



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-2021-03311

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His minor misconduct was due to Post-Traumatic Stress Disorder (PTSD) caused by his deployment experiences to Afghanistan. His condition was undiagnosed when he separated; the review board did not consider his PTSD when they ruled his general discharge was appropriate. He has been rated at 30 percent for PTSD by the Department of Veterans Affairs (DVA) effective 1 Dec 20.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 25 Jan 11, 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 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 28 Jan 09, a Letter of Reprimand (LOR) was issued for failure to report for duty.
- b. On 9 Jul 10, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for two incidents of unauthorized use of his government travel card (GTC). He received a reduction in grade to airman first class (E-3), suspended until 8 Jan 11, and 15 days of extra duty.
- c. On 16 Sep 10, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 86 for failure to report for duty. The applicant was reduced to the grade of airman first class with a new date of rank (DOR) of 9 Jul 10.

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

On 28 Jan 11, the Staff Judge Advocate found the discharge action legally sufficient.

On 28 Jan 11, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 10 Feb 11, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 5 years, 2 months, and 26 days of total active service.

On 3 Mar 12, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 7 May 15, 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 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 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 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. The applicant had engaged in three documented misconduct of failure to go, misuse of government travel card (GTC), and being absent from his place of duty for several hours as reasons for his discharge. A memorandum for records by his leadership and his personal statements at the

snapshot in time of service revealed behaviors of poor judgment and dishonesty caused his misconduct. There was no evidence these behaviors were caused by a mental health condition or related to his alleged traumatic deployment experiences. There was evidence he had deployed to Afghanistan twice during service, but there was no clarifying information provided of his traumatic experiences down range and his supposed PTSD symptoms he experienced that may cause his misconduct. Experiencing a mental health condition or emotional distress does not always result in misconduct problems and the lack of evidence would presume this was not the applicant's situation. The applicant never received any mental health evaluation, diagnosis or treatment for PTSD during service, and received no treatment post-service as well. He received service connected compensation from the DVA for PTSD several years post discharge, but the disability evaluation was not available for review and so it could not be determined with certainty the causes for his PTSD and if or how this condition could cause or mitigate his misconduct and discharge. It is also imperative to be aware that the DVA's definition of service connection does not indicate a nexus was established or existed between his mental health condition and misconduct/discharge. The applicant also alleges the AFDRB did not apply liberal consideration to his request; this claim has no merit. There is evidence the AFDRB applied liberal consideration as stated in their rationale decisional document. The AFDRB found no evidence his mental health condition had a direct impact on his misconduct and discharge. Liberal consideration does not mandate an upgrade and the AFDRB deliberated the case and found insufficient evidence had existed to warrant an upgrade to include under the liberal consideration policy guidance. The Psychological Advisor concurs with AFDRB's opinion and also finds no error or injustice with his discharge from service.

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 suffered from undiagnosed PTSD caused by his deployment experiences to Afghanistan resulting with his misconduct and discharge.
2. Did the condition exist or experience occur during military service?
There is no evidence his condition of PTSD or any other mental health condition had existed during service. He was deployed to Afghanistan twice during service, but there was no evidence his deployment experiences caused him to develop a mental health condition or emotional distress impacting his functioning. He was given service connected compensation for PTSD by the DVA several years post discharge and no rationale was provided for the cause of this condition.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence his condition of PTSD had a direct impact on his behaviors and misconduct resulting with his discharge. His 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 of PTSD may excuse or mitigate this discharge, his condition also does not 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 4 Apr 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 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 behaviors 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.
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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03311 in Executive Session on 22 Jun 22:

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, Panel Chair

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, Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 Sep 21.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Mar 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Apr 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.

4/4/2023

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Board Operations Manager, AFBCMR

Signed by: USAF