



**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:**

*Work-Product*

**DOCKET NUMBER:** BC-2021-03230

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

He wants his discharge upgraded to meet GI Bill requirements. At the time of his discharge, he suffered from borderline personality disorder (BPD) and attention-deficit/hyperactivity disorder (ADHD) causing his misconduct. He suffered from ADHD as a child and was prescribed Ritalin, which he had taken for one year starting at the age of 12 and stopped taking the medication on his own without his parent's knowledge. He reported that while waiting for deployment in Jan 04, his youngest brother had drove from *Work-Product* for his 21st birthday. He had a few people over to his apartment for a party and an argument between his brother and another invited guest over a woman had ensued. The guest/man left and came back with a pellet gun and shot his brother in the chest. He then chased after the man and got shot in his arm. He and his friends then went looking for the man and damaged the man's apartment. He was arrested and charged with felony larceny, trespassing, and damaging property equivalent to \$2,000.00. His first sergeant had bailed him out of jail on the same night and he was reprimanded and notified of discharge the following day by his commanding officer. He reported receiving two years of community service and ordered to pay \$2,000.00 in restitution to the individual whose property he had damaged, which he had complied. He has not had any legal issues since his discharge. He suffered from Post-Traumatic Stress Disorder (PTSD) from that night on 11 Jan 04 and was diagnosed with BPD in Apr 20. He has been taking medications to help stabilize his mood and has the desire to be the first person in his family to graduate from college.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

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Controlled by: SAF/MRB  
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On 19 Apr 04, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54 and 5.50.2 for drug abuse and a misconduct. The specific reasons for the action were:

- a. On 25 Jun 03, a Letter of Reprimand (LOR) was issued for consuming alcohol within eight hours of duty shift.
- b. On 12 Nov 03, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for assault and wrongful use of a firearm. He received a reduction in grade to airman (E-2), suspended until 11 May 04, 30 days of extra duty, and forfeiture of pay of \$150.00 for 2 months.
- c. On 11 Feb 04, AF Form 3070, indicates the applicant received NJP, Article 15 for wrongful use of marijuana. He received a reduction in grade to airman basic (E-1) and 30 days of extra duty.

On 30 Apr 04, the discharge authority directed the applicant be discharged for misconduct, a pattern of misconduct prejudicial to good order and discipline, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 7 May 04, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Patterns of Misconduct" and he was credited with 2 years, 1 month, and 18 days of total active service.

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

**POST-SERVICE INFORMATION**

On 4 Apr 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

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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 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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 4 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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 insufficient evidence to support the applicant's request for the desired changes to his record. A review of all available records finds the applicant's contentions were not sufficient to explain his misconduct and behaviors during service. His contentions were also inconsistent in comparison to his available limited objective military records. His military personnel records revealed he had received at least two Article 15s for serious offenses of wrongfully drawing his firearm and assaulting an airman by pointing his loaded handgun at the airman on or about 6 Oct 03 and wrongful use of marijuana between on or about 7 Dec 03 and 7 Jan 04. The applicant did not address or discuss either of these incidents in his petition. He reported being shot by a pellet gun and damaging the perpetrator's property in retaliation but there were no records of this reported misconduct in his military records. Also, he reported the incident took place on 11 Jan 04 but none of the aforementioned documented misconduct occurred on this date. It is plausible his reported incident took place since his available records were limited, but there were no records to substantiate his reports and contentions at this time. The applicant contends his conditions of ADHD and BPD caused his behaviors. His condition of ADHD was reported to have begun at the age of 12, which is considered to have existed prior to service. He failed to report this significant mental health history including his use of psychotropic medications during his enlistment process and could be considered to be fraudulent entry. There was no evidence his condition of ADHD and BPD caused any of his misconduct, and the applicant did not explain sufficiently how these conditions affected his behaviors. He also claimed he developed PTSD as a result of his reported incident and so his condition of PTSD could not have caused his previous behaviors. It appeared he was upset with being attacked and retaliated out of anger, and it was his anger that influenced his behaviors and judgment. There was no evidence his anger was the result of a mental health condition. To reiterate, there were no records of this misconduct and so to attempt to determine or declare his mental health condition could cause his undocumented behavior is purely speculative and could not be conclusive.

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 has ADHD and BDP that may cause his behaviors and also contends he developed PTSD following the incident of being shot in the arm by a pellet gun and his brother being attacked.
2. Did the condition exist or experience occur during military service?  
There is no evidence the applicant had any mental health conditions to include ADHD, BDP, and PTSD as claimed during service. His service treatment records were not available for review and he did not submit medical records to confirm he had these conditions or whether they existed during service.
3. Does the condition or experience excuse or mitigate the discharge?

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The applicant's discharge paperwork and service treatment records are not available for review to determine whether his mental health condition may cause, excuse, or mitigate his discharge. His personal testimony provided was found to be insufficient to support his mental health condition and experience may excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his discharge paperwork and service treatment records are not available for review, presumption of regularity is applied and there is insufficient evidence to support his mental health condition may outweigh his discharge.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 16 Feb 22 for comment (Exhibit D), 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 and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition, however, since there is no evidence his mental health condition had a direct impact on his behavior and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh 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.

**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 the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03230 in Executive Session on 22 Jun 22:

*Work-Product* [Redacted] Panel Chair  
[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, w/atchs, dated 17 Aug 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Feb 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Feb 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 4 Apr 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.

12/5/2023

*Work-Product* [Redacted]

Board Operations Manager, AFBCMR  
Signed by: *Work-Product* [Redacted]