



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03271

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was experiencing Post-Traumatic Stress Disorder (PTSD), anxiety, alcohol abuse, bipolar and depression while serving in the Air Force. He attempted to commit suicide by car accident while under the influence. After this, he was diagnosed with a mental health condition by an outside provider.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

On 14 Jan 20, the applicant received an Article 15 for physically controlling a vehicle while drunk. As a result, the applicant was demoted to the grade of airman (E-2) with a new date of rank of 14 Jan 20 and reprimanded.

On 13 Feb 20, the applicant received an Article 15 for wrongfully providing alcohol to an underage airman and unlawfully entering the property of an airman on two occasions. As a result, the applicant was demoted to the grade of airman basic (E-1) with a new date of rank of 13 Feb 20 and reprimanded.

On 9 Mar 20, the applicant received a general (under honorable conditions) discharge in the grade of airman basic (E-1). His narrative reason for separation is "Pattern of Misconduct" and he was credited with 1 year, 1 month, and 5 days of total active service.

On 10 Mar 21, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 10 Aug 21, the AFDRB found insufficient evidence of an inequity or impropriety that would warrant a change to the applicant's discharge. Therefore, the discharge received by the applicant was deemed to be appropriate and his request was not approved.

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

**AFBCMR Docket Number BC-2021-03271
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

POST-SERVICE INFORMATION

On 11 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 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 11 Apr 22, the Board staff provided the applicant a copy of the guidance (Exhibit C).

CUI//SP-MIL/SP-PRVCY

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 finds insufficient evidence to support the applicant's request for an upgrade to his discharge. The applicant's official discharge paperwork was not available for review, and it is possible he had other misconduct not listed in his available records causing his discharge. Thus, it could not be discerned with a degree of certainty his mental health condition may cause, excuse or mitigate some or all of his misconduct resulting with his discharge. There is evidence he was coping with the demise of his relationship with alcohol causing his suicide attempt. His military records consisted of two serious infractions and the latter misconduct was not found to be caused or explained by his mental health condition. There was evidence in his service treatment records that he had serious mental health issues to include having anxiety, depression, suicidal ideation, and engaging in self-mutilating behaviors prior to service in response to his childhood trauma and family and relationship stressors. He was not identified or diagnosed with bipolar disorder and there was no evidence he experienced any manic or hypomanic episodes during service. He also did not report his significant mental health history during his enlistment process and could be considered fraudulent entry. There was no evidence his prior service or existed prior to service (EPTS) mental health conditions were aggravated by his military service. As a result, there is no error or injustice with his discharge.

Liberal consideration is not required to be applied to the applicant's petition due to his mental health condition was found to be EPTS with no evidence of service aggravation. Should the Board elect to apply liberal consideration to the applicant's request, the following are responses based on information presented in the records to the four questions in the policy:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends his mental health conditions of PTSD, anxiety, alcohol abuse, bipolar disorder and depression caused his behaviors/misconduct and eventual discharge.
2. Did the condition exist or experience occur during military service?
There is evidence the applicant experienced anxiety and depression, had alcohol dependency issues, and attempted suicide during service. He received inpatient, intensive outpatient program and outpatient mental health treatment for these conditions. The applicant was diagnosed with bipolar disorder post service by the VA and no evidence this condition occurred during military service.
3. Does the condition or experience excuse or mitigate the discharge?

CUI//SP-MIL/SP-PRVCY

The applicant’s mental conditions were found to be EPTS with no service aggravation. His mental health condition was found to have caused at least one his misconduct but could not completely excuse or mitigate his discharge especially since his discharge paperwork was unavailable.

4. Does the condition or experience outweighs the discharge?
Since his mental health conditions do not excuse or mitigate his discharge, they also do not outweigh his discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 May 22 for comment (Exhibit E), 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. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. Finally, the Board is satisfied that the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant’s record.

4. 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-2021-03271 in Executive Session on 22 Jun 22:

- Work-Product, Panel Chair
- Work-Product, Panel Member
- Work-Product, Panel Member

AFBCMR Docket Number BC-2021-03271

CUI//SP-MIL/SP-PRVCY

CUI//SP-MIL/SP-PRVCY

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

Exhibit A: Application, DD Form 149, dated 10 Sep 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 11 Apr 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Apr 22.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 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.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF