



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02644

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He sustained a head injury and does not remember being discharged. He was crew chief of the month and suddenly after a head injury, he was not good enough to be in the service and got a mental-type discharge for personality disorder. His discharge did not see m right. After 39 years, he received a 90 percent disability rating for the injury. His head injury was inflicted by an intoxicated sergeant; he was severely beaten with a pool cue. He had seizures from the injury which has kept him from a normal life and has memory loss problems.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 8 Apr 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, paragraph 2-4b for a personality disorder. The specific reasons for the action were:

- a. On 2 Oct 81, ATC Form 18, *Record of Individual Counseling*, indicates the applicant was counseled for missing class.
- b. On 20 Oct 81, ATC Form 18 indicates the applicant was counseled for dishonored checks.
- c. On 22 Oct 81, the applicant was issued a notification letter for a failure to show.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

- d. On 26 Oct 81, ATC Form 18 indicates the applicant was counseled for substandard room appearance.
- e. On 27 Oct 81, AF Form 1611, *Notification of Alcohol Abuse Information*, indicates the applicant was a problem drinker.
- f. On 29 Oct 81, a Letter of Reprimand (LOR) was issued for a dishonored check.
- g. On 2 Nov 81, AF Form 2737, *Medical Evaluation-Potential Substance Abuse*, indicates the applicant was referred to the Alcohol Rehab Program by his commander.
- h. On 16 Dec 81, a Letter of Delinquent Indebtedness indicates the applicant was notified of his delinquent account.
- i. On 18 Dec 81, a memo for record (MFR) indicates the applicant was counseled for driving without a valid motorcycle license.
- j. On 22 Feb 82, ATC Form 18 indicates the applicant was counseled for a violation of the safety procedures.
- j. On 25 Feb 82, a Letter of Delinquent Indebtedness indicates the applicant was notified of his delinquent account.
- k. On 26 Feb 82, ATC Form 18 indicates the applicant was counseled for dereliction of duties.
- l. On 4 Mar 82, a LOR was issued for failing to follow proper safety protocols.
- m. On 11 Mar 82, a Report of Incident indicates the applicant was involved in an accident/incident involving a Civil Engineering personal and/or equipment – driving over the safe speed limit.
- n. On 22 Mar 82, ATC Form 18 indicates the applicant was counseled for dereliction of duties.
- o. On 26 Mar 82, a mental health evaluation was conducted on the applicant which found no indication of an on-going psychosis or neurosis but did indicate a presence of a chronic personality disorder due to his habitual patterns of behavior which interfered with adequate adjustment and caused conflict with the environment. The evaluation concluded the applicant was unsuited for further military service with an administrative separation recommendation.

On 21 Apr 82, an evaluation was conducted on the applicant due to his commander's recommendation he be discharged as unsuitable per AFM 39-12 for a personality disorder. The Evaluation Officer recommended the applicant be discharged with a general service

characterization due to his lack of respect for authority, his disregard for obligations while on duty, his instances of financial irresponsibility, and the repetitive nature of his infractions.

On 28 Apr 82, the Staff Judge Advocate found the discharge action legally sufficient.

On 29 Apr 82, the discharge authority directed the applicant be discharged for a personality disorder, with a general service characterization. Probation and rehabilitation was not offered.

On 6 May 82, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitability-Personality Disorder" and he was credited with 1 year and 24 days of total active service.

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

POST-SERVICE INFORMATION

On 9 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 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.

On 9 Mar 22, 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.

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 account that he had sustained a head injury, possibly two head injuries – a blow to the head in Oct 81 and having a loss of consciousness after being hit on the head causing him to be hospitalized for a few hours for observations in Nov 81 was corroborated according to his separation physical. However, there was no evidence he had any residual effects from his head injury that may alter his cognitive functioning and affect his mood or behaviors. Additionally, there was no evidence he had any seizures. The applicant had denied during his separation physical he had any memory issues, difficulties sleeping, depressed mood or anxiety. The applicant received a mental health evaluation to include psychological testing, and his tests results, which consisted of an IQ test (Shipley) and personality inventory (Minnesota Multiphasic Personality

Inventory (MMPI)), found no symptoms or abnormalities consistent with a head injury. His intellectual functioning was within normal range, and his MMPI found he had impulsive, immature, and hyperactivity behaviors, but these behaviors were not consistent to a head injury but to a personality disorder. He was given diagnoses of Atypical Impulse Control Disorder and Other Personality Disorder with impulsive and immature features from the evaluation. There was no overt psychopathology detected from the MMPI. He was assessed to have no thought or cognitive disorder and there were no complaints or observations of any anger or irritability, memory issues, inattention and concentration issues, or other neuropsychological deficits from the applicant during the evaluation to indicate he had any long-term effects from a head injury causing impairment to his overall functioning. His mental health evaluator and the Individual Evaluation Officer (IEO) reported he was dissatisfied with being in the Air Force and had not been amenable to any counseling, reprimands, or corrective behavioral interventions provided by his leadership to repair his behaviors. His lack of motivation and uncooperative attitude/behaviors were identified to have been caused by his personality disorder traits and job dissatisfaction and not due to his head injury. He implied his head injury was related to his separation from service. There was no evidence his head injury had a direct impact to his discharge. His first head injury occurred in Oct 81 (dated unspecified) and his records showed he already had behavioral problems in Sep 81, which predated his first head injury and could not possibly cause this problem. He also had numerous misconduct problems in Oct 81 that predated his head injury. Most of his misconduct occurred after his head injury and giving the applicant the benefit of the doubt that his head injury may produce his poor judgment and impulsive behaviors, the evidence in the records reflected his behaviors were better explained and aligned to his personality disorder traits. There was no evidence he was misdiagnosed with a personality disorder, and the rationale provided by his evaluator to support the diagnosis appeared to be sound and valid.

The applicant was discharged from service for having an unsuited personality disorder interfering with his duty performance. He was initially recommended for an honorable discharge by his commander when he was notified for discharge on 8 Apr 82. His commander had modified his discharge characterization to general to concur with the IEO's recommendation because of the frequency and severity of his behaviors and misconduct. It is certainly within his commander's authority to elect the appropriate discharge characterization deemed appropriate for the applicant that was congruent with his service and records. The Psychological Advisor acknowledges his personality disorder was determined to have caused his numerous misconduct infractions; however, finds his repeated maladaptive behaviors could not be excused or disregarded. The IEO reported he tended to ignore regulations and do as he pleased, which would put himself and others in mortal danger. Additionally, he informed the IEO he would relieve his boredom by resorting to alcohol and "impulsive acts of mischief and violence." His complete disregard for the safety and well-being of others could not be outweighed or mitigated by his mental health condition as these were serious matters. Therefore, the Psychological Advisor finds no error or injustice with discharge.

The applicant's DD Form 214 currently lists his narrative reason for separation as "Unsuitability-Personality Disorder." The Board may choose to change his narrative reason to "Condition Not A Disability" for privacy concerns while still appropriately reflecting his reason for discharge. The decision to change his narrative reason for separation 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 sustained a head injury causing him to have seizures during service and alluded that this condition and not personality disorder caused his discharge from service.
2. Did the condition exist or experience occur during military service?
There is evidence from his separation physical he had sustained possibly two head injuries for a blow to the head in Oct 81 and a loss of consciousness after being hit in the head leading him to be hospitalized for observations for a few hours in Nov 81 which occurred during military service. There is no evidence he had seizures from his head injury as claimed. The applicant was referred to a mental health evaluation due to his less than satisfactory duty performance. The results of the evaluation yielded a diagnosis of Atypical Impulse Control Disorder and Other Personality Disorder with impulsive and immature features.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence his head injury had a direct impact to his behaviors and subsequent discharge. His mental health evaluation found he had an unsuiting personality disorder that interfered with his duty performance and behaviors. His unsuiting mental health condition may have caused his behaviors and misconduct problems but does not excuse or mitigate his discharge because his reckless behaviors could have caused harm and jeopardized the safety of himself and others.
4. Does the condition or experience outweigh the discharge?
There is no error identified with the applicant's administrative discharge for having an unsuiting mental health condition; his mental health condition 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 5 Oct 22 for comment (Exhibit E), and the applicant replied on the same Date. In his response, the applicant contends he was assaulted by a staff sergeant who was drunk at the time which resulted in a Traumatic Brain Injury (TBI). At the time of the incident, the attending physician was new and had no experience with handling TBIs. He does not know why he was attacked. He was discharged soon after this incident because of seizures. His discharge did not reflect this; he was crew chief of the month and then suddenly, he was discharged. He is seeing a numerologist and has been found 90 percent disabled by the Department of Veterans Affairs (DVA) and these records are available at the Pensacola DVA hospital. In regards to the chlorine gas incident, two other airmen were involved who helped lock him in his room goofing around when the line broke the mask on the other side of the door. He never disclosed the details stating "because you don't turn on your brothers."

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 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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of his request. While the Board finds no error in the original discharge process, the Board recommends partial relief recognizing the potential stigma of "Personality Disorder" listed on his DD Form 214 which is sufficient to warrant a change to his records. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's request for an honorable discharge. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, his complete disregard for the safety and well-being of others is not mitigated or outweighed by his mental health condition. He had an unsuiting personality disorder that interfered with his duty performance and behaviors which may have caused his behaviors and misconduct problems but did not excuse or mitigate his discharge. 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 and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 6 May 1982, he was discharged with a separation code and corresponding narrative reason for separation of JFV (Condition, Not A Disability).

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant, the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2021-02644 in Executive Session on 21 Dec 22:

Work-Product	Panel Chair
Work-Product	, Panel Member
Work-Product	Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, dated 17 Jul 21 and 20 Apr 22.
- 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 9 Mar 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Oct 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Oct 22.
- Exhibit F: Applicant's Response, dated 5 Oct 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.

12/22/2023

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Board Operations Manager, AFBCMR

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