



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01350

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His Commander and First Sergeant were never fair and balanced regarding his alcohol treatment, family life, and financial situation in comparison to the rest of his peers. During his discharge hearing he was unable to present his character statements. Prior to the hearing, he was told by his First Sergeant to give him the statements and he would assure his attorney would get them; however, his attorney never received them. He managed to get through several jobs years later coping with this stressful situation that has greatly affected him after 30 years.

In support of his request for clemency, the applicant provides a personal statement, a Department of Veteran's Affairs (DVA) Rating Decision, and various documents from his discharge package.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

In an undated letter, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 19 Apr 88, he received a Letter of Reprimand (LOR) for control of a vehicle while impaired; operating an improperly registered vehicle; and not being properly licensed to operate a vehicle on 26 Mar 88.
- b. On 19 May 88, he received Nonjudicial Punishment for failure to go at the time prescribed to his appointed place of duty on 4 May 88. He received a reduction in grade to Airman Basic (suspended), 30 days Correctional Custody, and forfeiture of \$50.00 (suspended).
- c. On 3 Nov 88, he received a Record of Individual Counseling (RIC) for failing to report for Roll Call.
- d. On 10 Apr 89, he received an LOR for financial irresponsibility.

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e. On 28 Apr 89, he received a RIC for reporting to work late.

On 22 May 89, the Staff Judge Advocate found the discharge action legally sufficient.

On 5 Jun 89, the discharge authority directed the applicant be discharged for Minor Disciplinary Infractions with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

On 12 Jun 89, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern of Disciplinary Infractions" and he was credited with 3 years, 1 month, and 26 days of total active service.

On 29 Apr 91, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 22 Jul 91, 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.

On 21 Sep 93, according to the applicant's DD Form 215, *Correction to DD Form 214, Certificate of Release or Discharge from Active Duty*, Block 27, *Reenlistment Code*, was changed from "2C, which denotes, Involuntary separation with honorable discharge or entry-level characterization of service" to "2B, which denotes, Discharged under general or other than honorable conditions."

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

POST-SERVICE INFORMATION

On 10 Jan 23, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI) (Exhibit C); 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 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

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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 10 Jan 23, the Board staff provided the applicant a copy of the liberal consideration and clemency guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the 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.

General (Under Honorable Conditions). 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 member's military record.

AIR FORCE EVALUATION

The AFBCMR Psychological Advisor completed a review of all available records and finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge. The applicant contends he was command referred for mental health evaluations. Apart from his alcohol/substance abuse evaluation that was probably command referred after his incident of operating a vehicle impaired, which was reasonable, there was no evidence he received any other Commander Directed Evaluations as he claimed. He did receive a mental health evaluation for correctional custody (CC), but this was standard operating procedure and was not command directed. All his mental health evaluations and his physical examinations from his primary care manager found he did not have any mental health problems and was not given any mental disorder diagnosis. Although he did report having depressive symptoms while in CC, this reaction was not uncommon or unusual due to his situational circumstances. His depressive symptoms appeared to

have dissipated as he denied having any depression during his separation physical. He attended one stress management group session but was not a recurring event according to his records. There was no evidence the applicant had any diagnosable alcohol abuse issues, and he did not receive any alcohol abuse treatment as claimed during service. He claimed he increased his drinking to cope with his leadership stressors and reported late to work because of his drinking issues. Although his claim may have been possible, there was no evidence he had any recurring alcohol related incidents or had any serious alcohol problems. The Psychological Advisor acknowledges the applicant had been diagnosed with post-traumatic stress disorder (PTSD) by the DVA 30 years post-discharge from by his military experiences. There was no evidence the applicant had PTSD or similar conditions during service. He was diagnosed with PTSD over 30 years post-discharge signifying he more likely than not had a delayed onset of the condition. The applicant also did not explain how his condition of PTSD influenced his behaviors causing his discharge in his application. There is no evidence his mental health condition had a direct impact or was a mitigating factor to his misconduct causing his discharge.

Liberal consideration is applied to the applicant's request. The following are responses to the four questions from the Kurta Memorandum from the information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he was stressed by his poor leadership causing him to increase his drinking and being late to work a few times and claimed his leadership was not fair and balanced regarding his alcohol treatment, family life, and financial situation in comparison to his peers. He submitted a DVA Rating Decision letter reporting he received an increased rating from 50 percent to 70 percent for PTSD by the DVA occurring 30 years post-discharge. He did not discuss how his condition of PTSD caused his behaviors and subsequent discharge.

2. Did the condition exist or experience occur during military service?
The applicant was evaluated at least twice during service—after his driving impairment incident and when he was in correctional custody. He was found to not have any alcohol or mental health problems and was never diagnosed with any mental disorders during service. He was not recommended to attend alcohol rehabilitation treatment from his alcohol abuse evaluation. There was no evidence he attended/received alcohol abuse treatment during service as claimed. He attended at least one stress management group for unspecified reasons. He was diagnosed with PTSD by the DVA 30 years post-discharge caused by his military and prior service experiences. There was no evidence the applicant had any mental health conditions to include PTSD during service.

3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition had a direct impact or was a mitigating factor to his misconduct and discharge. His mental health condition or traumatic experiences does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since his mental health condition or traumatic experiences does not excuse or mitigate his discharge, his condition or experiences 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 7 Mar 23 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. 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. There was no evidence the applicant had PTSD or similar conditions during service. He was diagnosed with PTSD over 30 years post-discharge and also did not explain how his condition of PTSD influenced his behaviors causing his discharge. There is no evidence his mental health condition had a direct impact or was a mitigating factor to his misconduct causing his discharge. Liberal consideration was applied to the applicant’s request due to the contention of a mental health condition; however, there was no evidence the applicant had any diagnosable alcohol abuse issues, and he did not receive any alcohol abuse treatment as claimed during service. He claimed he increased his drinking to cope with his leadership stressors and reported late to work because of his drinking issues. Although his claim may have been possible, there was no evidence he had any recurring alcohol related incidents or had any serious alcohol problems. Therefore, his condition or experience does not excuse, mitigate, or outweigh his 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-01350 in Executive Session on 26 Jul 23:

-  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 26 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 10 Jan 23.
- Exhibit D: Advisory Opinion, Psychological Advisor, dated 6 Mar 23.

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Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Mar 23.

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.

2/19/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*