



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-2022-01615

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded to a general (under honorable conditions) discharge.

APPLICANT'S CONTENTIONS

He suffered from bipolar disorder and was incorrectly diagnosed with a different form of a mental health illness during service. In addition, he was prescribed the wrong type of medication by the Air Force medical staff, which resulted in mental and emotional stress throughout his military service. He was incarcerated unjustly and suffered extensive physical, mental, and emotional abuse at the hands of the leadership personnel. Through hard work, perseverance, and the proper mental health treatment, he is able to function as a productive law abiding and progressive member of society.

In support of his request for clemency, the applicant provides a character reference letter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 1 Aug 05, the convening authority published General Court-Martial Order Number W... The Order indicates the applicant pled guilty to one charge and one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). The applicant also pled guilty to one charge- and one specification of stealing property of the United States Government, in violation of Article 121, UCMJ. The applicant was sentenced to confinement for eight months, demoted to the grade of airman basic (E-1) and discharged from the service with a BCD.

On 20 Sep 06, according to General Court-Martial Order Number Wor..., the sentence to confinement for seven months, demotion to the grade of airman basic (E-1) was affirmed. As a result, the discharge from the service with a BCD was executed.

**AFBCMR Docket Number BC-2022-01615
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

CUI//SP-MIL/SP-PRVCY

On 2 Oct 06, the applicant received a BCD. His narrative reason for separation is “Court-Martial (Other).” He was credited with 3 years, 1 month and 29 days of total active service.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisory at Exhibit D and F.

POST-SERVICE INFORMATION

On 14 Jul 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 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 14 Jul 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.

CUI//SP-MIL/SP-PRVCY

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.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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 an upgrade to his discharge from a mental health perspective. The applicant's full service treatment records were not available for review but the available records did indicate he would periodically meet with his Primary Care Manager (PCM). He was given a diagnosis of depression by his PCM, but the cause and trigger for his depression were not reported in his treatment records. His depression may possibly be related to his legal issues, occupational problems, and new living environment as it is not unusual to experience emotional distress due to these circumstances. He received Zoloft refills and was reported to be responding well to this medication. He denied having any depressive symptoms to his PCM and his condition was reported to be stable during his last appointment that he did not require any regular or more intensive mental health treatment.

There was no evidence he had bipolar disorder or symptoms of this condition to include any manic episodes, liable mood, flight of ideas, sleep disturbances, during service. He did not submit any treatment records to confirm when he was given this diagnosis and the symptoms he experienced during his military service. He also did not provide a compelling or sufficient explanation for how his bipolar disorder had affected his behaviors during service resulting with his discharge. There is no evidence to substantiate his allegation of being unjustly incarcerated and suffering from extensive physical, mental, and emotional abuse at the hands of the leadership personnel.

The applicant had engaged in a pattern of minor and serious misconduct resulting with numerous counselings from his leadership, Letter of Reprimands, an Article 15 and conviction by general court-martial. Evidence shows his first report of depression occurred after his court-martial

CUI//SP-MIL/SP-PRVCY

conviction and after he had received disciplinary actions for his numerous misconduct and behavioral issues. There was no evidence his depression or mental health condition had occurred prior to or at the time of any of his misconduct or had a direct impact to his behaviors and discharge

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. 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 misdiagnosed and improperly treated by the medical staff. He claims he suffered from bipolar disorder that resulted in mental and emotional stress throughout his military service and was unjustly incarcerated and suffered from extensive physical, mental, and emotional abuse at the hands of the leadership personnel.

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

There is no evidence his condition/symptoms of bipolar disorder had existed or occurred during his military service. He submitted no records to confirm he was ever formally diagnosed with this condition during or post-service. There are records reporting he met with his PCM for a confinement physical and requested refills of Zoloft to treat his depression. He would request periodic refills of this medication during service. The reason and triggers for his depression were not reported in his records.

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

There is no evidence the applicant's mental health condition to include depression or bipolar disorder had a direct impact to his behaviors/misconduct resulting with his subsequent court-martial conviction and discharge from service. The first available treatment note reported he requested refills of Zoloft during his confinement physical. There were no reports for how long he had been taking this medication, the cause of his depression, and/or when he began to experience depression. His first report of depression occurred after his court-martial conviction and after he had received disciplinary actions for his numerous misconduct and behavioral issues. There was no evidence to indicate his depression or mental health condition had occurred prior to his misconduct or caused any of his misconduct. It is possible and more likely than not based on the available records, he had developed depression in response to his legal, occupational, and environmental stressors. The applicant was reported to have engaged in minor and serious misconduct causing his discharge, and his mental health condition does not excuse or mitigate this discharge.

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 D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

CUI//SP-MIL/SP-PRVCY

The Board sent a copy of the advisory opinion to the applicant on 9 Feb 23 for comment (Exhibit E), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

DAF/JA recommends denying the application. There is no indication an error or injustice occurred and no grounds for clemency. A clemency analysis necessarily includes a review of the airman's military service. The applicant has a history of misconduct, as evidenced by his Enlisted Performance Report, Article 15 and General Court Martial conviction. He defaced his military identification card, consumed alcohol underage on multiple occasions, lied to his commander, repeatedly failed to report for duty, harmed unit morale, stole military property, and used cocaine multiple times during a period of eight months.

The applicant's contentions of misdiagnosis and incorrect medication are insufficient evidence of error or injustice in his court-martial or his BCD sentence. The applicant voluntarily pled guilty in exchange for the convening authority limiting his confinement to seven months. As part of any guilty plea, a military judge conducts a providency hearing to make certain the military accused understands the crimes to which they are pleading guilty, the nature of the guilty plea, and the consequences of the guilty plea. The applicant gave the court no reason to believe he was not competent to plead guilty, including any mental health or misedication issues. Furthermore, the applicant benefitted from his pretrial agreement because his adjudged sentence of eight months was reduced to seven months as a result of his guilty plea. Based on the totality of the circumstances, including the repeated and serious nature of misconduct during a short period of service, there are no grounds to grant clemency in the form of a discharge upgrade.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Feb 23 for comment (Exhibit G), but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. 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 limitations 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 injustice. The Board finds no evidence that the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. However, the Board finds no basis for clemency in the case. The Board concurs with the rationale and recommendation of DAF/JA

CUI//SP-MIL/SP-PRVCY

and opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The totality of the circumstances, including the repeated and serious nature of misconduct during a short period of service, there are no grounds to grant clemency in the form of a discharge upgrade. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition to include depression or bipolar disorder had a direct impact to his behaviors/misconduct resulting with his subsequent court-martial conviction and discharge from service. 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. Furthermore, the Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. 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 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-2022-01615 in Executive Session on 22 Mar 23:

Work-Product [redacted] Panel Chair
[redacted], Panel Member
Work-Product [redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 May 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 14 Jul 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Nov 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Feb 23.
- Exhibit F: Advisory Opinion, DAF/JA, dated 13 Feb 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Feb 23.

CUI//SP-MIL/SP-PRVCY

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.

12/27/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*