



**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-2021-02835

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His "Uncharacterized" Entry Level Separation (ELS) with narrative reason of separation of "Fraudulent Entry into Military Service" be changed.

**APPLICANT'S CONTENTIONS**

He wants his discharge/narrative reason for separation changed to be eligible for Post-Traumatic Stress Disorder (PTSD) pay. His parents put him on anti-depressants when he was a child. He was assaulted and his face was cut open during duty and had traumatic stress. He denies any fraud and has been unable to work since discharge.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 6 Mar 02, a Letter of Reprimand (LOR) was issued for engaging in a mutual physical confrontation with another airman.

On 10 Jun 02, the applicant's commander recommended the applicant receive an ELS from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.15 for a fraudulent entry due to the following:

- a. On 4 Oct 01, Part 2 of the SF 86, *Questionnaire for National Security Positions*, indicates the applicant denied having consulted with a mental health professional in the last seven years.
- b. On 10 May 02, a Mental Health Evaluation (MHE) was completed on the applicant which found he presented symptoms indicative of an Adjustment Disorder with anxiety and depressed mood. It was revealed he was on anti-depressants two weeks prior to service

**AFBCMR Docket Number BC-2021-02835**  
**CUI//SP-MIL/SP-PRVCY**

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

and did not reveal this information on his enlistment paperwork. He was advised this could constitute a fraudulent enlistment.

c. On 21 May 02, ATC Form 125A, *Record of Administrative Training Action*, indicates the applicant was disenrolled from training due to fraudulent entry into the Air Force.

On 12 Jun 02, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 17 Jun 02, the discharge authority directed the applicant be discharged with an ELS for fraudulent entry.

On 18 Jun 02, the applicant received an uncharacterized ELS with no creditable service. His narrative reason for separation is “Fraudulent Entry into Military Service.”

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits D and E.

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

According to AFI 36-3208, incorporating changes through 8 Jun 17, paragraph 1.18, the types of service characterization are as follows:

**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.

**Entry Level Separation.** Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

According to AFI 36-3202, *Separation Documents*, Table 4, note 3, time spent in an enlistment that is determined to be fraudulent and has been specifically terminated by reason of fraud is not creditable service.

## **AIR FORCE EVALUATION**

AFPC/DPMSSR recommends denying the application finding no error or injustice with the discharge processing. A review of the Master of Personnel Record revealed that the commander provided ample justification to the Base Discharge Authority (BDA) to support discharge. The applicant was found to have intentionally failed to disclose that he had been treated for a mental health condition and was on medication for this condition until two weeks prior to entry on active

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

duty. The BDA determined that separation was appropriate and directed discharge based on fraudulent entry.

The complete advisory opinion is at Exhibit D.

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 has not met the burden of proof to support his request. The applicant was discharged from service for fraudulent enlistment for having disqualifying prior service mental health condition/treatment that he did not divulge during his enlistment process. He claims there was no fraud but admits he was placed on antidepressants as a child, which would confirm he had prior service mental health treatment. Furthermore, there was no evidence his prior service mental health condition/treatment was aggravated by his military service. As his commander stated in the notification memorandum that should he had disclosed this significant mental health history, he might not have been allowed entry into the service. He would require receiving a waiver for entry but based on his history, he most likely would not have received a waiver. There was no evidence he was assaulted during service as claimed, no evidence he had PTSD symptoms from this incident, and no evidence his assault experience caused his discharge. He reported to the Department of Veterans Affairs (DVA) suicide prevention hotline operator, over 20 years post-discharge, he had schizophrenia, paranoid, and PTSD, but with no evidence he had any of these conditions during service. His available records reported he had anxiety during basic military training (BMT) but its triggers were not specified and he was given a diagnosis of Adjustment Disorder with Anxiety and Depressed Mood. This condition also did not cause his discharge. He was discharged under ELS for fraudulent entry that was consistent to current policy per AFI 36-3208. There was no error or injustice with his discharge.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's petition because his prior service mental health condition was not service-aggravated per the Kurta memorandum #15. Should the Board elect to apply liberal consideration to his petition, the following are responses to the four questions from the Kurta Memorandum from the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant contends his parent placed him on anti-depressants when he was a child and denied any fraud. He reports he was assaulted, his face was cut open during duty, and had traumatic stress.
2. Did the condition exist or experience occur during military service?  
There is no evidence the applicant was assaulted during service and developed traumatic stress. He was reported to have anxiety during BMT and the cause of his anxiety was not specified and was given a diagnosis of Adjustment Disorder with Anxiety and Depressed Mood. He revealed to his mental health provider he took Prozac for two years and stopped taking this medication two weeks prior to his entry into service.
3. Does the condition or experience excuse or mitigate the discharge?

The applicant contends he was placed on anti-depressants when he was a child by his parents, which confirms he had prior service mental health treatment. He was discharged for fraudulent entry for failing to disclose his prior service mental health treatment, which was not found to have been aggravated by his military service. There was no evidence his alleged assault and traumatic stress caused his discharge. There is no error or injustice identified with his discharge and 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 EVALUATION**

The Board sent a copies of the advisory opinions to the applicant on 24 Oct 22 for comment (Exhibit F), but has received no response.

#### **FINDINGS AND CONCLUSION**

1. The application was not timely filed.
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 recommendations of AFPC/DPMSSR and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The records available reveal that he was discharged from the service for fraudulent enlistment due to having a disqualifying prior-service mental health condition/treatment that he did not divulge during his enlistment process thus is not considered under the intent and guidance of liberal consideration. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

#### **RECOMMENDATION**

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2021-02835 in Executive Session on 30 Nov 22:

*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 13 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 20 Oct 22.
- Exhibit D: Advisory Opinion, AFPC/DPMSSR, dated 20 Oct 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 22.

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.

8/1/2023

*Work-Product* [Redacted]

Board Operations Manager, AFBCMR  
Signed by: USAF