

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00956

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He would like his discharge upgraded to honorable so his time in the military can be counted towards his teacher's retirement. In his initial eight months in the military, he worked the midnight shift while stationed in Alaska. He performed his job well despite the dull and tedious work; but it became a very depressing existence. He rarely had any time off and began drinking on the weekends. While drinking, he got into an altercation with another airman who was drinking. Days later he was served with a legal letter from his first sergeant and learned nothing happened to the other airman involved in the incident. This was the beginning of a downward trajectory in his military career; he was "challenged" by several other airmen over his remaining time in the service. It was unjust and wrong how he was assaulted and then ultimately punished. He suffered from Post-Traumatic Stress Disorder (PTSD) from a traumatic childhood and with the help of his psychologist and 20 years of therapy, he can finally not feel ashamed of his time serving his country. He has been honored repeatedly in his 24 plus years of teaching.

In support of his request for a discharge upgrade, the applicant provides a personal statement, a Graduation Certificate, numerous character reference letters, a letter from his employer and his psychologist, and a Certificate of Commendation.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 1 Apr 87, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-46 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 18 Nov 86, a Letter of Reprimand (LOR) was issued for damage to government property.

b. On 17 Dec 86, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for disorderly conduct and underage drinking. He received a reduction in grade to airman (E-2) and 14 days of extra duty, seven of which, along with the reduction in grade, was suspended until 16 Jun 87, and forfeiture of \$100.00 pay for 1 month.

c. On 23 Mar 87, AF Form 3070, indicates the applicant received NJP, Article 15 for underage drinking. He received a reduction in grade to airman basic (E-1) and forfeiture of \$300.00 pay for one month.

On 17 Apr 87, the Staff Judge Advocate found the discharge action legally sufficient.

On 21 Apr 87, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was deemed not appropriate.

On 23 Apr 87, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Minor Disciplinary Infractions" and he was credited with 1 year, 6 months, and 17 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 3 May 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 11 May 22 and provided proof of employment with his school district.

The applicant's complete response is at Exhibit D.

## **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 paragraphs 6 and 7 of the Wilkie memorandum.

On 7 Oct 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

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 applicant claims the alcohol related incident in which he was assaulted and was unjustly punished was the beginning of a downward trajectory of his military career. His military records reflected he had two serious misconduct infractions that had occurred prior to this assault incident, which were damaging government property resulting with an LOR and underage drinking resulting with his first Article 15. His LOR incident did not appear to be alcohol related. The applicant did not discuss any of these predated misconducts that were also the basis of his discharge action. He claims he was assaulted by an intoxicated airman when they argued over the use of an oven. His account was partially corroborated. An *Incident/Compliant Report*, dated 1 Dec 86 completed by the Law Enforcement Superintendent reported two witnesses observed the applicant and another airman engaging in a verbal altercation over the use of the microwave oven that escalated into a physical altercation when the applicant either pushed or took a punch at the other airman. The airman then retaliated and punched the applicant causing injuries to him according to the witnesses. The airman confirmed the witnesses' account and stated the applicant swung first and missed and then was acting erratically. The applicant and the airman were both reported to have been intoxicated at the time and both were detained and released to their leadership. The applicant was assaulted by the other airman as he had contended; however, the applicant was also reported to have initiated the physical altercation that he failed to mention in his statement. This disorderly behavior and consuming alcohol while underage triggered his discharge action and essentially ended his military career, diverging from his contention. He did not have any additional documented misconduct after this incident.

The applicant contended he started drinking in response to his monotonous duties and job dissatisfaction and alluded to suffering from PTSD from his childhood trauma. There was no evidence he had exhibited or experienced any mental health conditions to include PTSD during service that may cause his behaviors and misconduct. His available limited records from the Mental Health Clinic (MHC) did not report he had any trauma or emotional distress and during his separation physical, he denied having any mental health issues or concerns. There was also no evidence his condition of PTSD caused him to have authoritative or adjustment issues as opined by his post-service provider. His MHC record stated he had some problems that needed to be addressed and his statements to his leadership disclosed he was being immature and could not cope with the pressures at home and clarified he had family problems, specifically his younger sisters running away from home that bothered him. He also stated his family could do without him but felt he could have helped with those matters. There was no childhood trauma that caused his distress at the time. It appeared more likely than not he had a delayed onset of PTSD that caused him to be diagnosed with this condition several years post-discharge. His childhood trauma had existed prior to service (EPTS) and no evidence his military service aggravated his pre-existing condition. It appeared he may have drank because of his job dissatisfaction and family problems but no evidence it was to cope with his anxiety, depression, etc. relating to his childhood trauma. There was also no evidence his work and family problems caused him to feel anxious, depressed, or developed a mental health condition. Having stressors do not necessarily cause one to develop a mental health condition. There was no evidence he was

drinking on the night of his assault incident to cope with his mental health condition. Given the applicant the benefit of the doubt he drank to cope with his stressors that may cause his underage drinking behaviors, his behaviors could not be excused, especially since he initiated the physical altercation and had damaged government property without any explanation or reason for his disruptive behavior. Therefore, the Psychological Advisor finds no error or injustice with his discharge.

The Psychological Advisor opines liberal consideration is not required to be applied to the applicant's petition because his mental health condition of PTSD caused by childhood trauma was found to have EPTS with no evidence of service aggravation per paragraph 15 of the Kurta Memorandum. Should the Board elect to apply liberal consideration to his petition, 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 contends he was physically assaulted by an intoxicated airman and was unjustly punished affecting his military career and discharge. He reported suffering from PTSD from his traumatic childhood that was corroborated by his post-service provider's clinical opinion.

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

There is no evidence the applicant had experienced or exhibited PTSD or similar symptoms from his childhood trauma during military service. He was seen by the MHC during service following his first alcohol related incident but no reports of any anxiety, depression, trauma, etc. He was identified to have problems that needed to be addressed and his statements to his leadership revealed he had problems at home he was unable to cope with and reported being immature. He denied during his separation physical he had any mental health issues or concerns. He submitted a letter from his post-service provider discussing he was diagnosed with PTSD caused by his childhood trauma that may have affected his ability to obey authority and caused his adjustment problems.

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

The applicant's condition of PTSD caused by his childhood trauma EPTS and no evidence was found to suggest his condition was aggravated by his military duties. Contrary to the applicant's contention, he had two prior and rather serious misconduct in which he did not address that were in addition to his disorderly/assault while intoxicated incident that caused his discharge. It is possible he had drunk to cope with his stressors, but his mental health condition does not excuse or mitigate his discharge especially since he initiated the physical altercation and damaged government property.

4. Does the condition or experience outweigh the discharge?

Since his 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 E.

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

The Board sent a copy of the advisory opinion to the applicant on 7 Oct 22 for comment (Exhibit F), and the applicant replied on 31 Oct 22. In his response, the applicant contends he had a truly successful career his first year in the service; however, lost interest and lacked the motivation needed to be successful after being placed on the night shift. Over the past 35 years, he has become an award winning teacher and is very proud of his accomplishments. He deeply regrets his behavior while in the service and apologizes for not fulfilling his military obligation.

The applicant's complete response is at Exhibit H.

## **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. While the Board finds no error in the original discharge process, nor evidence he had exhibited or experienced any mental health conditions to include PTSD during service that may have caused his behaviors and misconduct, the Board recommends relief based on fundamental fairness. The Board contemplated the many principles included in the Wilke 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. Given the evidence presented, the Board finds the applicant's post-service accomplishments sufficient enough to warrant a discharge upgrade. 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 on 23 April 1987, he was discharged with service characterized as honorable, a separation code of JFF and corresponding narrative reason for separation of Secretarial Authority.

## **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-2022-00956 in Executive Session on 21 Dec 22:

, Panel Chair  
, Panel Member  
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Mar 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Non-Viable Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 3 May 22.
- Exhibit D: Applicant's Response, w/atch, dated 11 May 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Sep 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Oct 22.
- Exhibit G: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 7 Oct 22.
- Exhibit H: Applicant's Response, dated 31 Oct 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.

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Board Operations Manager, AFBCMR