



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02013

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

In 1998 while in service, a man attempting suicide ran in front of him and he struck the man with his vehicle. The man was badly injured and he had to render medical aid to the man until emergency medical technicians (EMT) and the highway patrol arrived. The effects of this traumatic event caused him to be late to work multiple times and make bad judgement decisions. Also, he was around marijuana with his previous roommate, but he did not report him, nor did he engage in the use of marijuana. Finally, he was unaware he could have his discharge reviewed for a possible upgrade until after speaking with other veterans who suggested he was suffering from post-traumatic stress disorder (PTSD) due to the accident.

In support of his request for clemency, the applicant provides a newspaper article that documented the accident.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 23 Sep 98, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. Between on or about (o/a) 10 July and 13 July 1998, he wrongfully used marijuana and wrongfully possessed marijuana, a controlled substance under Schedule I of Title 21 U.S.C., section 812. He received an Article 15, *Uniform Code of Military Justice (UCMJ)*, dated 3 Aug 98, with a reduction to the grade of Airman, with new date of Rank of 3 August 1998, restriction to base for 45 days and 20 days extra duty.
- b. O/a 29 July 1998, he failed to inform his immediate supervisor of his whereabouts and intentions to leave base. He received a Letter of Counseling (LOC), dated 30 July 1998.
- c. O/a 30 July 1998, he was counseled for possible adulterous act or acts and received an

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LOC.

- d. O/a 5, 6 and 7 August 1998, he was late for work and was counseled after each incident and documented as a memo for record (MFR).
- e. O/a 6 August 1998, he removed items from the shop's snack bar and did not pay or leave any type of "IOU." He received a Record of Individual Counseling, dated 10 August 1998.
- f. Between o/a 5 August and 7 August 1998, he failed to go at the time prescribed to his appointed place of duty and received an Article 15, dated 7 August 1998, with a reduction to the grade of Airman Basic, with new date of rank 7 August 1998, forfeiture of \$200 pay and 10 days extra duty, both suspended until 6 February 1999.
- g. O/a 20 August 1998, he failed to go to his appointed place of duty. His suspended Article 15 punishments for forfeiture of \$200 and 10 days of extra duty were vacated on 8 September 1998.
- h. O/a 2, 8, and 9 September 1998, he was late to work and was counseled after each incident and documented as MFRs.

On 26 October 1998, the Acting Staff Judge Advocate found the discharge action legally sufficient.

On 27 October 1998, the discharge authority directed the applicant be discharged for drug abuse (use and possession of marijuana) and pattern of misconduct (drug abuse and repeated failure to go to duty). Drug abuse is the primary reason for discharge with an UOTHC service characterization.

On 29 October 1998, the applicant received an UOTHC discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years and 14 days of total active service.

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

**POST-SERVICE INFORMATION**

On 20 October 2022, 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 September 2014, 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 August 2017, 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

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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 July 2018, 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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 20 October 2022, 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.

**Under Other than Honorable Conditions.** This characterization is used 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 members. 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:

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- 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 DA
- 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 abuse of a child, sexual harassment, and attempts to commit these offenses.

**AIR FORCE EVALUATION**

The AFBCMR 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. A review of the available and submitted records/evidence finds the applicant's contention he was traumatized by striking an individual with his vehicle is very plausible. He submitted evidence to substantiate the incident; however, his traumatic experience is not in question, but it is whether his mental health condition developed from his traumatic experience could cause, excuse, or mitigate his misconduct and discharge. His objective military records do not support the latter impression. There was no indication his behavior changed because of his traumatic experience. The applicant did not have any behavioral or performance problems until about eight months after his traumatic experience. This may indicate there was no nexus between his behavioral changes and traumatic experience since there was no immediate reactions or he may have experienced delayed onset of trauma and stressor related symptoms. The latter scenario is difficult to verify. He claimed he had PTSD based on his conversations with combat veterans, but these veterans were not or not identified as duly qualified mental health professionals to make this assessment credibly. He did not submit any evaluations or reports from an actual licensed mental health provider to confirm he developed PTSD from his traumatic experience during service. Furthermore, his service treatment records were not available for review to reflect he experienced PTSD or trauma and stressor related symptoms during service that may have impacted his behaviors resulting with his subsequent discharge. The applicant did not describe or discuss his PTSD symptoms and how they could mitigate his behaviors and misconduct and his explanation was vague. It is uncertain his behavioral changes were caused by his traumatic experience. The applicant's personal testimony was not compelling or sufficient to demonstrate his mental health condition was a mitigating factor to his misconduct and discharge. Therefore, this Psychological Advisor finds no error or injustice with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition caused by his traumatic experience. 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 struck a man, who was attempting to commit suicide, with his vehicle in the middle of the night on 19 January 1998. He witnessed the man mangled in the center median, was bleeding from multiple wounds, and gurgling blood out of his mouth and nose. He rendered aid to the man until EMT and the highway patrol arrived, and this incident haunted him day and night. After this traumatic event, he was late to arrive at his duty station on multiple occasions and made bad judgments and decisions. He was around marijuana via his roommate but did not report him and did not engage in the use of marijuana but was charged with this misconduct. He spoke to a few combat veterans who suggested he was suffering from PTSD from the accident in 1998 based on his reported symptoms.

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

The applicant submitted a news article, dated 19 January 1998, identifying him as the driver striking and injuring a man with his vehicle who had to be transported to the hospital for medical care. This article corroborated the incident and his reported traumatic experience from the incident was experienced during his military service. The applicant's service treatment records were not available for review and so there is no evidence to substantiate his condition of PTSD had existed or occurred during his military service. There is no evaluation or report from a duly qualified mental health professional to confirm he had or was diagnosed with PTSD from his traumatic experience. There is no evidence he had or experienced PTSD or trauma and stressor related symptoms during service.

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

The applicant denied he used marijuana even though he received an Article 15 for wrongful marijuana usage and possession and reported in his response to his Article 15 his involvement with marijuana was due to peer pressure. His explanations at the time of service for his repeated tardiness to work were caused by various factors and not related to his mental health condition, and his remaining misconduct of failing to inform his supervisor of his whereabouts and intentions to leave the base, failing to go to his prescribed appointed place of duty twice, his possible involvement in an adulterous act or acts, and failing or intending to pay for snacks were not addressed and do not appear to be caused by his mental health condition. The applicant never discussed his traumatic experience or made complaints of any mental health concerns during service to explain his behaviors or behavioral changes. Although it is possible his mental health condition was a factor to some of his misconduct, his mental health condition could not compellingly or sufficiently explain, excuse, or mitigate most and his more serious misconduct causing his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition from his traumatic experience does not excuse or mitigate his discharge, his condition or experience 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 25 April 2023 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Furthermore, 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition to include PTSD; however, since there is no evidence his mental health condition or the suicide attempt he witnessed had a direct impact on his behaviors and misconduct resulting with 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 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.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

**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-2022-02013 in Executive Session on 26 Jul 23:

*Work-Product* [redacted] Panel Chair  
*Work-Product* [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 5 Jul 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 20 Oct 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Apr 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Apr 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.

3/5/2024

*Work-Product* [redacted]

Board Operations Manager, AFBCMR  
Signed by *Work-Product* [redacted]