

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01140

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her general (under honorable conditions) discharge be upgraded to a medical separation.

APPLICANT'S CONTENTIONS

She was having difficulties with her supervisor; her supervisor made no attempt to train her unless it was to humiliate her because he took pleasure in making her look stupid and threatening her with discharge. Her best friend noticed her mental health declining and had taken her to the emergency room (ER) on base several times for cutting herself to which her supervisor was informed. She was too afraid to tell anyone; she was terrified of her supervisor and she was having suicidal ideation. After her supervisor had been telling people she was arrested for sexual assault, her supervisor would write her up for literal symptoms of depression such as forgetting to shave, failing a room inspection, not meeting weight requirements, and being late to work three times. She drank heavily to cope with her stressors and for the first time in her life, she was placed on medications that she continues to take presently and could not function without. When her coping mechanism with alcohol did not work, she started seeing a mental health professional and as time went on, she got an Article 15 for being late for the third time and had a stripe removed for failing a room inspection. She ended up having a breakdown and agreed to go North Star because she could not contract for safety. On the day of her discharge from North Star for being suicidal, her supervisor took her to see the colonel who had informed her she was being kicked out. She continued to meet with her psychiatrist and got another airman to help her complete her discharge. This airman informed her of the lies and rumors her supervisor had been spreading behind her back, calling her a number of distressing things, and had plans to leave her stranded outside of base with no phone, money, or contact information. Since her discharge, she has been unable to hold down any kind of job for any length of time and had been at several mental health hospitals in three states. She was discharged just one month short of two years without any resources despite her serious mental health condition. The result of her mental health condition was a direct result of harassment from her superiors; she was discharged within weeks of reaching two years to qualify for benefits, and she should have been sent to the medical board due to her mental health issues.

In support of her request, the applicant provides a personal statement, a psychological report from a civilian provider, and her medical records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 25 Oct 01, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 5 Mar 01, a Letter of Counseling (LOC) was issued for misuse of government credit card and issuing insufficient checks.
- b. On 30 Jul 01, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go. She received a reduction in grade to airman (E-2), suspended until 2 Feb 01, forfeiture of pay of \$272.00 for one month, and 14 days of extra duty.
- c. On 1 Oct 01, a Letter of Reprimand was issued for failure to maintain dormitory room standards.
- d. On 4 Oct 01, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 92 for dereliction of duty by tampering with a fire protection device. The applicant was reduced to the grade of airman with a new date of rank (DOR) of 3 Aug 01.

On 1 Nov 01, the assistant staff judge advocate found the discharge action legally sufficient.

On 8 Nov 01, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct (Minor Infractions)" and she was credited with 1 year, 11 months, and 1 day of total active service.

On 22 Oct 07, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to her discharge.

On 16 Apr 09, 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 13 May 22, the Board sent the applicant a request for post-service information to consider her application under clemency and to ensure fundamental fairness, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, she 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 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 13 May 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for a medical separation; however, finds her mental health condition may have possibly caused some of her misconduct resulting with her discharge. The Board may elect to upgrade her discharge based on liberal consideration which is at the Board's discretion. A review of the applicant's available records finds the applicant began to receive regular mental health treatment during service beginning on 30 Mar 01 because her first sergeant was concerned with reports from her colleagues believing she was depressed, and the applicant had concurred that she could be perceived as depressed. Her treatment records identified she was anxious and depressed for a plethora of reasons such as getting into trouble for being late to work on multiple occasions, misusing her government credit, failing her room inspection, etc. causing her to receive disciplinary actions. She was on the Weight Management Program (WMP) and had problems with over-eating, had sleep difficulties, problems with pornography, and her colleagues were not understanding or supportive of her religion. Her depressed mood would cause her to engage in maladaptive behaviors of having passive suicidal thoughts, coping with alcohol, and engaging in cutting/self-mutilation behaviors to help her deal and feel her emotions. She would eventually be prescribed an anti-depressant medication that she took voluntarily and was found to be somewhat effective to manage her mood. There were no reports she was being harassed or was having difficulties with her supervisor in any of her treatment notes that caused her to feel depressed and in fact, treatment notes dated 24 Aug 01, reported she had a new supervisor and looked forward to going to work; follow-up treatment notes dated 12 Sep 01, reported she liked her new supervisor. It was uncertain from her notes if this individual was the same supervisor she was referring to in her personal testimony, but nevertheless, these notes demonstrated she did not have any issues with her supervisor. Her first sergeant was also reported to have been kept abreast of her problems and treatment plan by her psychiatrist and was supportive of her care. Contrary to the applicant's report, she was not hospitalized because of stressors relating to her supervisor causing her mental health to decompensate and having suicidal ideation but was related to having distressing thoughts of her childhood trauma. She was unable to contract for safety because of this latter reason resulting with her being admitted to XXXXXX on 9 Oct 01.

When she was escorted to her appointment with her psychiatrist during a pass she received while she was still receiving inpatient treatment, she reported she was feeling more anxious with panic-like symptoms at North Star as a result of talking about her past abuse issues. It was during her hospitalization that she was given a confirmed diagnosis of Post-Traumatic Stress Disorder (PTSD) from her childhood trauma. Also contrary to her personal testimony claiming on the day she was discharged from XXXXX for being suicidal, her supervisor took her to see the colonel to be informed she was being kicked out, but her records reflected she was aware of her discharge prior to her hospitalization. Treatment notes dated 1 Oct 01, about eight days prior to her hospital admission, reported the applicant's command initiated her discharge from the military and the applicant was concerned about how her parents (mom and stepdad) would react to her discharge; however, she wanted to get out. Her first sergeant had even informed her psychiatrist on the day of her hospital admission she would be discharged in two weeks but was still supportive of her receiving treatment so close to her discharge date. The applicant alleges she continued to be distressed by her supervisor after her hospital discharge but again, her records do not support this allegation.

Her treatment records after discharge found no reports of this distress. She was focused on her discharge, learning more about her past abuse, worried about informing her family about her past abuse, coping with her abuse, and planning for her future post-discharge. She claims she was discharged without any resources but this assertion is also not supported by her records. After her hospital release with knowledge of her impending discharge from service, her provider had assisted her with developing a post-service treatment plan. The applicant had identified she could receive treatment at XXXXX, which was near her mother's home, her mother had scheduled her with an individual therapist according to her termination treatment note, and she identified having good support from her family and friends. The applicant contends she should have received a medical discharge, but her objective service treatment records do not support this impression. The applicant had misconduct and disciplinary issues prior to her receiving mental health treatment during service and her notes reported her depression was caused by her occupational problems. Her depression worsened when memories of her childhood abuse had resurfaced causing her hospitalization. Her childhood trauma had existed prior to service and stressors from her military experiences/occupational problems may have exacerbated but did not permanently aggravate her preexisting condition. The applicant clearly had difficulties adjusting to the military and adhering to the standards of the military causing her to feel depressed and her primary diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood reflected her acute clinical presentation. Her adjustment issues never became chronic. Her passive suicidal thoughts and self-mutilating behaviors were also reflected through her personality disorder identified as Schizotypal Personality Disorder with Borderline features. These conditions were found to have influenced her behaviors and were considered as unsuited for military service meeting criteria for an administrative discharge, which she received. Her post-service psychological evaluation confirmed her personality traits were pervasive, enduring, and chronic. The applicant did not have any unfitting mental health conditions to be referred to the Medical Evaluation Board (MEB) for a medical discharge. She was diagnosed with Major Depressive Disorder (MDD) and PTSD during military service, but these conditions never elevated to potentially unfitting and were not identified to be her primary conditions. Her condition of PTSD had developed after her administrative discharge action had been initiated according to her records and did not directly impact her behaviors and discharge. Receiving mental health treatment and/or a mental disorder

diagnosis does not automatically render a condition as unfitting. There were no records the applicant was placed on a duty limiting condition profile or was deemed not worldwide qualified due to her mental health condition; however, due to the age of her treatment records, these designations/markers were not standard documentation practice at the time that is employed currently. She was however, removed from regular duty after she was discharged from North Star by her first sergeant. It was not clear from her records if this was because of her mental health condition or because of her impending discharge. She most likely would or should have these restrictions due to her functioning and safety concerns at the time of service, but her harmful behaviors of suicidal ideation and self-mutilation were caused by her unsuited adjustment issues and personality traits and not potential unfitting conditions.

Based on the cumulative presented information, the Psychological Advisor finds her request for a medical discharge could not be supported. The applicant was discharged from service for engaging in a pattern misconduct. She contends she was written up for literal depressive symptoms of forgetting to shave, failing her room inspection, not meeting weight requirements, and being late to work three times. Her explanation is reasonable as it was possible her documented depressive symptoms of sleep disturbances, poor concentration, and appetite issues, may have caused problems for her. These same behaviors were identified to be other derogatory data or disciplinary conduct outlined in the legal review memorandum. For the misconduct listed as the basis of her discharge, her mental health condition may have caused some of her misconduct such as failing her room inspection and failure to go to her appointment of duty/being late to work, which the latter behavior was more frequent and serious resulting in an Article 15, as contended but did not appear to have caused her to misuse her government credit card and make unauthorized purchases, issued three insufficient funds checks, and purposefully tampered with her fire protection device because she had burned candles and incense in her room to practice her religion. Despite this assessment, her adjustment issues and occupational problems did initially cause her to feel depressed (no evidence her depression was caused by her supervisor), and her depression continued to persist causing additional misconduct issues leading to her discharge from service. Thus, it is highly plausible a nexus had existed between her mental health condition and misconduct directly impacting her discharge. Therefore, the Board may choose to upgrade her discharge based on liberal consideration. This decision is at the Board's discretion. The following are responses to the four questions in 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 contends she was harassed and threatened by her supervisor causing her mental health to decline. She experienced depressive symptoms that caused her to forget to shave, failed her room inspection, not meeting weight requirements, and being late to work three times. She alleges the result of her mental health condition was a direct result of harassment from her superiors, she was discharged within weeks of reaching two years to qualify for benefits, and she should have been sent to the medical board due to her mental health issues.

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

There is no evidence the applicant's [sic] suffered from harassment or threats from her supervisor causing her to develop depression or emotional distress. There is evidence she received mental health treatment for depression caused by her adjustment and occupational problems and was hospitalized at XXXX Hospital for distressing memories of childhood trauma causing her to be

unable to contract for safety. She was given diagnoses of Adjustment Disorder with Mixed Anxiety and Depressed Mood, MDD, PTSD, and Schizotypal Personality Disorder with Borderline features during service.

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

There is no evidence the applicant had any unfitting mental health conditions that would result with a medical discharge. She did have unsuiting mental health conditions of adjustment and personality disorders that were identified to be her primary conditions affecting her clinical presentation and behaviors during service. Her occupational problems initially caused her to feel depressed, but her depressive symptoms had exacerbated with time and most likely caused some and her more serious misconduct of multiple failures to go and failing to maintain her dormitory room. Her mental health condition may excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since her mental health condition may have caused, excused, and mitigated her discharge, her mental health condition would outweigh her 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 26 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 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The discharge was not 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. Her mental health conditions were found to have influenced some of her behaviors and were considered as unsuiting for military service meeting criteria for an administrative discharge; however, she did not have any unfitting mental health conditions to be referred to the Medical Evaluation Board (MEB) for a medical discharge. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, the Board did not find the evidence presented sufficient to grant the applicant's request. Her mental health condition may have possibly caused some of her misconduct resulting

with her discharge; however the Board finds the majority of her misconduct does not warrant a change to her discharge. 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-2022-01140 in Executive Session on 30 Nov 22:

, Panel Chair
, 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 3 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 May 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 26 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.

X

Board Operations Manager, AFBCMR