



**CUI//SP-MIL/SP-PRVCY**

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02649

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

After retraining and transferring to a new base in 1987, he was having trouble sleeping and felt overwhelmed. After the premature death of his daughter in February 1989, he could not concentrate, had trouble sleeping, felt very depressed, hopeless, bitter, worthless and did not know who to turn to for help. He became mean and hated himself and needed serious psychological help, so he and his wife went to grief counseling once but were unable to open up. In May 1990 his wife left him and took his daughters. After his court-martial, he saw a psychologist but received no help, no medication, nor follow-up appointment. He has been in therapy since December 1995. His performance reports will show his service was honorable prior to his daughter's death; however, the Air Force, his commander and his supervisor failed to help him thru those difficult times.

In support of his request for clemency, the applicant provides a personal statement and two character reference statements.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 9 November 1990, 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:

- a. On 1 December 1989 to on or about 21 December 1989, the applicant conspired with another individual to commit larceny and receipt of stolen property of the Army and Air Force Exchange Service (AAFES), violating Article 81 of the Uniform Code of Military Justice (UCMJ).
- b. On or about 21 December 1989, the applicant wrongfully received property of the AAFES, which he knew was stolen, to which he pled guilty in a General Court-Martial for violating Article 134 of the UCMJ.

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- c. On diverse occasions between 1 July 1989 and 31 December 1989, the applicant conspired with another individual to commit larceny of the AAFES and the other individual delivered the merchandise to the applicant at his direction and he then removed the merchandise from the AAFES, violating Article 81 of the UCMJ.
- d. On diverse occasions between 1 July 1989 and 31 December 1989, the applicant stole merchandise of the AAFES, of some value, which he knew to be the property of the AAFES, with intent to permanently deprive the AAFES, violating Article 121 of the UCMJ.
- e. On 22 February 1990 the applicant received a letter of reprimand for being disrespectful and insubordinate toward a commissioned officer, violating Article 89 of the UCMJ.

On 4 April 1991, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 April 1991, the discharge authority directed the applicant be discharged for Misconduct, with an UOTHC service characterization. Probation and rehabilitation was considered, but not offered.

On 10 January 1992, the applicant received an under UOTHC discharge. His narrative reason for separation is "Misconduct - Other Serious Offenses" and he was credited with 18 years, 11 months, and 24 days of total active service.

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

**POST-SERVICE INFORMATION**

On 30 December 21, 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 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 C). The applicant has not replied. However, the applicant provided a personal statement and two character statements with the initial application.

**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 30 December 21, 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 the desired change to his records. However, the Board may consider applying clemency to his request due to length of time since discharge. A review of the applicant's available military records partially supports the applicant's contentions. There was no evidence he had bipolar symptoms or disorder during service. He reported he met with a psychologist for sleep problems after his court martial and confinement and there were no records of this meeting. He was not diagnosed and treated with this condition until three years after his discharge. It is possible his depression from his grief and loss may have triggered the onset of his bipolar disorder, but it also appeared more likely than not his bipolar disorder/condition developed after service as his bipolar symptoms did not appear until after discharge. There was no evidence he experienced any hypomanic or manic episodes, which are required symptoms of this condition, during service. He also reported during his separation physical he did not experience any depression, anxiety, or sleep issues. He believed if he was treated for this condition for this condition, the outcome would have been different for him. There is no merit to this assertion as he did not exhibit any bipolar symptoms to be treated during service. Although there was no evidence he had bipolar disorder during service, there was evidence he reported experiencing grief and loss following the death of his newborn daughter during service. He had discussed in his sworn and unsworn statements as part of his court martial/administrative discharge board hearing, he and his wife were devastated by the loss of their child and faced marital difficulties after their loss. They attended counseling for their problems but was not helpful. The applicant contended he experienced depression following his daughter's death and his report is credible as depression or depressed mood is a common symptom or emotional reaction to grief and loss, especially in response to the loss of a child. While this psychological advisor is sympathetic to his loss, the applicant had reported in his statements he knowingly received the stolen items and gave the items to his wife as Christmas presents to improve their relationship and to give them a nice Christmas after experiencing their loss and difficulties. This Psychological Advisor concedes the applicant had noticeable behavioral changes because he was able to serve for over 17 years without any serious incidents or remarks in his records up until the time of his loss but again, the applicant acknowledged knew what he did was wrong at the time of the misconduct and continued to engage in improper activities thereafter. Furthermore, many people dealing with grief and loss do not engage in deliberate and illegal activities or serious misconduct and his experience could not excuse or mitigate his behaviors. Thus, this Psychological Advisor finds no error or injustice with his discharge.

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 was diagnosed and treated with bipolar disorder three years after discharge and believed if he was treated for this condition during service, the outcome would have been different for him. He reported experiencing the death of his daughter during service causing him to feel very depressed, hopeless, bitter, worthless, and have sleep problems. He did not know how to cope with his loss and the experience put him in a completely different state of mind.
2. Did the condition exist or experience occur during military service?

There is no evidence the applicant's bipolar symptoms or disorder had existed or occurred during military service. There is evidence he reported experiencing the loss of his daughter and had marital difficulties after her death and attended brief counseling with his wife during service. He reported he met with a psychologist for sleep problems after his court martial and there were no records of this meeting, and no records he had received any mental health disorder diagnosis, evaluation, or treatment during service. The applicant denied during his separation physical he experienced any anxiety, depression, or sleep issues. The applicant was diagnosed and treated for bipolar disorder three years post service.

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

There is no evidence his bipolar disorder condition had a direct impact to his misconduct and discharge. The applicant's mental health condition of depression, grief and loss from his daughter's death may have caused his behavioral changes, impaired judgment, and poor decision-making skills to receive stolen items, but the applicant admitted he knew what he did was wrong at the time and willfully engaged in subsequent inappropriate behaviors resulting with his court martial conviction and discharge. His condition and experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there was no evidence his mental health condition or experience may excuse or mitigate his discharge, his condition and experience also do not outweigh 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 1 Sep 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 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes many people dealing with grief and loss do not engage in deliberate and illegal activities or serious misconduct and his experience could not excuse or mitigate his behaviors. Thus, the Board finds no error or injustice with 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 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 2.5, considered Docket Number BC-2021-02649 in Executive Session on 26 Oct 22:

████████████████████ Panel Chair  
████████████████████, Panel Member  
████████████████████, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 14 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 30 Dec 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 2 Aug 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Sep 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.

5/25/2023

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Board Operations Manager, AFBCMR  
Signed by: USAF