



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

*Work-Product*

**DOCKET NUMBER:** BC-2021-03779

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

His discharge was the result of his undiagnosed condition of Post-Traumatic Stress Disorder (PTSD). The circumstances surrounding his discharge were based on upon his actions after his return from his temporary duty (TDY) assignment to *Work-Product* which was where his PTSD developed. He was involved in responding to a number of emergencies during his time overseas that resulted with PTSD, and had severe difficulties adjusting upon his return which led to a number of errors leading to his discharge

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 30 Mar 04, 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 3 Jun 02, a Letter of Counseling (LOC) was issued for failure to go.
- b. On 7 Nov 02, a Memo for Record (MFR) indicates he was counseled for tardiness in the workplace.
- c. On 15 Feb 03, a LOC was issued for tardiness in the workplace.
- d. On 14 Mar 03, a Letter of Reprimand (LOR) was issued for possession of alcohol while underage.

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e. On 3 Dec 03, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go and two counts of dereliction of duty. He received a reduction in grade to airman (E-2), suspended until 2 Jun 04, and 30 days of correctional custody.

f. On 8 Mar 04, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 121 for theft. The applicant was reduced to the grade of airman (E-2) with a new date of rank (DOR) of 3 Dec 03.

On 14 Apr 04, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Apr 04, 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 21 Apr 04, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 7 months, and 23 days of total active service.

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

**POST-SERVICE INFORMATION**

On 23 Apr 21, 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

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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 23 Apr 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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

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applicant contends his experiences in [Work-Pro...] caused him to develop PTSD and vaguely mentioned he was involved in a number of emergencies overseas. He did not provide any clarifying information regarding these alleged traumatic or stressful experiences or how these experiences affected his behaviors and overall functioning during service. A lack of a specific timeline would make it difficult to determine with certainty whether his mental health condition derived from his deployment/TDY experiences as claimed could cause, excuse or mitigate some, all or none of his misconduct. There were records the applicant had deployed to [Work-Pro...] but a specific timeline was not referenced in his military records. He had received a Letter of Appreciation (LOA) dated 7 Aug 03, for his outstanding efforts during the operations in support of OPERATION ENDURING FREEDOM (OEF) and OPERATION IRAQI FREEDOM (OIF) and was welcomed home by his commander, and he reported in his response to his discharge action dated 31 Mar 04, he was in [Work-Pro...] for seven months. These records also did not provide a time frame of when he was deployed, but it could be deduced he was deployed sometime in 2003 and returned from deployment in the summer of 2003 based on the date of the LOA. He claimed he had difficulties adjusting upon his return causing a number of errors and his discharge; however, he was documented to have numerous misconduct issues prior to his return from deployment/TDY, if using the date of his LOA for frame of reference. He had missed morning formation twice in May and Jun 02 respectively, and was late for work in Nov 02. He was late for work again and was found to be in possession of alcohol while underage in early 2003 while he was at Scott Air Force Base. These misconduct could not be caused by his mental health condition of PTSD from his deployment/TDY experiences as they appeared to have occurred prior to his deployment. His remaining misconduct of possibly occurring after his deployment of failing to go, missing training, not reporting in his service blue uniform, and stealing shoe inserts also could not be explained by his mental health condition according to his explanations offered in his response to his administrative discharge action. The applicant did not discuss in his discharge action response, which was at the snapshot in time of service, of having any mental health issues or emotional distress at the time of any of his misconduct, he did not attribute his behaviors to his mental health issues in his statement, and none of these misconduct appeared to be caused by his mental health condition. Lastly, the applicant reported he had undiagnosed PTSD, but he did not submit any medical records to substantiate he was given a diagnosis of PTSD by a duly qualified mental health professional. There was no evidence he was diagnosed with PTSD during service and no evidence he experienced any PTSD or PTSD-like symptoms during service. In the absence of medical records, he also did not sufficiently described his PTSD symptoms that he may have experienced and more importantly, how his PTSD symptoms or condition affected his behaviors causing his discharge.

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 had undiagnosed PTSD caused by his deployment/TDY experiences of responding to a number of emergencies while in [Work-Pro...]. Upon his return from deployment, he had difficulties adjusting causing a number of errors and leading to his discharge.

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

There is evidence the applicant had deployed to Work-Pro... during service but no evidence he had developed any mental health conditions to include PTSD from his deployment experiences. His service treatment records were not submitted for review and so there is no evidence the applicant had any mental health conditions occurring during military service. The applicant also did not submit any records corroborating his report that he had PTSD or was diagnosed with PTSD by a mental health professional post-service.

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

There is no evidence the applicant had any mental health conditions to include PTSD during service causing his misconduct and discharge. The applicant had misconduct issues prior to his deployment that also contributed to his discharge and so these misconduct could not be caused, excused, or mitigated by his mental health condition derived by his deployment experiences. His misconduct possibly occurring following his deployment were found to not have been caused by his mental health condition according to the applicant's explanations in his response to his discharge action. Thus, 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 original discharge.

The complete advisory opinion is at Exhibit D.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 13 Jul 22 for comment (Exhibit E), 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 or deployment experiences 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. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness. 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 (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03779 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 7 Dec 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 9 Dec 21.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 12 Jul 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, 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.

5/18/2023

  
*Work-Product*

Board Operations Manager, AFBCMR  
Signed by: USAF