



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-2022-00765

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

The applicant, through counsel contends his unacceptable misconduct was the result of overindulgence in alcohol. He was diagnosed as an alcohol abuser and sent for treatment. However, he was never evaluated for any other psychological issues other than alcoholism. He has suffered long term from Post-Traumatic Stress Disorder (PTSD), attention deficit hyperactivity disorder (ADHD), anxiety and depression, and bipolar 1 disorder. A proper diagnosis of his psychological conditions would have rendered him ineligible for military service or would have resulted in a medical discharge with an honorable service characterization. During his time in the Air Force, the applicant was able to suppress his illnesses to the extent he was successful in college and with technical aspects of flying aircraft during his first couple of years in the Air Force as an instructor pilot. As an officer suffering from bipolar disorder, he should have received a medical discharge rather than an administrative discharge for unacceptable conduct and the resulting general (under honorable conditions) service characterization. Bipolar disorder is a serious disabling disease that has many ramifications and consequences not the least of which is a propensity to abuse alcohol and engage in inappropriate and often criminal conduct. The applicant requests clemency, upgrading his character of service to honorable leaving him to rebuild his life and begin a new start.

In support of his request for clemency, the applicant provides counsel's brief and several character reference letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve first lieutenant (O-2).

On 27 Sep 05, the applicant's commander recommended he be discharged from the Air Force for Unacceptable Conduct, under the provisions of AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, chapter 3, paragraph 3.6.4, *Serious or Recurring misconduct punishable by military or civilian authorities*. The specific reasons for the action were:

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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- a. On 4 Sep 03, the applicant received a Letter of Admonishment for refusing to comply with the law and was arrested for public intoxication.
- b. On 15 Nov 04, the applicant received a Letter of Reprimand for being involved in a physical altercation while under the influence of alcohol, going to work with the intention of flying the mission while impaired by the after effects of alcohol and sustained injuries.
- c. On 17 Aug 05, the applicant received an Article 15 for being drunk and disorderly which conduct was of a nature to bring discredit upon the armed forces. As a result, the applicant was ordered to forfeit \$885 pay per month for 2 months and was reprimanded.

On 17 Nov 05, the staff judge advocate found the discharge action legally sufficient.

On 19 Dec 05, the Secretary of the Air Force directed the applicant be discharged with a general (under honorable conditions) discharge without the offer of probation and rehabilitation.

On 13 Jan 06, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unacceptable Conduct." He was credited with 3 years, 6 months, and 28 days of total active service.

On 22 Dec 20, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 11 Jun 21, the AFDRB considered the applicant's request and determined he had ample opportunities to change his negative behavior through the administrative actions taken by his chain of command. In addition, there was no evidence his military duties as a pilot aggravated his pre-existing alcohol dependency issues. Finally, after a thorough review of the applicant's service record and input from the AFDRB psychiatrist/psychologist, the AFDRB found the applicant's pre-existing mental health condition may have been a mitigating factor to his misconduct; however, it could not explain or excuse the misconduct sufficiently to warrant upgrading the discharge. Accordingly, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 13 Apr 22, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did reply to the request for post-service information (Exhibit D), his response did not include an FBI background check or other criminal history data. On 4 May 22, the applicant provided a brief response to the five arrests that are on his FBI report. His arrests were due to his mental health disorders, which include alcohol dependency, major depressive disorder, bipolar disorder and PTSD. He has maintained his sobriety since 15 Mar 21 and has had no further involvement with law enforcement. Additionally, he attends therapy sessions with a psychologist and attends Alcoholics Anonymous meetings to ensure he maintains his sobriety.

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. Liberal consideration is not required for cases involving pre-existing conditions which are determined not to have been aggravated by military service.

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 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 13 Apr 22, 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 finds insufficient evidence to support the applicant's request for an upgrade to his discharge. Based on a review of the available records, the Psychological Advisor finds the applicant had alcohol abuse and dependency issues prior to, during, and post service. Consistent and cumulative reports demonstrated his mental health conditions/disorders of bipolar disorder, PTSD and alcohol issues all existed prior to service (EPTS).

The Psychological Advisor concurs with the AFDRB's previous opinions. Giving the applicant the benefit of the doubt his mental health conditions (Bipolar Disorder, PTSD, major depressive disorder (MDD), and/or ADHD) existed during service, there are no actual records to confirm these impressions. The applicant's mental health conditions causing or relating to his alcohol dependency issues may be a mitigating factor to his misconduct, but his conditions do not excuse or outweigh his discharge. The evidence shows the applicant engaged in multiple incidents of serious misconduct while intoxicated during his time in service and these egregious behaviors of being drunk and disorderly, making racial derogatory comments to arresting officers, refusing to be cooperative with law enforcement on at least two occasions, behaving inappropriately in the presence of a student pilot, jeopardizing the safety of himself and others when he reported to work with the intention of flying a mission while impaired by the aftereffects of alcohol, and resisting arrest causing him to be physically restrained and pepper sprayed, could not be completely disregarded. These were defined as unacceptable conduct and were the basis of his discharge.

Per the Kurta Memorandum, liberal consideration is not required to be applied to the applicant's petition because his mental health conditions were found to be EPTS with no evidence of service aggravation. Nevertheless, the AFDRB had previously applied liberal consideration to the applicant's petition and so the Board may elect to do the same. 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 and his legal counsel contend the applicant had bipolar disorder, PTSD, ADHD, MDD, and alcohol dependency issues during service that were EPTS. These conditions affected his functioning during service and caused his discharge from service.

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

There is no evidence in his available military records the applicant had experienced or displayed manic or hypomanic episodes, and/or had bipolar disorder, PTSD, ADHD, or MDD symptoms during military service. He was officially diagnosed with these conditions post service by his Department of Veterans Affairs (DVA) and civilian providers that he reported were first experienced during his adolescent/teenage years. One of his DVA providers reported his PTSD symptoms were dormant for years and became prominent again when he was 28 years old or in 2008, two years post discharge, the same year he was officially diagnosed with bipolar disorder by the DVA. The applicant was evaluated, diagnosed, and received treatment for alcohol abuse and dependency issues during service.

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

The applicant's mental health conditions and alcohol dependency issues were EPTS with no evidence they were aggravated by his military duties/service. His mental health conditions causing

or relating to his alcohol dependency issues may be a mitigating factor to his misconduct, but they do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health conditions excuse or mitigate his discharge, his conditions also do not outweigh his original discharge due to the serious offenses of his misconduct that could not be completely disregarded.

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 counsel on 21 Sep 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 opinion of the AFRBA Psychological Advisor that there is insufficient evidence the applicant's mental health conditions that existed prior to service, with no evidence of service aggravation, would be considered a mitigating factor for the misconduct that caused his discharge. Specifically, the applicant's unacceptable behavior and misconduct does not excuse, mitigate, or outweigh his discharge. Therefore, the Board 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 fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. Finally, the Board is satisfied that the application of liberal consideration does not warrant relief. In view of the forgoing, the Board recommends against correcting the applicant's record.
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 2.1, considered Docket Number BC-2022-00765 in Executive Session on 2 Feb 23:

Work-Product

Chair, AFBCMR

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Work-Product Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 10 Mar 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 13 Apr 22.
- Exhibit D: Applicant's Response, dated 4 May 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Sep 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Counsel, dated 21 Sep 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.

9/10/2024
Work-Product

Board Operations Manager, AFBCMR
Signed by: *Work-Product*