

*Work-Product*

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01228

*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**

His service in the Air Force was honorable. He progressed in his job knowledge and training in exemplary fashion. He successfully completed the program at the Alcohol Rehabilitation Center (ARC); however, he was disqualified from the Security Police Squadron (SPS) weapons career field and ineligible for Personnel Reliability Program (PRP) duties. This caused him to become depressed and contributed to his continued alcohol abuse. Since leaving service, he has not had any alcohol related problems and no longer consumes alcohol. Finally, he is married, raised four children, and considers himself a good citizen and neighbor and wishes the Board would realize that despite his inability to control himself as a youth, his service itself was conducted with honor.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

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

On 7 Dec 89, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Alcohol Abuse Rehabilitation Failure" and he was credited with 2 years, 10 months, and 18 days of total active service.

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

### **POST-SERVICE INFORMATION**

On 2 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 10 May 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement.

The applicant's complete response is at Exhibit D.

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## 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 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 3 Oct 22, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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 the desired change to his records. The applicant clearly had alcohol dependency issues during service causing him to engage in numerous alcohol related incidents such as damaged government property, drunk on station, public drunkenness, and disorderly conduct, and received a citation for driving under the influence. He received mental health treatment at various levels of care for his alcohol dependency issues that the Air Force could offer to him to include outpatient alcohol abuse treatment from Social Actions Office (SAO), Alcohol Rehabilitation Center (ARC)/residential rehabilitation treatment at [REDACTED] Work-Product, individual supportive psychotherapy services, and medication management services from his primary care manager. He also participated in Alcoholics Anonymous (AA) meetings for social support. Although he had made brief and temporary progress, he was eventually not amenable to these treatment interventions in the long-term as he continued to drink causing impairments to his overall functioning. There were no actual records officially declaring he was an alcohol treatment rehabilitation failure, but his available treatment records sufficiently reflected he was a rehabilitation failure because of his unwillingness to cooperate with treatment requirements of remaining sober or abstinence from alcohol for a certain period after completing a treatment program and/or was continuing to drink while receiving treatment. There were no records reporting he experienced any emotional distress or mental health issues such as anxiety, depression, trauma, etc. that would cause him to cope with alcohol; his notes echoed his behaviors were consistent with alcohol dependency. He was reported to appear to be in a depressed mood during one of his rehabilitation committee meetings but was possibly in reaction to the fact that his commander had recommended initiation of his administrative discharge action. The applicant contends he lost morale when he was informed, he could not hold PRP duties and could not draw a weapon because he was sent to an in-house rehabilitation program causing him to drink resulting with his discharge. This contention is not supported by his records. The applicant was disqualified from PRP because of his diagnosis of alcohol dependence and not because of his ARC/residential alcohol rehabilitation treatment. The Psychological Advisor acknowledges his leadership reported his job performance was excellent and satisfactory and most likely due to this reason, he was given an opportunity to cross train that would be a better fit for him to accommodate his circumstances. Unfortunately, his alcohol dependency remained, and he was unable to be retained in the service. Alcohol dependency, although it is considered a mental health condition under the classification of substance use disorder, is an unsuiting condition for continued military service. His official discharge paperwork was not available for review and so it is possible he was discharged for more than one reason besides alcohol rehabilitation failure that is currently listed on his DD Form 214, *Certificate of Release or Discharge from Active Duty*. He was reported to have misconduct issues caused by his alcohol dependency issues and may have been a factor to his general discharge characterization. His alcohol dependency appeared to have caused and was mitigating factor to his discharge for alcohol rehabilitation failure, but his condition does not excuse or outweigh his discharge. Discharge characterization for alcohol rehabilitation failure could be furnished with an honorable or general discharge according to current policy of AFI 36-3208, *Administrative Separation of Airmen*, which replaced previous policy of AFR 39-10, *Administrative Separation of Airmen*, cited for his discharge. The decision for his service characterization was at his commander's discretion centered on his behaviors and service records and it appeared his commander elected a general characterization. The reason for this election is unknown because of the missing discharge paperwork. Because of this issue, presumption of regularity is applied indicating his discharge was appropriate. The burden of proof is placed on the applicant to submit the necessary evidence/records to support his contention and request. As such, this psychological advisor finds no error or injustice with his discharge from service.

The applicant's alcohol dependency issues were determined to have existed prior to service (EPTS) because he was reported to have begun to consume alcohol and was intoxicated many times during his adolescent years, predating his military service. There was no evidence his military duties/service had aggravated his EPTS condition of alcohol issues. This Psychological Advisor opines liberal

consideration is not required to be applied to his petition because of this reason per Kurta memorandum #15. Should the Board choose to apply liberal consideration to his request, the following are answers 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 after he was removed from PRP and could not draw his weapon because he was sent to an in-house (residential) rehabilitation program, he lost morale and was not able to stay away from drinking and a result, led to his discharge.
2. Did the condition exist or experience occur during military service? There is ample evidence the applicant had alcohol dependency issues necessitating him to receive outpatient alcohol abuse treatment at the SAO, residential rehabilitation treatment/ARC at [REDACTED], individual supportive psychotherapy, and medication management services for alcohol abuse by his PCM during service. He was given a diagnosis of Alcohol Dependence by his providers.
3. Does the condition or experience excuse or mitigate the discharge? There is evidence the applicant was removed from PRP and weapons handling due to his diagnosis of Alcohol Dependence and not because of his participation in ARC treatment as contended. There is no evidence the applicant reported having any mental health issues to include anxiety or depression that may cause him to cope with alcohol during service. He denied having any mental health issues during his cross-train evaluation and separation physical. He was discharged for alcohol rehabilitation failure because he continued to drink after he completed treatment. Although it is possible he had low morale from being removed from his career field that caused him to drink, his mental health condition of alcohol dependency was unsuited for continued service and does not excuse or mitigate his discharge. There is no error or injustice identified with this discharge.
4. Does the condition or experience outweigh the discharge? Since his unsuited condition of alcohol dependency issues were determined to not excuse or mitigate his discharge, they also do 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 19 Oct 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 the applicant's alcohol dependence appeared to have caused and was a mitigating factor to his discharge for alcohol rehabilitation failure; however, his condition does not excuse or outweigh his discharge. The applicant's alcohol dependence was determined to have existed prior to service because he was reported to have begun to consume alcohol and was intoxicated many times during his adolescent years, which predated his military service. Nevertheless, there was no evidence his military service

was aggravated by his pre-existing alcohol issues. Furthermore, the Board is satisfied that the application of liberal consideration does not warrant relief. Accordingly, 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 applicant's discharge based on the Wilke Memo. In this regard, the Board considers the weight of each principle described in the Wilke Memo, paragraphs 6 and 7, and whether the principles support relief in a particular case. However, given the evidence presented, the Board finds no basis to do so. Specifically, although the applicant provided an FBI report indicating he had no arrests since his discharge, his personal statement alone is insufficient to support an upgrade to honorable based on the Wilke Memo. Should the applicant provide sufficient evidence to support an upgrade, the Board would be willing to reconsider his request. Accordingly, 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 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-2022-01228 in Executive Session on 16 Feb 23:

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Panel Chair  
el Member  
el Member

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

- Exhibit A: Application, DD Form 149, dated 22 Apr 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 2 May 22.
- Exhibit D: Applicant's Response, w/FBI Report, dated 10 May 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 3 Oct 22.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Oct 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.

4/12/2023

X

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Board Operations Manager, AFBCMR

Signed by: Work-Product

**AFBCMR Docket Number BC-2022-01228**

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