



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-2021-03715

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded.

APPLICANT'S CONTENTIONS

He abused drugs as a means of self-medicating. Since his discharge, he started a family, maintained employment, and earned his bachelor's degree. He received a 70 percent disability rating for Post-Traumatic Stress Disorder (PTSD).

In support of his request, the applicant provides a personal statement, copies of his Bachelor of Science Degree, certificates of training, his Air Medal, Commendation Medals, Joint Service Achievement Medal and Bronze Star Medal for Heroism, a letter from a psychologist, character reference letters, Department of Veterans Affairs (DVA) disability compensation letter and various other documents related to his request.

The applicant's complete submission is at Exhibit A.

APPLICABLE AUTHORITY

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

STATEMENT OF FACTS

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

On 27 Oct 05, the convening authority published General Court-Martial Order Number [REDACTED]. The order stated the applicant pled guilty to one charge and two specifications of wrongful use and distribution of cocaine (Article 112a). The applicant pled guilty to one charge and two specifications of making false statements (Article 107). The applicant also pled guilty to one charge and one specification of wrongful endeavor to impede an investigation (Article 134). The

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applicant was sentenced to confinement for 11 months, forfeiture of all pay and allowances, reduction to the grade of airman basic, and discharge from the service with a BCD.

On 19 Jun 07, according to General Court-Martial Order Number Attor..., the sentence to confinement for 10 months, forfeiture of all pay and allowances, reduction to the grade of airman basic (E-1) was affirmed. As a result, the discharge from the service with a BCD was executed.

On 26 Jun 07, the applicant received a BCD in the grade of airman basic (E-1). His narrative reason for separation is "Court-Martial (Other)." He was credited with 16 years, 4 months and 10 days 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 13 Jul 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 (Exhibit E). The applicant did however, provide post-service documents to support his request with his initial application (Exhibit A).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor has reviewed all available records and finds the applicant has not met the burden of proof to support his request for the desired changes to his records from a mental health perspective. The Psychological Advisor finds his substance use during service may explain his behaviors but do not excuse or mitigate his misconduct and discharge. His misconduct could also be construed as premeditated behaviors as his actions appeared to have been planned and calculated and had occurred over a prolonged period of time. The applicant appeared to have drug abuse problems during service that most likely drove his behaviors and misconduct but does not excuse his egregious behaviors. As a result, the Psychological Advisor finds no error or injustice with his discharge from service.

Liberal consideration is not required to be applied to the applicant's request due to his behavior and misconduct could be considered as premeditated according to policy. 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 he abused drugs as a mean of self-medicating. He reported receiving a 70 percent rating for PTSD.
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records were not available for review and so there were no objective service records to substantiate his condition of PTSD had existed or was experienced during military service. His DVA treatment records and the submitted letter from a community

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psychologist alluded his condition of PTSD may be related to his military duties. It appeared from available records he was not diagnosed with PTSD until several years post discharge.

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

It is plausible the applicant had coped with his mental health condition with drugs as this is not an uncommon occurrence. However, not only did the applicant use a hard, illicit drug on multiple occasions during service, he also distributed cocaine, made false official statements to an investigative agent, and impeded on an investigation by asking an individual to make false reports on his behalf to law enforcement officials and offered monetary compensation to the individual to do so. His mental health condition may explain his behaviors as they are consistent to drug involvement behaviors, but his 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 this discharge, his condition also does not outweigh his discharge especially since his behaviors/misconduct were serious offenses resulting with his general court-martial conviction.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Jul 22 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application is not timely. 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 limitations 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 injustice. The Board finds no evidence that the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the applicant's service, and the seriousness of the offense(s) committed. However, 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. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. Finally, giving the applicant's misconduct and behaviors were possibly premeditated, the Board is satisfied the application of liberal consideration does not warrant relief. Therefore, the Board recommends against correcting the applicant's record.

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-2021-03715 in Executive Session on 21 Sep 22:

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

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

- Exhibit A: Application, DD Form 149, dated 14 Nov 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 11 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 July 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 13 Jul 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.

5/19/2023
Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF