



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-2022-00037

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His "Uncharacterized" Entry Level Separation (ELS) be upgraded.

APPLICANT'S CONTENTIONS

He needs his characterization of discharge changed to be eligible for Department of Veterans Affairs (DVA) mental health care. His mental health issues caused his discharge from service. He had requested assistance while still enlisted and was discharged with no assistance.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 13 Apr 04, DD Form 2807-1, *Report of Medical History*, was signed by the applicant certifying the information on the form was true and complete to the best of his knowledge. The form indicates the applicant did not have any mental health issues, past or present.

On 22 Aug 06, the applicant received an "Uncharacterized" ELS. His narrative reason for separation is "Erroneous Entry (Other)" and he was credited with 14 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.

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.

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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 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 6 Jul 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

According to AFI 36-3208, *Administrative Separation of Airmen*, incorporating changes through 8 Jun 17, paragraph 1.18, the types of service characterization are as follows:

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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.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

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. He was appropriately discharged for erroneous entry based on having unreported and disqualifying mental health conditions. He had significant behavioral and mental health conditions and a treatment history that existed prior to service (EPTS) identified as Oppositional Defiant Disorder (ODD), Attention Deficit Disorder (ADD), and poor violent impulse control. He did not report these prior-service conditions during his Military Entrance Processing Station (MEPS) examination which could be construed as fraudulent or erroneous entry. These EPTS conditions are disqualifying for military service, and if he had reported them during his MEPS examination, he would have been required to obtain a waiver to enter the service. It would however, be highly unlikely he would have received a waiver based on his conditions and treatment history. It appeared he never received a waiver to remain in the service as he was discharged after being in the service for only 14 days. There was no evidence his military service caused or aggravated his EPTS conditions during his brief time in service. The applicant contends he requested assistance for his mental health issues during service, which may have resulted with him receiving a mental health evaluation. Because of his unreported and disqualifying EPTS conditions, he was ineligible to remain in the service and did not receive any mental health treatment due to his expeditious

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discharge. He was furnished with an uncharacterized character of service because he served less than a 180 continuous days of active duty service and this characterization is in accordance to current regulation of AFI 36-3208.

The Psychological Advisor reviewed the applicant's submitted post-service treatment records. These treatment records indicated his anxiety, depressive, and Post-Traumatic Stress Disorder (PTSD) symptoms were caused and triggered by his post-service employments (prison and emergency services) and were not related or associated with his military service. He began to experience anxiety and depression in 2006, a year after discharge, and again these conditions have no relation to his military service and were not caused by his military service. This information was more likely than not, the reason he was deemed ineligible for DVA treatment services.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's request because his mental health conditions were considered to be EPTS and not aggravated by military service per policy guidance. The following are responses based on the available records to the four questions from the Kurta memorandum:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contends his mental health issues caused his discharge from service but he did not clarify these mental health issues. He had submitted treatment records indicating he had a diagnoses of ODD, ADD and Adjustment Disorder, Unspecified annotated in a mental health evaluation report performed during service, and he had complaints of anxiety, depressive and PTSD symptoms post-service.

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

The applicant was evaluated during his brief time in service and a diagnosis of ODD, ADD, and Adjustment Disorder, Unspecified were annotated in his treatment records. These conditions EPTS, were not caused by his military service, and he did not report them during his MEPS process. His symptoms of anxiety, depression, and PTSD were reported to have been caused by his post-service employments and did not occur during military service.

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

The applicant's unreported EPTS conditions caused his discharge for erroneous entry. There is no error or injustice identified with his ELS discharge and no evidence his EPTS mental health conditions were caused and/or aggravated by his military service. He was furnished with an uncharacterized character of service because he served less than 180 days of continuous active service and this characterization is based on policy and regulation guidance. Therefore, his mental health conditions do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his EPTS mental health conditions may excuse or mitigate his discharge, these EPTS conditions also do not outweigh his discharge.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 6 Jul 22 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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. Specifically, the applicant’s mental health conditions EPTS and were not caused by or aggravated by his military service but by his post-service employment. He was in the service for 14 days and did not report these conditions during his MEPS process. The characterization of the applicant’s service was deemed uncharacterized as the applicant did not complete the entry level status of 180 days of active service as detailed in AFI 36-3208. Furthermore, the Board considered the applicant’s request under liberal consideration; however, the Board finds his mental health conditions EPTS; therefore, determined liberal consideration does not apply. 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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2022-00037 in Executive Session on 5 Oct 22:

Work-Product	Chair, AFBCMR
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, w/atchs, dated 21 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Jul 22.

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Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance),
dated 6 Jul 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.

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Board Operations Manager, AFBCMR
Signed by: USAF