



**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-2021-02793

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His uncharacterized entry level separation (ELS) discharge be upgraded to honorable.

**APPLICANT'S CONTENTIONS**

The Department of Veterans Affairs (DVA) determined his mental health status was service connected, and he received a 50 percent disability rating for his mental disorder. A discharge upgrade will allow him to secure opportunities in the future.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former airman first class (E-3).

On 1 Nov 96, according to AETC Form 125A, *Record of Administrative Training Action*, the applicant's commander approved the applicant's discharge from the Air Force based on the applicant being diagnosed with recurrent back pain and bilateral leg pain. He was offered an opportunity to reclassify to another career field but chose separation instead.

On 14 Nov 96, the applicant received an uncharacterized ELS. His narrative reason for separation is "Defective Enlistment Agreement" and he was credited with 3 months and 14 days of total active service.

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

**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

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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 Oct 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

**AIR FORCE EVALUATION**

AFPC/DP2SSR recommends denying the application. Airmen are in entry level status (ELS) during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit D.

**ADDITIONAL AIR FORCE EVALUATION**

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge. A review of the applicant's available records finds the applicant has not met the burden of proof to support his request. His official discharge paperwork and service treatment records were unavailable; however, there was a document reporting he was recommended to reclassify to another career field by his primary care manager because of back and bilateral leg pain; however, the applicant opted to be discharged, which was approved by his commander. This situation was most likely the cause and reason for his discharge. There were no records he had any mental health conditions during service and no evidence his mental health condition was the cause or reason for his discharge. He has been receiving mental health treatment from the DVA for depression triggered by post-service stressors and not from his military service.

Liberal consideration is applied to the applicant's request. The following are responses to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

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The applicant contends the DVA service connected his mental health condition. He did not specify his mental disorder condition/disorder and/or how his mental health condition caused his discharge.

2. Did the condition exist or experience occur during military service?

There is no evidence the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during military service. He has been treated for depression triggered by post service stressors and not by his military service by the DVA that began over 20 years post-discharge.

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

Since there is no evidence he had a mental health condition during service, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition excuses or mitigates his discharge, his mental health condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit E.

**APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS**

The Board sent a copy of the advisory opinions to the applicant on 26 Oct 22 for comment (Exhibit F) but has received no response.

**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 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 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 AFPC/DPMSSR and the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant opted to be discharged when offered to cross-train due to an injury. DoD determined it would be unfair to the member and the service to characterize a member's service if it is less 180 days of continuous active service. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. There were no records he had any mental health conditions during service and no evidence his mental health condition was the cause or reason for his discharge, thus his condition does not mitigate or excuse his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. Therefore, the Board recommends against correcting the applicant's records.

**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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02793 in Executive Session on 26 Jul 23:

*Work-Product* [Redacted] Panel Chair  
*Work-Product* [Redacted] Panel Member  
*Work-Product* [Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, dated 10 Aug 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 25 Oct 22.
- Exhibit D: Advisory Opinion, Advisory, AFPC DPMSSR, dated 25 Oct 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 26 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.

3/6/2024

*Work-Product* [Redacted]

Board Operations Manager, AFBCMR

Signed by: *Work-Product* [Redacted]