



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03342

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His Entry Level Separation (ELS) be upgraded on his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

### APPLICANT'S CONTENTIONS

The Department of Veterans Affairs (DVA) diagnosed him with a service-connected mental disability, bipolar disorder.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 5 Sep 00, the applicant received an Article 15 for wrongfully receiving a stolen Air Force Security Forces badge, impersonating an agent of the Air Force Office of Special Investigation (AFOSI), and assaulting an airman. As a result, the applicant forfeited \$502 of pay.

On 8 Sep 00, the applicant received an ELS. His narrative reason for separation is "Personality Disorder." He was credited with six months and one day 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 18 May 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.

**AFBCMR Docket Number BC-2021-03342**

Work-Product

Controlled by: SAF/MRB

CUI Categories: Work-Product

Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

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 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 May 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.

**Under Other than Honorable Conditions.** When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

## **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request. The applicant's discharge paperwork and service treatment records were not available or submitted by the applicant for review. The applicant's military records indicated he received an Article 15 for using a stolen Security Force badge to intentionally impersonate an AFOSI agent and he assaulted another airman. There was no evidence these behaviors or misconduct were caused by a manic episode or other mental health condition. The Psychological Advisor finds the serious nature of these misconducts could not be overlooked, excused, or mitigated based on the information available for review. Without these vital records, the Psychological Advisor is unable to determine with certainty if he had bipolar disorder/schizoaffective disorder or symptoms during service and whether any of these conditions could cause, excuse or mitigate his discharge. The applicant states he was given service connection for bipolar disorder by the DVA. He provided DVA disability compensation documentation for schizoaffective disorder, 12 years post discharge. His DVA treatment records revealed the first documented mental health treatment for schizoaffective disorder, bipolar type was 13 years post discharge. Although his DVA records stated he allegedly had symptoms of this condition during service, there were no records to substantiate this claim and the report was obtained by the applicant's self-report. According to the applicant's DD Form 214, he was discharged for having an unsuited personality disorder. The applicant did not submit any records to dispute this diagnosis or his discharge were made in error. In terms of his request for a change to his character of service, he received an Uncharacterized service characterization because he served less than 180 days of continuous days (the time his discharge was initiated and not when he was officially discharged from service) of service. This characterization is in accordance to the current regulation of AFI 36-3208 and as such and in addition to the other information presented in this advisory, the Psychological Advisor finds no error or injustice was identified with his discharge from service. Although there was no error identified with his discharge, the applicant's DD Form 214 currently lists his narrative reason for discharge as "Personality Disorder." The Board may consider changing his narrative reason to "Condition Not a Disability" for privacy reasons. This narrative reason is also appropriate per liberal consideration guidance. The narrative reason of "Secretarial Authority" is not appropriate or recommended because there was no evidence his personality disorder diagnosis was made in error.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses based on the available 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 he was given service connected disability from the DVA for bipolar disorder. The submitted DVA letter stated he was given 70 percent for schizoaffective disorder, bipolar type.

2. Did the condition exist or experience occur during military service?

The applicant's service treatment records are not available for review. There was no evidence his conditions of bipolar disorder and/or schizoaffective disorder, bipolar type existed or occurred during military service. He reported to the DVA he had symptoms of this condition during service and was given diagnoses of these conditions several years post service.

3. Does the condition or experience excuse or mitigate the discharge?

There was no evidence of his conditions of bipolar disorder and/or schizoaffective disorder caused his discharge. He was discharged for having an unsuiting personality disorder and no evidence there was an error or injustice with his discharge. Therefore, his conditions of bipolar disorder and/or schizoaffective disorder do not excuse or mitigate his discharge.

4. Does the condition or experience outweighs the discharge?

Since there was no evidence his conditions of bipolar disorder and/or schizoaffective disorder excused or mitigated his discharge, these conditions also not outweigh his discharge. There is no error identified with the applicant's ELS discharge for his personality disorder and no error identified.

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 21 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 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 the applicant's request under fundamental fairness based on the Wilkie Memo guidance and did not find the evidence presented sufficient to warrant relief. The Board also agrees with the Psychological Advisor's recommendation to change the applicant's narrative reason for separation from "Personality

Disorder” to “Condition Not a Disability.” Therefore, the Board recommends correcting the applicant’s record to the extent indicated below.

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 pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that at the time of his 8 Sep 00 discharge, his narrative reason for separation was “Condition Not a Disability” with the corresponding separation code of “JFV.”

However, regarding the remainder of the applicant’s request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## 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 2.5, considered Docket Number BC-2021-02773 in Executive Session on 27 Jul 22:

Work-Product

Panel Chair

Work-Product

Panel Member

Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Oct 21.

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

Exhibit C: Advisory Opinion, Psychological Advisor, dated 7 Mar 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Apr 22.

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

5/12/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

**AFBCMR Docket Number BC-2021-03342**

Work-Product