

Work-Product

RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2022-00812

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He has been granted 100 percent total and permanent service-connection by the Department of Veteran's Affairs (DVA) and of this percentage, 70 percent is for unspecified trauma and stressor-related disorder. He feels the incident contributed to his behavior that led to his subsequent discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 30 Jan 01, the applicant was offered nonjudicial punishment (NJP) action pursuant to Article 15, Uniform Code of Military Justice (UCMJ) in violation of Article 92 for operating his vehicle when his driving privileges were suspended. As a result, he received a reduction to the grade of airman (E-2) suspended until 6 Aug 01 and a reprimand.

On 14 May 01, the applicant received a reduction to the grade of airman (E-2) with a new date of rank of 9 Feb 01.

On 22 May 01, the applicant was offered NJP action pursuant to Article 15, UCMJ in violation of Article 92 for failure to refrain from using his Nations Bank visa card while not on temporary duty and for failure to make payments to the same card. As a result, he received a reduction to the grade of airman basic (E-1) suspended until 21 Nov 01, forfeiture of \$150.00 pay per month for 2 months, and a reprimand.

On 30 Aug 01, the applicant was offered NJP action pursuant to Article 15, UCMJ in violation of Article 134 for altering a public record. As a result, he received a reduction to the grade of airman basic (E-1) with a new date of rank of 13 Sep 01, forfeiture of \$521.00 pay per month for 2 months, base restriction for 45 days, and 45 days extra duty.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 7 Nov 01, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of "Misconduct" and was credited with 3 years, 4 months, and 14 days of net 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 5 Apr 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), for consideration of his request under fundamental fairness; however, he has not replied (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.

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 paragraphs 6 and 7 of the Wilkie memorandum.

On 5 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force (DAFI) 36-3211, *Military Separations*, describes the types of service characterization:

Honorable. The quality of the member's service generally has met DAF 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 a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member'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 applicant's official discharge paperwork and service treatment records were not available or submitted for review. Without these vital records, his contentions could not be corroborated, and an assessment could not be performed to determine whether his mental health condition had a direct impact to his misconduct and subsequent discharge. There was no evidence he had any mental health issues or conditions or traumatic experiences during service. The applicant alluded he suffered from trauma and felt "this incident" had contributed to his discharge. He did not provide any additional or clarifying information pertaining to his trauma and how his mental health condition caused his behaviors during service. He also did not address any of his misconduct for which he had received at least three Article 15s during service. His DVA treatment records revealed he reported experiencing the death of a bunk mate from a seizure and felt helpless he was unable to help him sometime in 2000 that led him to engage in reckless behaviors that ultimately resulted with his discharge. Giving the applicant the benefit of the doubt, this traumatic experience did occur and affected his behaviors during service despite him not providing any explanations in his petition, this explanation could cause his reckless behaviors documented in his Article 15s, but they do not excuse or mitigate his discharge. The applicant was discharged for reason of misconduct and although there were three Article 15s for misconduct issues in his available records, he could have other misconduct as additional reasons for his misconduct that are unknown at this time because of the lack of paperwork. The burden of proof is placed on the applicant to submit the necessary documents to support his request and presumption of regularity is applied. Thus, the Psychological Advisor finds no evidence of any error or injustice with his discharge based on the available records to support his request for an upgrade of his discharge.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are answers to the four questions from 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 reported he had received 100 percent service-connected disability rating

from the DVA and 70 percent of this rating was for unspecified trauma and stress-related disorder that he contended contributed to his discharge. He did not clarify his traumatic experience or address the actual misconduct and reasons for his discharge.

2. Did the condition exist or experience occur during military service? There is no evidence the applicant's traumatic experience and/or mental health condition had existed or occurred during his military service. The applicant reported to the DVA, about 16 years post discharge, he experienced the death of his bunk mate and being helpless to help him occurring in the year 2000 when he was in the service.

3. Does the condition or experience excuse or mitigate the discharge? The applicant's discharge paperwork and service treatment records are not available for review to determine whether his mental health condition or experience could excuse or mitigate his discharge. Giving the applicant the benefit of doubt using his report to the DVA despite him not providing any clarifying information in this petition, his mental health condition caused by his traumatic experience during service may cause and explain his misconduct documented in his Article 15 but does not excuse or mitigate his discharge. He may also have other misconduct listed as reasons for his discharge that could not be verified due to the absence of his discharge paperwork.

4. Does the condition or experience outweigh the discharge? Since the applicant's discharge paperwork and service treatment records are not available for review, presumption of regularity is applied, and there is insufficient evidence to support his mental health condition and experience may 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 29 Aug 22 for comment (Exhibit E) 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. Liberal consideration was applied to the applicant's request due to a DVA service-connected mental health condition and the Board finds insufficient evidence his condition had a direct impact on his behaviors and misconduct. Due to the absence of discharge documentation in the applicant's official military records, nor provided by the applicant, presumption of regularity is applied to the discharge action and reasons. 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 good citizenship since his discharge, 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 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00812 in Executive Session on 26 Oct 22:

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

Exhibit A: Application, DD Form 149, w/atchs, dated 7 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 5 Apr 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Aug 22.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 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.

10/20/2023

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Board Operations Manager, AFBCMR

Signed by: USAF

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