

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02845

XXXXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His narrative reason for separation be changed from Misconduct to Medical.
3. His grade be reinstated to senior airman (E-4) with the original date of rank of 10 Jan 04.

APPLICANT'S CONTENTIONS

He suffered from severe undiagnosed Post-Traumatic Stress Disorder (PTSD) resulting from combat deployment(s) and aggravated by underlying medical conditions that he continues to experience. He had an alcohol related incident in 2002, after returning from a deployment. He began treatment for alcohol dependence. This would be his second alcohol related incident post deployment. This was his way of self-medicating and dealing with the anxiety and depression. Additionally, he contracted severe skin conditions while deployed to XXXXX. The skin condition, along with other service-connected conditions have only amplified the PTSD symptoms. Unknown to him at the time, the depression and anxiety was the leading factor in the poor decisions he made which lead to disciplinary action.

In support of his requests, the applicant provides a personal statement, copies of medical records, orders, photos, post-service academic records and various other documents associated with his request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

On 29 Sep 03, the applicant was promoted to the grade of senior airman (E-4), with a date of rank and effective date of 10 Jan 04.

On 21 Dec 04, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFPD-36-32, *Military Retirement and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The specific reasons for the action were:

- a. On 10 Jul 01, the applicant received an Article 15 for damaging government property by striking the Air Force Base perimeter gate with his vehicle. As a result, he was demoted to the grade of airman (E-2) with a new date of rank of 10 Jul 01.

- b. On 3 Aug 01, the applicant received an Article 15 for violating a lawful general order by consuming alcohol within eight hours of duty. As a result, the applicant was demoted to the grade of airman basic (E-1) with the reduction below airman (E-2) suspended, 14 days of extra duty and a reprimand.
- c. On 6 Dec 04, the applicant received an Article 15 for failing to obey a lawful order to remain reachable by telephone and inform someone if leaving the area during a base exercise. As a result, the applicant was demoted to the grade of airman first class (E-3) with a new date of rank of 6 Dec 04, restriction to the limits of duty base for 30 days, 15 days of extra duty and a reprimand.

On 6 Jan 05, the discharge authority directed the applicant be discharged for Misconduct, with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

On 13 Jan 05, the applicant was discharged with service characterized as general (under honorable conditions) in the grade of airman first class (E-3) with a date of rank and effective date of 6 Dec 04. His narrative reason for separation is "Misconduct" and he was credited with 5 years, 1 month, and 12 days of total active service.

On 25 May 07, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 3 Apr 08, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 25 Feb 22, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did reply to the request for post-service information (Exhibit D), his response did not include an FBI background check or other criminal history data.

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 25 Feb 22, the Board staff provided the applicant a copy of the supplemental 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 sufficient evidence to support the applicant's request for an upgrade to Honorable and change of narrative reason of separation to "Secretarial Authority" based on liberal consideration. However, there was insufficient evidence presented to support his request for a medical discharge based on his mental health.

His objective military records indicated he had deployed twice, from 3 Feb 01 to 22 Mar 01 and 27 Sep 01 to 7 Mar 02. He had two alcohol related misconducts incidents on 24 May 01 and 19 Jul 01 after his deployments. This information would dispute his contention that his second alcohol related incident occurred in 2002 and after he returned from deployment. There were records corroborating the notion he began to have problems with alcohol after his return from deployment, as evidenced by his statement to his misconduct referencing completion of the six-hour alcohol education course and receiving alcohol abuse treatment from the Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program after his second alcohol related incident. The applicant did not report having any anxiety, depression, or traumatic experiences in his numerous personal statements in response to his disciplinary and discharge actions, but he did discuss his deployment experiences of working long hours and being involved in classified combat missions. Personal statements suggest he may have been involved in combat or at least had hostile or stressful experiences while deployed as he contended. It is comprehensible he may have been stressed or was affected by these deployment experiences causing him to cope with alcohol resulting with his first two Article 15s for alcohol related misconduct. The applicant received a third Article 15 a few years later for being unable to be reached by phone for a base exercise. The applicant provided a personal statement to this infraction but it appears to not have been caused by his mental health condition. However, a holistic assessment of his misconduct finds his explanation of coping with his mental health condition with alcohol caused by his military duties were sufficient and reasonable enough to explain the causes of most of his misconduct and mitigating his discharge. The AFRBA Psychological Advisor finds sufficient evidence was presented through his personal testimony, submitted extracted service treatment records, and DVA records to support his request for an upgrade of his discharge to Honorable based on liberal consideration. If the Board concurs with this finding, it is also recommended his narrative reason be changed to "Secretarial Authority" to be consistent with an Honorable discharge.

The applicant is also requesting a medical discharge. The applicant did receive alcohol abuse treatment during service and was given a diagnosis of alcohol dependence. This condition is considered unsuited and does not meet criteria for a medical discharge. The submitted service treatment records finds he was not given any other mental disorder diagnosis especially related to anxiety, depression, or PTSD. The applicant was diagnosed with these conditions several years post service according to his DVA records. The applicant alleges he was improperly diagnosed during service, but there is no evidence to support his claim. It is plausible he may have experienced symptoms of anxiety, depression, or PTSD during service, but there was no evidence he reported experiencing any of these symptoms to his providers during service in order for them to assign a diagnosis or that these symptoms/conditions had elevated to potentially unfitting causing early career termination. There was no evidence he was placed on a duty limiting conditions profile or deemed not worldwide qualified due to his mental health condition. There were also no reports from his chain of command of any observance of mental health concerns that

may interfere with his ability to reasonably perform his military duties in accordance to his office, grade, rank or rating. Without these markers in his objective service records, he was not eligible to be referred to the Medical Evaluation Board for a possible medical discharge. As a result, his request for a medical discharge could not be supported.

For awareness since the applicant has been receiving service connected compensation for PTSD and depression by the DVA: The military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

Liberal consideration is applied to the applicant's petition due to his contention of a mental health condition. 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 undiagnosed PTSD caused by his deployment experiences and coped with alcohol resulting with his misconduct and discharge. He has been receiving treatment and service connected compensation for PTSD and depression from the DVA.
2. Did the condition exist or experience occur during military service?
There was no evidence he was diagnosed with PTSD or similar conditions during service, but there was evidence he received alcohol treatment for alcohol dependency issues from ADAPT following his return from deployment. He was not diagnosed with PTSD until about nine years post discharge.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant explained he had coped with his mental health condition of anxiety, depression and PTSD with alcohol and his behaviors resulted with his discharge. His contentions were corroborated by his military and DVA records and therefore, his condition would excuse or mitigate his discharge.
4. Does the condition or experience outweighs the discharge?
Since his mental health condition was found to have caused, excused, and mitigated his discharge, his condition would also outweigh his discharge.

The complete advisory opinion is at Exhibit E.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor finds insufficient evidence that the applicant had an unfitting medical condition that could/would meet criteria for a referral into the disability evaluation system (DES). The applicant's skin condition of acne was present prior to service entry and its occasional flare-ups while on active duty did not rise to a level where he was reasonably unable to perform the duties of his rank, grade, office or rating. The shin splints and the right shoulder sprain, physical restrictions were few and lasted less than one month in each case; neither of which would be considered unfitting in performing his intended military duties. The applicant, in his own stated answers on the report of medical assessment, did not have any medical conditions that limited his ability to work in his primary military duty. The evidence provided by the applicant does not support his request for additional consideration and processing through the Disability Evaluation System (DES). The medical decisions and overall separation process was fair and appropriate without evidence of an applied error or rendered injustice.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 4 May 22 for comment (Exhibit G), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 requests. While the Board finds no error in the original discharge process, the Board recommends partial relief based on liberal consideration. As noted by the AFRBA Psychological Advisor, the applicant's contentions were corroborated by his military and DVA records and therefore, his condition would excuse or mitigate his discharge. As such, the Board recommends the applicant's discharge be upgraded to fully honorably. Although the applicant request his narrative reason for separation be changed from Misconduct to Medical, the Board finds it more appropriate to change it to "Secretarial Authority" with the corresponding separation code of "JFF." The Board also notes the applicant request his former grade of senior airman be reinstated; however, he has not provided sufficient evidence to support his request. Therefore the Board finds no basis to recommend granting this portion of the applicant's request. Accordingly, the Board recommends correcting the applicant's records to the extent indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that his DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with his discharge on 13 Jan 05, be amended to reflect he was honorably

discharged with a narrative reason of “Secretarial Authority” and a corresponding separation code of “JFF,” and was furnished an Honorable Discharge Certificate.

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-2021-02845 in Executive Session on 25 May 22:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 27 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 25 Feb 22.
- Exhibit D: Applicant’s Response, w/atchs, dated 25 Feb 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Apr 22.
- Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 2 May 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 4 May 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.

X

Board Operations Manager, AFBCMR