did not report severe symptoms and he never received a diagnosis of Major Depressive Disorder that would indicate his depression was severe or moderate rather than mild.

The applicant contends that he was not offered any continued treatment for his ongoing depression. The applicant was seen by psychiatrist and was told to return to the clinic in six weeks for a follow up to assure appropriateness of diagnosis and reconsider the need of medication. His mental health treatment was voluntary and he decided not to return for this treatment. His primary care doctor reported that things were going well for him at home which indicated that his symptoms remained mild as they did not appear to create any problems that would necessitate his need for continued treatment.

Documentation of repeated misconduct indicates the applicant had serious financial issues of accruing unpaid or insufficient funds, failure of work inspections, late for duty and carelessness while operating work vehicles. These behaviors are rather serious and are not consistent to the presentation of mild depression. Mild depression would not cause these types of behavioral or misconduct issues, and there was no evidence to show his mental health condition was severe

CUI//SP-MIL/SP-PRVCY

enough to cause significant and prolonged impairments to his functioning. It was noted the applicant had limited insight into the cause of his depressed mood and could not be definitively ascertained that his depression and mental health condition caused his behaviors and misconduct. To the contrary, it is possible his overwhelming financial issues resulting in Article 15s and repeated misconduct issues may cause him to feel depressed as well. His insight and judgment were found to be fair and good and he did not have any cognitive or thought issues that would impede on his ability to make proper decisions. The applicant was given ample time and opportunity from his leadership to repair his behaviors especially to rectify his financial situation and he was unable to respond to those efforts.

Liberal consideration is applied to the applicant's request. The following are answers to the four questions from 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 had depression, inability to focus, lack of sleep, and other mental health concerns that had an effect on his job performance and ability to properly manage his finances. He believes his commander did not consider his mental health condition at the time of his discharge.
2. Did the condition exist or experience occur during military service?
There is evidence the applicant received mental health treatment for depression, concentration issues, and sleep problems during service. He was initially given a diagnosis of Dysthymia that was changed to Adjustment Disorder with Depressed Mood due to having mild symptoms according to his psychiatrist. His psychological testing evaluator and psychotherapy provider also assigned to him the same latter diagnosis indicating his symptoms were mild.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant's mental health condition and symptoms were considered to be mild. His mild depressive symptoms would typically not produce or cause the types, severity, and frequency of his behaviors and misconduct that were documented in his records. Thus, his mental health condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweighs the discharge?
Since there is no evidence his mental health condition may excuse or mitigate his discharge, his condition also does not outweigh his original discharge. There is no error or injustice identified with 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 8 Feb 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

CUI//SP-MIL/SP-PRVCY

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 to warrant upgrading his discharge. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant requests his rank and paygrade on his DD Form 214, be corrected to reflect senior airmen (E-4). However, he has not provided sufficient evidence of an error or injustice to persuade the Board that he should be promoted to the grade of senior airman. In the interest of justice, the Board considered upgrading the discharge based on clemency and fundamental fairness; however, given the evidence presented, 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.

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-2021-02539 in Executive Session on 27 Apr 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 12 Jul 21.
- 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 14 Mar 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Jan 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Feb 22.

CUI//SP-MIL/SP-PRVCY

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.

2/13/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2021-02539

CUI//SP-MIL/SP-PRVCY