

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03101

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His discharge should be upgraded due to his service records contain incorrect and invalid entries. Specifically, documents have been doctored to make it look like he was suicidal and had a pattern of misconduct.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 19 Jun 86, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Enlisted Personnel, Administrative Separation of Airmen*, for a pattern of misconduct. The specific reasons for the action were:

- a. On 10 Mar 86, he was counselled for failing to wear proper safety equipment while operating his motorcycle.
- b. On 27 Mar 86, he was counselled for failure to meet a scheduled appointment.
- c. On 29 Mar 86, he reported to duty not in compliance with AFR 35-10, *Dress and Personal Appearance of Air Force Personnel*, with his uniform improperly configured.
- d. On 7 Apr 86, he missed a second appointment to fire weapons qualification.
- e. On 10 Apr 86, he was counselled for failing to use the proper chain of command in making a complaint.
- f. On 15 May 86, he was counselled for imprudent use of a motor vehicle, his motorcycle, and for irrational behavior, resulting in his motorcycle being impounded for his safety.
- g. On 15 May 86, a Memo for Record concerning his irresponsible attitude was prepared. At that time, he was restricted from using firearms and removed from flight duties.
- h. On 19 May 86, after Mental Health personnel briefed him that he had an immature attitude but not a threat, he was returned to flight duties.
- i. On 20 May 86, he was again counselled not to operate his motorcycle without utilizing the proper safety equipment.

j. On 25 May 86, he was apprehended for disorderly conduct, Art 134, Uniform Code of Military Justice (UCMJ), and relieved of all flight duties, placed on the weapons restriction list, restricted to base and had his motorcycle impounded for the second time.

k. On 27 May 86, a special security file was established, and his security clearance was placed in adjudication.

On 14 Jul 86, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Jul 86, the discharge authority directed the applicant be discharged with a general service characterization for a pattern of misconduct – conduct prejudicial to good order and discipline. Probation and rehabilitation was considered, but not offered.

On 16 Jul 86, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of “misconduct–pattern conduct prejudicial to good order and discipline.” He was credited with 9 months and 21 days of total active service.

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

POST-SERVICE INFORMATION

On 18 Jul 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 the supplemental guidance, paragraphs 6 and 7.

On 18 Jul 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

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 EVALUATIONS

AFPC/DP2SSR recommends denying the application. The commander provided the Base Discharge Authority (BDA) ample documentation to support discharge and the character of service. The BDA determined that the negative aspects of the applicant's conduct clearly outweighed any positive aspects of the applicant's brief military career. Based on review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for an honorable discharge. A review of the applicant's available objective military records finds there was ample and sufficient documentation in his military file indicating he had numerous behavioral and misconduct problems during his brief time in service, which disputes the applicant's contention. In terms of his claim his records were "doctored" to make it appear he was suicidal and had misconduct problems, there was no evidence to substantiate this claim. The applicant had reported to the security police office investigator (SPOI) he had attempted suicide twice prior to service and had also admitted to the mental health provider he had a history of suicide thoughts and behaviors also prior to service. These reports were consistent. It is to note the applicant did not report this significant mental health history during his enlistment process and could be considered fraudulent entry, and his condition would be considered existed prior to service (EPTS) with no

evidence of service aggravation. There were multiple individuals in his chain of command who had documented counseling sessions and disciplinary actions in response to his misconduct and there were numerous witness statements from different individuals also attesting to his poor behaviors. His mental health evaluation also reported similar and consistent findings to these observations and reports. Due to the abundance of reports from different individuals with similar observations, it is highly doubtful these records were “doctored.” His discharge action for his pattern of misconduct was also reviewed by a Staff Judge Advocate and was deemed to be legally sufficient, adding an additional layer that his records and discharge action for misconduct were accurate and appropriate. The applicant did not submit any evidence or witness statements to corroborate his claims and the burden of proof is placed on the applicant to submit the necessary records. In light of the absence of records or evidence to support his claims, presumption of regularity is applied and the psychological advisor finds no error or injustice with his discharge.

The applicant denied he was suicidal and believed his records reporting this behavior was “doctored.” His mental health condition to include suicidal thoughts were found to be EPTS and no evidence was aggravated by his military service. For these circumstances, liberal consideration is not required to be applied based on policy guidance. However, should the Board choose to apply liberal consideration to the applicant’s request due to his mental health history, the following are answers to the four questions from the Kurta memorandum 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 there were incorrect and invalid entries into his service records and alleged the documents had been doctored to make it look like he was suicidal and had a pattern of misconduct.

2. Did the condition exist or experience occur during military service? The applicant had reported to the SPOI he had attempted suicide twice prior to service and due to this report, his commander referred him to a mental health evaluation for concerns of his safety and disciplinary problems. The applicant was seen a total of three times by a mental health provider during service and he also confirmed to the provider he had history of suicide thoughts and behaviors prior to service. He denied having any active suicidal plans but he was reported and observed to display erratic, impulsive, and hostile behaviors during military service.

3. Does the condition or experience excuse or mitigate the discharge? There were no errors found with his mental health evaluation and behavioral/misconduct information documented in his military records. The applicant’s mental health condition to include suicidal ideation and behaviors were found to be EPTS with no service aggravation. He was found to have impulsive, irritable, hostile and rebellious behavioral traits that may cause some of his misconduct, but they do not excuse or mitigate his discharge. These behavioral traits are considered to be unsuited behaviors for military service.

4. Does the condition or experience outweigh the discharge? Since his mental health condition to include suicidal thoughts and behaviors does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 20 May 22 and 6 Sep 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's response to the advisory opinions, the Board concludes the applicant is not the victim of an error or injustice. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. The Board concurs with the rationale and recommendations of the AFPC/DP2SSR and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant's request does not warrant consideration under liberal consideration due to his mental health conditions were found EPTS with no service aggravation. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, in the absence of post-service information and criminal history report, the Board finds no basis to do so. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's record.
4. The applicant also alleges he faced reprisal based on his DD Form 149, Application 15 Sep 21. Based on the authority granted to this Board pursuant to 10 U.S.C. § 1034, the Board reviewed the complete evidence of record to reach our own independent determination of whether reprisal occurred. Based on our review, the Board concludes the applicant has failed to establish he was reprised against. Therefore, in the absence of persuasive evidence to the contrary, the Board does not find the applicant has been the victim of reprisal pursuant to 10 U.S.C. § 1034.
5. 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 (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03101 in Executive Session on 24 Aug 22 and 6 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, dated 15 Sep 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 22 Feb 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 19 May 22.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 May 22 and 6 Sep 22.

Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 18 Jul 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