



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03427

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He had undiagnosed post-traumatic stress disorder (PTSD) in 1978, while a Security Policeman stationed in *Work-Product*. He was an 18-year-old entry guard, and 3 days out of training, when he witnessed completely burned bodies because of an A-10 crash. Over the next 2 and a half years he was dispatched to guard 4 Helicopter crashes resulting in explosions and more burned bodies. At 19 years old, he started having anxiety attacks and have had them his whole life. In 2008 he was diagnosed with Severe Service-Connected PTSD rated at 100 percent and agoraphobia by the Department of Veterans Affairs (DVA) in Nebraska.

In support of his request, the applicant provides copies of his DVA Summary of Benefits Statement, military medical records, a commendation medal, a 1985 letter of appreciation from his commander, character references, college Dean's List certificate, college transcripts, college degree, an FBI report with explanation, and a resume.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 22 Jul 86, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. Driving While Intoxicated, Article 15, 17 Dec 85.
- b. Dereliction of Duty, LOR/UIF, 3 Feb 86.
- c. Driving While Intoxicated, LOR/UIF, 11 Jul 86.
- d. Failure to comply with the unit's notification procedures, LOR/UIF, 16 Jul 86.

On 31 Jul 86, the Judge Advocate found the discharge action legally sufficient.

On 18 Aug 86, the discharge authority directed the applicant be discharged for Misconduct, with a general discharge service characterization. Probation and rehabilitation was considered, but not offered.

**AFBCMR Docket Number BC-2021-03427
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

CUI//SP-MIL/SP-PRVCY

On 22 Aug 86, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct-Pattern Conduct Prejudicial to Good Order and Discipline” and he was credited with 3 years, 9 months, and 24 days of active service for the period.

For more information, see the excerpt of the applicant’s record at Exhibit B.

POST-SERVICE INFORMATION

The applicant provided an FBI report with his application. According to the report, the applicant was arrested on 13 Dec 90 and charged with negligent homicide, injury and aggravated obstruction of highway. The applicant provided an explanation of those charges and submitted post service information (Exhibit A).

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

CUI//SP-MIL/SP-PRVCY

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 D).

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 completed a review of all available records and finds insufficient evidence/information to support the applicant's request for an upgrade of his discharge. The applicant contends he had undiagnosed PTSD as a result of witnessing an A-10 crash in 1978 as an entry guard and as a guard of 4 helicopter crashes where he witnessed burned bodies in both events. He reported having anxiety attacks since around 19 years old. In 2018, he was diagnosed with severe PTSD and agoraphobia and had been service connected with a 100 percent rating from the DVA. A review of the available records finds the applicant's contentions were consistent for this petition and his report to the VA; however, there is insufficient evidence to support the applicant's request. First and foremost, the applicant did not clearly explain how his mental health condition of PTSD or agoraphobia had impacted his behaviors/misconduct resulting with his discharge. Having a mental health condition does not always or automatically result in misconduct issues. The applicant was never diagnosed with PTSD or agoraphobia during service and his DVA treatment notes reported he was diagnosed with these conditions over 20 years post discharge and was exacerbated and aggravated by post service events and stressors. There was evidence he experienced anxiety and depression during service

CUI//SP-MIL/SP-PRVCY

from the record he submitted and from his VA records but again, there was no description of how these conditions affected his discharge from any of these sources. The applicant was discharged for driving under the influence twice, was derelict in his duty and failed to comply with his unit's notification procedures. These are serious infractions and the applicant did not address any of these misconduct issues. The applicant's traumatic experiences and ensuing mental health condition are not in question, but it is whether these experiences or condition may cause or mitigate his discharge. The available records were insufficient to support this possible nexus.

It is acknowledged the applicant has received service connected compensation for his mental health condition from the DVA. For awareness, the VA, operating under Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. This is especially relevant to the applicant's case as he had received reevaluations and adjusted rating awards over the years due to increased impairment affecting his overall post service functioning. These increased impairments were not directly caused by his military service or discharge but from post service stressors according to his DVA records.

Liberal consideration is applied to the applicant's request. The following are answers to the four questions from 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 had undiagnosed PTSD caused by his military duties and had been rated at 100 percent for severe PTSD and agoraphobia.
2. Did the condition exist or experience occur during military service?
There is no evidence his condition of PTSD or agoraphobia existed during military service. His submitted one-page service treatment record and DVA records reported he had experienced and received treatment for anxiety to include panic attacks and depression during service. He was not diagnosed with PTSD and agoraphobia until over 20 years post discharge.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant did not clearly explain how his condition of PTSD or agoraphobia caused his behaviors and misconduct leading to his discharge in his petition. There was no evidence he had anxiety or was depressed at the time of any his misconduct and so his condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweighs the discharge?
Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his discharge.

Again, after an exhaustive review of the available records, the psychological advisor regrettably finds insufficient evidence/information to support the applicant's request for an upgrade of his discharge. The Board may consider applying clemency to the applicant's request at the Board's discretion.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

AFBCMR Docket Number BC-2021-03427

CUI//SP-MIL/SP-PRVCY

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. As noted by the Psychological Advisor, liberal consideration was applied to the applicant’s request due to the contention of a mental health condition; however, there is no evidence his condition of PTSD or agoraphobia existed during military service. He was not diagnosed with PTSD and agoraphobia until over 20 years post 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, the Board finds no basis to do so. The applicant’s resume mentions nothing of employment after 2005 and he provided no proof that the charges indicated on the FBI report were dropped. Therefore, the Board recommends against correcting the applicant’s records. The applicant retains the right to request reconsideration of this decision. The applicant may provide additional post-service evidence in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.
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 2.5, considered Docket Number BC-2021-03427 in Executive Session on 8 Aug 22:

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

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

Exhibit A: Application, DD Form 149, w/atchs, dated 30 Sep 21.

CUI//SP-MIL/SP-PRVCY

- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Apr 22.
- Exhibit D: Notification of Advisory, w/atchs (Liberal Consideration and Clemency Guidance), dated 4 Apr 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.

5/12/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF