



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00628

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded to honorable.

APPLICANT'S CONTENTIONS

He was exposed to very traumatic events which were classified, causing him to cope in unhealthy ways. He was young when he began to participate in the traumatic events. He is now a different person than he was in the military. He successfully completed a 28-day detox program followed by a 3-month halfway house stay in Work-Pr... He has learned the nature of his disease and of a solution but not a cure. He also discovered the 12-step program through Alcoholics Anonymous (AA) where he continues to participate in and has helped others while never relapsing. He received a college degree in Computer Science and was able to become a professional commercial truck driver. He has been a productive member of society, a dependable and respected father, family member, coworker, and friend. He regrets the temporary path he took and no longer wishes to carry the stigma of his past into his final years.

In support of his request for clemency, the applicant provides a personal statement, several character letters, certificates, transcripts, resume and civilian personnel records.

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 12 Jan 89, the convening authority published General Court-Martial Order Work-Product. The Order stated the applicant pled guilty and was found guilty of one charge and one specification of wrongfully using cocaine (Article 112a) on or about 10 Aug 88 and 17 Aug 88. The applicant was sentenced to confinement for five months, forfeiture of \$210.00 pay per month for five months, reduction in grade to airman first class, and discharged from the service with a BCD.

On 5 Sep 89, the convening authority published General Court-Martial Order (GCMO) Number Wor... The order stated the applicant's sentence of a BCD, confinement for 5 months, forfeiture of

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\$210.00 pay per month for 5 months, and reduction to airman first class as promulgated in GCMO **Work-Product**, dated 12 Jan 89, has been affirmed. Article 71(c) having been complied with; the BCD will be executed.

On 8 Sep 89, the applicant received a BCD. His narrative reason for separation is "Conviction By Court-Martial (Other Than Desertion)" and he was credited with 4 years and 10 months of total active service.

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

POST-SERVICE INFORMATION

On 14 Apr 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. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 17 Jun 22 and provided an FBI report. According to the report, the applicant only had one conviction since his discharge for driving while intoxicated (DWI) on 29 Jul 00. The applicant also provided a personal statement, several character letters, certificates, transcripts, resume and civilian personnel records.

The applicant's complete response is at Exhibit A.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 post-traumatic stress disorder (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 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 issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 14 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the 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.

General (Under Honorable Conditions). 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 member's military record.

Under Other than Honorable Conditions. This characterization is used 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 members. 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 DAF.
- 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 abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATIONS

The Psychological Advisory finds sufficient evidence to support a request for a discharge characterization upgrade to at least a general (under honorable conditions) based on liberal consideration. A review of the available and submitted records finds no confirmatory evidence the applicant had PTSD or related conditions or symptoms during service; however, finds it plausible the applicant's singular/one-time cocaine usage, which was the basis of his discharge and BCD, was in response to cope with his traumatic military experiences/mental health condition as he contended. The applicant is requesting an upgrade to honorable, and the Psychological Advisor defers this decision to the Board. If the Board upgrades his discharge, it is recommended the Board also change his narrative reason for separation to "Secretarial Authority." These decisions are at the Board's discretion.

He was never given any mental disorder diagnosis during service. He was diagnosed with PTSD by his Department of Veterans Affairs (DVA) providers over 30 years after discharge. He may have had a delayed onset of PTSD or did not know how to articulate his experiences during service. However, the lack of a diagnosis during service does not completely rule out he did not have any stressful and/or traumatic experiences, did not have the condition/PTSD, or experienced PTSD symptoms during service.

The applicant contended he was exposed to very traumatic events which were classified, causing him to cope in unhealthy ways, implying his drug use. There is evidence the applicant worked or was involved in nuclear activities. His performance evaluation for the period of 23 Jan 84 to 17 Sep 84 reported the applicant's extensive knowledge of nuclear surety directives was instrumental in the activity's success as well as working with crew chiefs who had never pulled alert duty before,

he quickly molded them into a cohesive unit which has been commended by numerous pilots and distinguished visitors. Work or activities involving nuclear often are highly classified and so his contention he was unable to discuss classified work with anyone was plausible. This performance evaluation rating period and description matched and were consistent with the timeline of his personnel reliability program (PRP) duties in a controlled setting he had submitted as evidence.

There are some clues in his records and submitted evidence which may support the plausibility he was coping with his mental health condition with drug use. His military records reflected he was convicted at a general court-martial for cocaine use on or about 10 Aug 88 and 17 Aug 88. His records consistently reported it was a single, one-time use and his evaluation and treatment records from Social Actions for his cocaine use stated he was a "drug experimenter." He was not given any substance use disorder diagnosis from the evaluation, which would signify no cocaine/substance abuse or dependency problems. This information may substantiate his report it was a singular use. The applicant did not report having any PTSD symptoms such as nightmares, intrusive memories, hypervigilance, easily startled, etc. when he was evaluated by Social Actions during service; he reported his PTSD symptoms to his DVA providers decades after service. There was evidence he was observed to be defensive, somewhat paranoid, and a little apprehensive during one of his Substance Abuse Rehabilitation Committee meetings which was not dated. This is purely speculative, but the applicant submitted records/evidence confirming he was performing PRP duties in a controlled setting for a few years and his contention he was working on classified assignments may be a factor impacting his observed standoffish behaviors. It was also possible he did not know or had difficulties articulating how he was feeling or thinking at the time or was indicating he was in emotional distress.

Before the applicant's cocaine use, he received and participated in the local alcohol rehabilitation program as recommended by Social Actions for his problems with drinking from Nov 84 to Apr 85. His problems with drinking did occur after he was performing PRP duties in a controlled setting in 82 and 84. The cause or reason for his alcohol problems was not reported and his providers' notes were rather limited and sometimes vague. It is possible he was coping with alcohol since his duties involving nuclear or classified duties occurred around this time. He was able to complete treatment, but his drinking problems may be a precursor to his experimentation with cocaine use to cope with his traumatic experiences related to his military duties as he contended.

Another clue in the applicant's military records was his significant, unexplained behavioral change. The applicant received at least 14 performance evaluations during his military career spanning about 12 years of service and in 13 of 14 performance evaluations, he earned the maximum rating of 9. This signified he had outstanding or exceptional performance evaluations. He received one rating of 8/9 early in his military career and this evaluation rating also reflected excellent or above average work performance. It is unusual and even uncharacteristic, all of a sudden, he would use cocaine after having such a highly accomplished career for an extended period of time. This may suggest or support the notion he used cocaine to cope with his traumatic experiences sustained from his military duties as he had claimed. His DVA treatment records confirmed he was given a diagnosis of PTSD decades after service because of his traumatic experiences in the military. As mentioned, he did have drinking problems from an unidentifiable

cause, which may be a precursor to his drug use, and his records indicated he had alcohol problems after service and may have used this substance to cope with his PTSD symptoms.

Liberal consideration is applied to the applicant's petition due to his contention of a mental health condition. The following are answers 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 exposed to very traumatic events that were classified and caused him to cope in ways that were not beneficial to him, his family, or his health. He also stated he had undiagnosed PTSD and was diagnosed with this condition by his DVA providers based on his traumatic military experiences after discharge.

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

There is no evidence the applicant had PTSD or a similar condition during service. He was diagnosed with PTSD by his DVA providers over 30 years after service based on his traumatic military experiences. He had submitted records reflecting he had performed PRP duties in a controlled setting in 82 and 84 and his performance evaluation for the period of 23 Jan 84 to 17 Sep 84 annotated he worked or was involved in the nuclear surety directives, which may include classified duties. His service treatment records revealed he had received and participated in the local rehabilitation program from Nov 84 to Apr 85 for "Problem Drinker." The cause or reason for his alcohol use was not reported and he was not given any alcohol use disorders. However, his alcohol rehabilitation treatment occurred around the time he was performing PRP/classified duties. He received another evaluation from Social Actions after testing positive for cocaine on 2 Sep 88 and was recommended to enter into the local rehabilitation program again. He was assessed to have experimented with cocaine and was not given any substance use disorder diagnosis.

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

It is possible the applicant had used cocaine to cope with his traumatic experiences as he contended. Prior to the applicant's cocaine use, he received treatment for alcohol issues around the time he was performing PRP/classified duties. These duties were reported to be his traumatic experiences. His alcohol use was a possible precursor to his cocaine use. He also continued to have alcohol issues after service. The applicant had a noticeable, unexplained behavioral change. He received at least 14 performance evaluations spanning 12 years of service and all of his performance evaluations reflected outstanding or exceptional duty performances. Giving the applicant the benefit of the doubt since he contended, he coped with his traumatic experiences or mental health condition with cocaine and there is some evidence to corroborate this notion, his mental health condition from his traumatic experiences may excuse and mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition from his traumatic experiences may excuse and mitigate his discharge, his condition and experience would also outweigh his discharge to support his request for an upgrade of his discharge.

The complete advisory opinion is at Exhibit D.

AF/JAJI finds no additional information has been provided by the applicant to suggest clemency in the form of a discharge upgrade is warranted. During the relevant timeframe, the applicant was a technical sergeant on active duty, located at Eglin Air Force Base, Florida. He pled guilty to cocaine use and was discharged.

By pleading guilty, the applicant acknowledged his guilt of the offense for which he was charged. He maintains his cocaine use was a single, experimental use and a private occurrence, and there is no information provided to indicate otherwise. The supplemental documents the applicant submitted include impressive highlights from his Air Force career. He positively contributed to the military mission for over a decade. While there is one documented incident of misconduct since his discharge from military service, specifically a conviction for a DWI in 00, the applicant's FBI Identity History Summary Check shows no events in the last 23 years. Furthermore, the applicant credits the DWI as the event which ultimately helped him seek treatment for alcoholism, and he appears to remain dedicated to that sobriety. The applicant states he has not relapsed since entering rehab in 00. Additionally, the applicant provided extensive details of his ability to be a productive citizen since being discharged from the Air Force. He earned an associate degree and graduated with honors. He has a lengthy work history in the civilian sector and has shown himself to be a dedicated family man. Several individuals wrote a letter to the AFBCMR in support of the applicant.

The AFRBA Psychological Advisor provided an advisory based on the applicant's assertion he has PTSD and depression and found compelling evidence to support at least a general discharge.

It is noted the guidance for liberal consideration of mental health issues – Memorandum for Secretaries of the Military Departments Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, (A.M. Kurta, 25 Aug 17), also known as the Kurta Memorandum – generally cuts against the requested correction to the applicant's discharge characterization according to the memorandum's standards. According to Paragraph 19 of the attachment to the Kurta Memorandum, premeditated misconduct is not generally excused by mental health conditions. Review boards will exercise caution in assessing the causal relationship between asserted conditions or experiences and premeditated misconduct. However, substance-seeking behavior and efforts to self-medicate symptoms of a mental health condition may warrant consideration. The applicant's misconduct appears to have been willful in that it required deliberation on the part of the applicant and was therefore "premeditated" as that term is used in the Kurta Memorandum. According to the record of trial, the applicant was approached by several men while he was in his car near [REDACTED] Work-Product [REDACTED]. The men offered the applicant rock cocaine which he purchased for twenty dollars. He went to a safe area "then fashioned a bull-Malt Liquor Bull can into a pipe." The applicant told the military judge, "I bent it, stuck holes into it, put cigarette ashes on this can, and then the cube would go on top, and proceeded to light it with a Bic lighter, and then I inhaled the gases until gone--until the cube was gone." When the applicant asserts in his AFBCMR submission the traumatic events he experienced during military service caused him to cope in ways which were not beneficial to him, his family, and his health, it is reasonable to conclude he is

referring to alcohol consumption and/or his isolated cocaine use. This is precisely the type of substance-seeking behavior and self-medication the Kurta Memorandum contemplates, and the Psychological Advisor opined the applicant's mental health condition from his traumatic military experiences, although not diagnosed during his service, may excuse and mitigate his discharge. However, in this case, the applicant deliberately accepted rock cocaine from strangers, paid for it, found a secluded and safe place to ingest it, and took deliberate steps to create a pipe to inhale it. Furthermore, those deliberate steps were only made possible because of the applicant's prerequisite level of experience and premeditation allowed him to fashion a homemade rock cocaine pipe from a malt liquor can by himself while in public.

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 2 Jan 24 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 discharge upgrade requests are technically untimely. However, it would be illogical to deny a discharge upgrade 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 the victim of an injustice and recommends granting the applicant's request, in part. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition. The applicant provided extensive details of his ability to be a productive citizen since being discharged from the Air Force. He earned an associate degree and graduated with honors. He has a lengthy work history in the civilian sector and has shown himself to be a dedicated family man. The Board also concurs with the Psychological Advisor who found his mental health condition from his traumatic experiences may excuse and mitigate his discharge and therefore, his condition and experience would also outweigh his discharge. Given the applicant's strong military performance prior to the one-time documented use of cocaine, and positive post-service evidence presented, the Board finds the applicant's post-service accomplishments sufficient to warrant a discharge upgrade to general but finds his military service and post-service accomplishments do not warrant an upgrade to honorable. Therefore, the Board recommends the applicant's records be corrected as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show his DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued on 8 September 1989, be amended to reflect a characterization of service of general (under honorable conditions) with a narrative reason for separation of Secretarial Authority, and corresponding separation code of JFF.

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-2022-00628 in Executive Session on 20 Mar 24:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 Feb 22 and 17 Jun 22.
- 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 14 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA MH, dated 23 Oct 23.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 5 Dec 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jan 24.

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.

5/14/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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