



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-2021-03661

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable and his narrative reason for separation be changed to medical reasons.

APPLICANT'S CONTENTIONS

He reported to Air Force psychiatrists to treat visual and auditory hallucinations but was never formally diagnosed. His minor disciplinary infractions which led to his separation were a direct result of his mental disorders at the time. Throughout his time in the military, he had suffered from this condition. Post discharge, he was diagnosed with schizoaffective disorder and has been under the care of various psychiatrists. As a result, he is now of sound mind. Relief would afford him access to Department of Veterans Affairs benefits.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 11 Apr 85, the applicant's commander recommended the applicant be discharged from the Air Force for minor disciplinary infractions, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-46. The specific reasons for the action were:

- a. On 27 Mar 84, the applicant received a Letter of Reprimand (LOR) for wrongfully hitting the squadron lobby door with his fist, causing it to shatter and break.
- b. On 26 Dec 84, the applicant received a LOR for loaning his ration card to another airman who tried to gain unauthorized access into the Base Exchange.
- c. On 14 Jan 85, the applicant received a LOR for operating an unlicensed motor vehicle without a helmet.
- d. On 3 Apr 85, the applicant received an Article 15 for operating a vehicle while drunk. As a result, the applicant was ordered to forfeit \$162.00 of pay and reduced to the grade of airman with a new date of rank of 3 Apr 85.

On 25 Apr 85, the Staff Judge Advocate found the discharge action legally sufficient.

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On 2 May 85, the discharge authority directed the applicant be discharged under the provisions of AFR 39-10, Chapter 5, Section H, paragraph 5-46 with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 15 May 85, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct- Pattern of Minor Disciplinary Infractions." He was credited with 1 year, 11 months, and 9 days of total active service.

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

POST-SERVICE INFORMATION

On 27 Jun 22, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record (Exhibit C). The applicant replied on 18 Jul 22 and provided an FBI report. According to the report, the applicant was arrested on 22 Dec 00 for driving under the influence (DUI) of alcohol/drugs. The applicant also provided a personal statement, character reference letters, and letters from his mental health providers.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense for Personnel and Readiness (USD P&R) 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?

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- 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 27 Jun 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 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 based on a review of available records. The applicant reported being seen by a psychiatrist for auditory and visual hallucinations during service but no records exist to corroborate this claim. His available service treatment records revealed he was seen three times at the Mental Health Clinic (MHC) for a command referred evaluation following his alcohol related incident (DUI), a crisis relating to his current situation, and a follow-up session. There were no records he reported having any auditory and/or visual hallucinations, other psychotic symptoms, or mood issues during any of his visits at the MHC and denied during his separation physical he had any mental health conditions or symptoms. The applicant did not seek mental health treatment until about 17 years post discharge and was diagnosed with schizoaffective disorder around this time. His prior psychiatrist stated the applicant reported during their initial evaluation he was seen by a military psychiatrist during service and he was experiencing auditory and visual hallucinations at the time but there were no records to substantiate this.

There was no evidence he was in emotional distress or had a mental health condition/symptom at the time of his [sic] most of his misconduct. His emotional distress or mental health condition may have caused one of his misconducts, his DUI, but it did not cause most of his misconduct and

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none of his misconduct was caused by schizoaffective disorder or similar conditions. It appeared he had poor judgment and decision making skills, but these traits were not derived from a mental health condition.

Finally, the applicant is requesting a medical discharge. There was no evidence he had any unfitting mental health conditions to include schizoaffective disorder meeting criteria to be referred to the Medical Evaluation Board. He was never placed on a duty limiting condition profile nor never not deemed worldwide qualified due to his mental health condition. Therefore, the Psychological Advisor finds no error or injustice with his discharge and insufficient evidence has been presented to support his request for an upgrade of his discharge characterization and change his narrative reason for separation.

Liberal consideration is applied to the applicant's request. The following are responses to the four questions from the Kurta memorandum from 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 was treated for auditory and visual hallucinations by an Air Force psychiatrist during service and his misconduct was the result of his mental health condition leading to his discharge.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant had experienced or was treated for auditory and visual hallucinations or other psychotic symptoms during service. He was command referred to an evaluation following his DUI and did not receive a mental disorder diagnosis. He did report having anxiety from personal problems causing him to impulsively drink and subsequently led to his DUI according to his statement in response to his discharge action. During his separation physical, he denied having any mental health issues and reported he was in good health and was taking no medications.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant's mental health condition may have caused one of his misconducts of receiving a DUI but did not cause most of his misconduct. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his discharge.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Oct 22 for comment (Exhibit F), 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, 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03661 in Executive Session on 25 Jan 23:

 Panel Chair
 Panel Member
 Panel Member

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

- Exhibit A: Application, DD Form 149, dated 8 Nov 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 27 Jun 22.
- Exhibit D: Applicant's Response, w/atchs, dated 18 Jul 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Oct 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.

12/6/2023

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Board Operations Manager, AFBCMR

Signed by:

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