



Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01965

Work-Product

COUNSEL: NAME

HEARING REQUESTED: NO

APPLICANT’S REQUEST

His Bad Conduct Discharge (BCD) be upgraded to Honorable.

APPLICANT’S CONTENTIONS

He would not have received the type of discharge he did under current standards. His record of court-martial conviction was for one isolated offense, and the punishment was too severe compared to today’s standards. There is no mention of the amount of marijuana he had in his possession when he was arrested. He had less than three grams. If he was arrested at that time as a civilian in the state of Work-Product he would have been given a citation, not one year in prison. In recent years, Work-Product has expunged marijuana convictions for possessing an ounce or less. He believes the military wanted to make an example of him. The Air Force strongly frowned upon marijuana use. Currently, service members with drug and alcohol abuse are being discharged with honorable or general discharges with their full benefits, not time in prison. This situation derailed his life trajectory as he enlisted in the Air Force with the intention of making it a career.

The applicant’s complete submission is at Exhibit A.

APPLICABLE AUTHORITY

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.

STATEMENT OF FACTS

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

On 10 Nov 69, the convening authority published General Court-Martial Order No Wor... The Order stated the applicant was found guilty of having in his possession four Amphetamine tablets (Article 92), having in his possession 12.37 grams, more or less, of marijuana (Article 134), and being absent without leave (AWOL) (Article 85). The applicant was sentenced to confinement at hard labor for 1 year, forfeiture of all pay and allowances, and discharge from the service with a Bad Conduct Discharge.

On 6 Jul 70, according to the DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, the applicant was discharged with an under other than honorable conditions (UOTHC) character of service.

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

POST-SERVICE INFORMATION

On 14 Mar 23, the Board sent the applicant a request for post-service information (Exhibit C), including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge from a mental health perspective. The applicant contends he was convicted for one offense of marijuana possession, the amount of possession was not reported, and he possessed less than three grams of marijuana. However, his court-martial records dispute his contentions. He was convicted for three offenses which were possession of four amphetamine tablets, possession of 12.37 grams of marijuana, and he was AWOL for almost five months. His contentions are vastly different than his military records and he did not address his possession of amphetamines nor his AWOL. The applicant did not explain how his mental health condition may excuse or mitigate his discharge. There is no evidence his mental health condition was a mitigating factor to his misconducts/offenses and discharge. He received at least two mental health evaluations during service and both evaluations determined he had a personality disorder albeit various types of a personality disorder. He was given a diagnosis of Sociopathic Personality Disorder, Dyssocial Type from his evaluation at his home station by request of his legal counsel and given a diagnosis of Emotionally Unstable Personality, chronic, moderate, as manifested by intolerance for discipline and ruling, low tolerance for frustration, difficulty in learning from experience, poor sense of his role in life, the use of drugs and a tendency to use poor judgment from his admission evaluation to the Disciplinary Barracks at **Work-Product**. Personality disorders and traits are life-long enduring and stable patterns of maladaptive behaviors commonly developed beginning in childhood or adolescence causing disruption to one's overall functioning. His personality traits, likely developed prior to service contributed to his behavioral problems during service. It was clear from his records he was unable to adapt to the military environment and structure due to his difficulties with authority and complying to rules and social norms. He had a history of resenting authority and had serious legal problems prior to service and these familiar behaviors carried over to his time in the Air Force. Personality disorders are unsuited conditions for military service and while his personality disorders may explain and cause his maladaptive behaviors, they do not excuse them especially since they had existed prior to service with no evidence of service aggravation, and he was convicted at General Court-Martial for various serious offenses. His convicted offenses are too egregious to be excused or mitigated by his personality disorder. The applicant contends he became very depressed and suicidal because he was assaulted numerous times by fellow prisoners while incarcerated. He did not discuss how his depression, suicidal ideation, or other mental health condition caused his misconducts. There is no evidence he had depression, suicidal thoughts, or other mental health conditions during service to include prior to his court-martial conviction, during incarceration and from any of his mental health evaluations. There is no evidence he was in emotional distress at the time of any of his offenses causing his impaired judgment and poor decision-making skills. He was already convicted and sentenced for his serious offenses when he was assaulted in prison causing him to develop depression and suicidal thoughts and so his depression and suicidal thoughts could not have preceded or caused his offenses and discharge based on his explanation. He also denied during his separation physical examination he had any mental health issues or concerns to include depression.

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 became depressed and suicidal because he was assaulted numerous times by fellow prisoners while incarcerated. He did not discuss how his mental health condition may excuse or mitigate his discharge.

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

There is no evidence the applicant's depression or suicidal thoughts occurred during military service. He received two mental health evaluations during service resulting with his being diagnosed with Sociopathic Personality Disorder, Dyssocial Type from his evaluation at Work-Product AFB by request of his legal counsel and Emotionally Unstable Personality, chronic, moderate, as manifested by intolerance for discipline and ruling, low tolerance for frustration, difficulty in learning from experience, poor sense of his role in life, the use of drugs and a tendency to use poor judgment from his evaluation for admission to the Disciplinary Barracks at Work-Product Work-Product. There is no evidence he reported having depression or suicidal thoughts during any of these evaluations or evidence he displayed these behaviors or symptoms during service. He denied having any mental health concerns to include depression during his separation physical examination.

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

There is no evidence the applicant's mental health condition to include having depression or suicidal thoughts was a mitigating factor to his discharge. He had unsuited personality disorders that may explain and cause his maladaptive behavioral patterns resulting with his court-martial conviction and discharge, but his personality disorders do not excuse or mitigate his discharge. He was reported to have used illicit drugs and have behavioral problems to include likely personality traits prior to service and there is no evidence his military service aggravated any of these pre-existing behaviors or conditions.

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.

ADDITIONAL AIR FORCE EVALUATION

AF/JAJI recommends denying the application. The AFBCMR corrections can merely reflect actions regarding a court-martial that were already taken by review authorities under the Uniformed Code of Military Justice (UCMJ) (e.g., convening authority clemency, appellate corrections); or the AFBCMR can take action only on the sentence, but even then, only on the basis of clemency and not on the basis of alleged legal error or injustice. There is insufficient evidence of an error warranting correction of a record to reflect an action taken by review authorities under the UCMJ. The applicant has the burden of providing evidence in support of their allegation(s). In this case, the applicant does not allege or provide any evidence of error in this regard, nor does a review of his available personnel records, reveal such an error demanding correction. Also, there is insufficient evidence warranting clemency. The applicant's basis for requesting an upgraded service characterization is because he believes his court-martial and sentence are not commensurate with current law or punishment trends in the state of Work-Product or the Air Force for cases involving marijuana possession. First, his court-martial charges and conviction were pursuant to violations of the UCMJ, not the laws of Work-Product and it is still a

violation of the UCMJ to possess marijuana. Second, he fails to mention in his request, he was not only charged and convicted of marijuana possession, but also of amphetamine possession, and desertion. He further alleges his records do not mention the amount of marijuana he had in his possession and states he only had three grams at the time of his arrest. This claim is factually untrue. The General Court-Martial order in his case clearly states he was found guilty of possessing “12.37 grams, more or less” of marijuana. Finally, he alleges he intended to make a lifelong career in the Air Force. This is inconsistent with his records, which reflect he deserted twice in his short time in service and expressed a desire to be discharged.

The complete advisory opinion is at Exhibit E.

APPLICANT’S REVIEW OF EVALUATIONS

The Board sent a copy of the advisory opinions to the applicant on 28 Aug 23 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

- 1. The application is timely. 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 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 error or injustice. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Liberal consideration was applied to the applicant’s request due to the contention of a mental health condition; however, since there is no evidence the applicant’s mental health condition, to include having depression or suicidal thoughts, was a mitigating factor to his discharge, 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 clemency; 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 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-2022-01965 in Executive Session on 20 Dec 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, dated 2 Aug 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Request FBI Report and Clarifying Guidance (Liberal Consideration and Clemency), dated 14 Mar 23.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 27 Jul 23.
- Exhibit E: Advisory opinion, AF/JAJI, dated 14 Aug 23.
- Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 28 Aug 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.

		1/10/2024
X	<i>Work-Product</i>	
<i>Work-Product</i>		
Board Operations Manager, AFBCMR		
Signed by: USAF		