



**CUI//SP-MIL/SP-PRVCY**

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01100

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

He suffered from depression his whole life and has been on disability since Dec 01. He was undiagnosed while he was in the Air Force and many years after service. He believes his pattern of disciplinary infractions that led to his discharge were due entirely to his depression and lack of treatment for this condition. His depression caused him to be unreliable and unstable. Had his superiors made any effort to get him help instead of punishing him, he could have continued in the Air Force. His service was honorable and should be characterized as such.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 11 Jul 89, 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 Jul 88, a Letter of Reprimand (LOR) was issued for drunk and disorderly conduct.
- b. On 21 Sep 88, the applicant was verbally counseled for issuing a bad check.
- c. On 27 Feb 89, a LOR was issued for damage to government property beyond normal wear-and-tear.
- d. On 3 Mar 89, a LOR was issued for driving while intoxicated during which time he was participating in the Alcohol Rehabilitation Program to which he was ordered not to consume alcohol.

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e. On 3 Mar 89, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go and for disobeying a lawful written order by having a female guest in the dormitory after visitation hours. He received a reduction in grade to airman basic (E-1), suspended until 2 Sep 89, and 30 days of correctional custody.

f. On 26 Apr 89, a LOR was issued for knowing and willfully allowing an individual to operate his privately owned vehicle (POV) without a driver's license and the knowledge of how to drive, which caused a minor vehicle accident.

g. On 24 May 89, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 86 for failure to go. The applicant was reduced to the grade of airman basic with a new date of rank (DOR) of 3 Mar 89.

On 31 Aug 89, the Director, Military Justice Division, found the discharge action legally sufficient.

On 4 Sep 89, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 18 Sep 89, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Minor Disciplinary Infractions" and he was credited with 2 years, 8 months, and 19 days of total active service.

On 27 Jan 93, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 10 May 93, 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 D.

**POST-SERVICE INFORMATION**

On 28 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); however, he has not replied.

**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

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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 28 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:

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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.

**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. Although it is possible he experienced depression during service as contended, there was no evidence in his objective military or service treatment records he reported feeling depressed, was observed to be depressed or was in emotional distress by his leadership or mental health treatment team, or that his depression had affected his overall functioning in the service. He also submitted no records to substantiate he was ever diagnosed with depression by a duly qualified mental health provider. In light of the absence of his Social Actions/alcohol rehabilitation treatment records, there are records he received a mental health evaluation, attended quarterly Alcohol Rehabilitation Committee (ARC) meetings, and completed a separation physical. In all of these available records, there were no reports of any depression, depressed mood, or depressive symptoms and in fact, he denied ever or during his separation physical of experiencing any depression when he completed the Report of Medical History form dated 4 Aug 89. His misconduct included three alcohol related incidents for being drunk and disorderly in a public place, operating a vehicle while intoxicated, and failing to not consume alcohol while participating in the alcohol rehabilitation program. It is possible he coped with his depression through alcohol, but this is speculative as the applicant did not explicitly state this in his contention. His alcohol related incidents were not his only misconduct as he had other misconduct such as writing an insufficient funds check, damaging government property, wrongfully having a female guest in his room after visitation hours, failing to go to his place of duty, allowing an individual to operate his POV without a driver's license or knowing how to drive causing a minor accident, and failing to go to his group counseling appointment that contributed to his discharge. These other misconduct infractions were numerous and did not appear to be caused by his depression or mental health condition. The applicant had submitted a personal statement in response to his Article 15 at the snapshot in time of service and explained he had no excuses for his actions, showed complete disrespect for authority, and the reason he drank was because of his attitude toward the alcohol rehab program. He did not mention any depression or mental health issues he was experiencing at the time that caused his behaviors.

Additionally, the applicant previously petitioned to the AFDRB for an upgrade of his discharge in 1993, about four years post-discharge, and did not mention he had depression during service but rather, had attributed his drinking issues and misconduct to the atmosphere of being in the Philippines. The applicant contends he had depression his whole life which would indicate his depression had existed prior to service (EPTS) and no evidence his EPTS condition was aggravated by his military service. He reported to the AFDRB all of his problems had occurred off-duty and never caused him to not perform his job or missed work indicating his military duties/service did

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not cause his problems. His mental health evaluation during service revealed he reported he had been drinking since college and increased his drinking since he arrived in the Philippines also signifying his drinking issues EPTS. His drinking did increase during service but again, no evidence it was aggravated by his military duties and service but was probably from the “party” atmosphere in the Philippines per his past report to the AFDRB.

Lastly, the applicant claimed he did not receive any mental health treatment for depression and was undiagnosed during service. His records do not support this assertion. He did receive a mental health evaluation and the results yielded a diagnosis of Alcohol Abuse, Continuous Excessive. He was not given a diagnosis for depression or related disorders because he did not report having or displayed having any depression or depressive symptoms. He reported his feelings and cognitions were altered when drinking but no indication he was referring to depression. Mental health providers rely on the reporting from their examinee to make an informed diagnosis and treatment plan, and it appeared he did not receive treatment for depression during service because he never disclosed having depression. He received alcohol rehabilitation treatment during service following his evaluation because he reported having a problematic drinking pattern. He was making some initial progress with treatment but was determined to have failed to complete the program because he continued to drink while in the program which was prohibited. It appeared he had a drinking problem, and this would be considered an unsuiting condition for military service. To reiterate, the applicant had other several non-alcohol related misconduct problems that do not appear to be caused by his depression or mental health condition that could not be disregarded completely. Therefore, the Psychological Advisor finds no error or injustice with his discharge, and the applicant’s contentions for this petition were found to be insufficient to support his request.

Liberal consideration is not required to be applied to his petition because his mental health condition of depression EPTS and was not service aggravated per the Kurta memorandum #15. Should the Board choose to apply liberal consideration to his petition, the following are responses to the four questions from the Kurta memorandum based on information presented in the records:

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

The applicant contends he suffered from depression his whole life and this condition was undiagnosed during service and many years after service. He believes his pattern of disciplinary infractions that led to his discharge were due entirely to his depression and lack of treatment.

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

There is no evidence in his objective military records his depression had existed or occurred during military service. He denied having any depression or other mental health related issues during his separation physical and did not report to his mental health provider he had any depression, depressed mood, or depressive symptoms during his mental health evaluation performed at the time of service. He received a mental health evaluation following his first alcohol related incident for being drunk and disorderly in a public place and reported he had been drinking since college and increased his drinking since arriving in the Philippines. He was given a diagnosis of Alcohol Abuse, Continuous Excessive during service. There were no records available or submitted to support he was ever diagnosed with depression or related disorders by a duly qualified mental health provider during or post-service.

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

There is no evidence presented in his military records or in his personal testimony his mental health condition to include depression may excuse or mitigate his discharge. While it is possible he may have felt depressed during service, he had engaged in numerous misconduct that could not be explained, excused, or mitigated by his mental health condition. Additionally, his depression EPTS according to his report and no evidence it was service-aggravated by his military duties.

4. Does the condition or experience outweigh the discharge?

Since the applicant's 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 D.

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

The Board sent a copy of the advisory opinion to the applicant on 8 Sep 22 for comment (Exhibit E), but has received no response.

**FINDINGS AND CONCLUSION**

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Therefore, the Board concurs with the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim that a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. 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. 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 the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-01100 in Executive Session on 30 Nov 22:

*Work-Product* Panel Chair  
*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, dated 7 Apr 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 28 Apr 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 8 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.

12/22/2023  
*Work-Product*  
Board Operations Manager, AFBCMR  
Signed by: *Work-Product*