
RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-02022

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her general (under honorable conditions) discharge be upgraded to honorable, her narrative reason for separation be changed to "Secretarial Authority," and similar changes be made to the separation authority and reentry code.

APPLICANT'S CONTENTIONS

Through counsel, the applicant contends during her second year of service, she incurred physical injuries during a training exercise that damaged her shoulder, neck, right arm, left hip and left knee causing recurring nosebleeds and migraines, and traumatic events (unspecified) causing her mental health to deteriorate. She was first diagnosed with severe depression by Air Force medical personnel on 3 Aug 04 and was sent to LSSC and thereafter, her depression intensified and directly led to infractions that occurred during a dark time in her life. A statement from a master sergeant attested he was aware the applicant began to suffer from depression and anxiety in 2005 resulting with deterioration of certain aspects of her work performance. Her mental health issues resulted in a series of misconduct and related infractions during her last several months of military service and ultimately resulted with her general discharge. Her misconduct would not have occurred if not for her mental health issues. She received several Letters of Counseling (LOC) and Letters of Reprimand (LOR) from Aug 04 to Jul 05 often for not following rules for which she was unaware and was not adequately trained. After that she became despondent, and her morale plummeted.

In 2021, she was 100 percent serviced connected by the Department of Veteran Affairs (DVA) for adjustment disorder with mixed anxiety and depressed mood.

Since her discharge from service, she has had a commendable record of achievement, except for a minor indiscretion in 2012. Her record of achievement, contribution to the Air Force, and personal growth since leaving military service indicates she has been rehabilitated, and her misconduct while in the Air Force should be deemed "youthful indiscretions." While she still struggles with mental health, she has largely managed those challenges: she has been gainfully employed, started her own business, received several vocational certificates, obtained a Bachelor of Arts degree, and contributed to her community through volunteer service. In consideration of her request for clemency under fundamental fairness, the applicant provides a personal statement and copies of military performance reports, college diploma, and character letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 9 Nov 05, the applicant was notified of her commander's recommendation she be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, with a general (under honorable conditions) discharge for minor disciplinary infractions. The specific reasons for the action were:

a. On or about (o/a) 11 Aug 04, she illegally purchased a meal using her meal card for someone other than herself and allowed a civilian to eat at the Dining Facility. As a result, she received a Letter of Counseling (LOC).

b. Between o/a 1 Aug 04 through o/a 31 Aug 04, she knowingly failed to make any entries into FitLinxx and failed to report to mandatory physical training (PT). As a result, she received an LOC.

c. On 17 Feb 05, she failed to report to mandatory PT two times a week and failed to log a minimum of 10 workouts per month into FitLinxx. As a result, she received a Letter of Reprimand (LOR).

d. Between o/a 1 Feb 05 through o/a 28 Feb 05, she failed to obey a written order to log a minimum of 10 entries into FitLinxx per month. As a result, she received an LOR.

e. O/a 15 Apr 05, she willfully failed to properly identify all meals going to the United States with a USDA sticker. As a result, she received an LOC.

f. O/a 3 June 2005, she willfully failed to maintain sanitary standards required in the Flight Kitchen area as well as the break area. As a result, she received an LOC.

g. O/a 3 Jun 05, she willfully failed to go to the Wing Warrior Run. As a result, she received an LOC.

h. On 14 Jun 05, she failed to pay the overdue debt owed on her Military STAR card. As a result, she received an LOC.

i. O/a 16 Jun 05, she failed to obey an order to complete a survey by the close of business. As a result, she received an LOC.

j. Between o/a 5 May 05 through o/a 17 Jun 05, she failed to report to mandatory study sessions for her Career Development Course (CDC). As a result, she received an LOC.

k. Between o/a 1 Oct 04 through o/a 31 Jun 05, she failed to complete her CDCs in the required one month per volume standard. As a result, she received an LOC.

l. O/a 15 Jun 05, she failed to show for her PT assessment without permission or explanation. As a result, she received an LOR.

m. O/a 9 Jul 05, she failed to refrain from sleeping while she was posted as an internal armed response team, as a Security Forces augmentee. As a result, she received an LOR and an Unfavorable Information File (UIF) was established.

n. O/a 18 Jul 05, she failed to follow established guidelines in the performance of her duties as a Security Forces augmentee. Also, o/a 19 Jul 05, she failed to report to duty and self-medicated herself with a previously prescribed drug for an unrelated illness. As a result, she received an LOR.

o. O/a 31 Jul 05, she willfully failed to wear her BDU shirt when the food facility was open and o/a 15 Aug 05, she failed to wear a hair restraint while handling food. As a result, she received non-judicial punishment (NJP) action pursuant to Article 15, Uniform Code of Military Justice (UCMJ). Punishment consisted of reduction to the grade of airman first class (E-3) and a reprimand which was added to her UIF.

On 16 Nov 05, the applicant responded to the discharge action and requested her mental health be considered and she be given an honorable discharge.

On 17 Nov 05, the applicant's commander recommended the applicant be discharged with a general (under honorable conditions) discharge.

On 1 Dec 05, the Staff Judge Advocate (SJA) found the discharge action legally sufficient and recommended the applicant be discharged with a general (under honorable conditions) discharge. The SJA noted the applicant was diagnosed by a provider from the Life Skills Support Center with "309.9-Adjustment Disorder Unspecified," however she was also considered world wide qualified from a mental health perspective and she reported she "has been unhappy in the Air Force since Day 1 and has been trying everything she can think of to get out of the Air Force."

On 8 Dec 05, the discharge authority directed the applicant be discharged for minor disciplinary infractions with a general service characterization but not until she could be medically cleared. Probation and rehabilitation were not granted.

On 16 Dec 05, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of "Misconduct". She was credited with three years, 1 month, and five days of total active service.

On 3 Mar 08, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to her discharge.

On 11 Feb 09, 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. The Board found no evidence of impropriety or inequity on which to base an upgrade of the discharge. The Board opined that through the applicant's administrative actions, she had ample opportunities to change her behaviors and found the seriousness of her misconduct offset any positive aspect of her duty performance. The Board concluded there existed no legal or equitable basis for a discharge upgrade and thus, her discharge should not be changed.

According to DVA Rating Decision letter, dated 6 May 21 and provided by the applicant, her adjustment disorder with mixed anxiety and depressed mood, previously denied on 12 Dec 11, was granted service connection with an evaluation of 100 percent, effective 10 Mar 21.

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

POST-SERVICE INFORMATION

On 24 Aug 22, the Board sent the applicant a request for any additional post-service information she may wish the Board to consider and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 22 Oct 22 and provided an FBI report, dated 15 Oct 22 (Exhibit D). According to the report, the applicant was arrested on 4 Jun 11 for theft by shoplifting.

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 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 the supplemental guidance, paragraphs 6 and 7.

On 24 Aug 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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

Honorable. The quality of the service member'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 a service member'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 AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to her records. The applicant's full service treatment records were not available but there were extracted pages available and/or submitted for review. It is acknowledged the applicant struggled to adjust to the military and had developed anxiety and depression from this issue in addition to her physical conditions, however, her mental health condition could not quite convincingly explain most of her misconduct infractions. The applicant was cited for engaging in at least 15 misconduct infractions resulting in one Article 15, five LORs and nine LOCs for various misconduct. She had explained at the snapshot in time of service she did not willfully fail to maintain standards in the Flight Kitchen and that the uncleaned pots and pans were the civilian employee's doing from the previous shift. She also did not know she could not leave her belongings in the break area. For her failure to attend CDC study sessions, she explained she had to work the night shift which made it difficult for her to attend these sessions that were scheduled during her off duty time and she would be too tired to attend them, and the sessions were not helpful to her. She explained in her personal testimony she was unaware of rules or were not properly trained causing her numerous misconduct infractions. Her legal counsel echoed her explanation and added her misconduct were derived from interpersonal issues with her leadership. All of these explanations provided do not suggest her misconduct/problems were caused by her mental health condition but were from misunderstanding or lack of awareness.

It is acknowledged she had reported in response to her discharge action at the time of service she disclosed having problems adjusting to the military causing her to feel depressed and received mental health treatment services from LSSC on base, which were corroborated by her records. Her provider also contacted her leadership to inform them of her depression. However, these medical records and the applicant did not clearly explain or detail her depressive symptoms and how these symptoms caused her numerous misconducts of failing to go, financial irresponsibility, not following rules and regulations, etc. The applicant and her legal counsel provided vague and general information her mental health condition of anxiety and depression caused her misconduct. Contrary to this statement, her legal counsel also stated her misconduct while in the Air Force should be deemed as "youthful indiscretions" which would be different than being caused by her mental health condition. Her report of mental health issues to her military providers and mental health treatment may have coincided at the time of her misconduct and it is possible there was a nexus, but it is also possible they could be mutually exclusive events. Giving the applicant [the benefit] of the doubt her mental health condition or depressed state may have caused her to experience impaired judgment, apathy, anhedonia, and/or lack of focus and concentration which

in turn may cause some of her misconduct, her condition could not explain or mitigate most of them. Inferences could have been made but the responsibility lies with the applicant to amply demonstrate a nexus existed between her mental health condition and misconduct, which the psychological advisor finds were not satisfactorily interrelated. The applicant was provided with service connection for adjustment disorder by the DVA, but service connection does not demonstrate mitigation. The psychological advisor opines the information provided for this petition was not adequate to demonstrate her mental health condition was mitigating to her misconduct and subsequent discharge. Therefore, the psychological advisor finds no evidence of an error or injustice with her discharge.

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

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant and her legal counsel contend the applicant suffered from anxiety and depression caused by her physical conditions, traumatic experiences, and difficulties adjusting to the military resulting with her numerous misconduct infractions and leading to her discharge from service.

2. Did the condition exist or experience occur during military service? There is evidence the applicant reported to her primary care manager (PCM) and mental health care provider she had anxiety and depression caused by issues at home and work and being unhappy in the Air Force. She appeared to have received individual psychotherapy sessions from LSSC and her service treatment records were not available for review.

3. Does the condition or experience excuse or mitigate the discharge? Giving the applicant the benefit of the doubt her mental health condition may have caused some of her misconduct, her mental health condition could not sufficiently explain or was demonstrated to have a direct impact to her discharge. Based on her explanations in response to her disciplinary actions at the time of service, statements from her leadership in her objective military records, and her explanations provided for this petition to the AFBCMR, her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge? Since her mental health condition does not excuse or mitigate her discharge, her condition also does not outweigh her 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 25 Jan 23 for comment (Exhibit F), and the applicant replied on 21 Feb 23. Through counsel, the applicant reiterates her request should be given liberal consideration in light of the mental health conditions that arose during, and because of, her military service. In support of her request, the applicant provided an independent expert report who found she experienced all nine symptoms of major depressive disorder (MDD) while serving in the Air Force and "experienced significant function impairment related to MDD symptoms." The medical experts concluded that the applicant's "records indicate sufficient nexus between her service-connected depressive disorder and the misconduct which resulted in discharge from the Air Force," and "prior to [the applicant's] diagnosis of depression (Aug 04) there was not a single incident of misconduct documented in her record. After her diagnosis, [the applicant] was cited for various incidents of misconduct, many of which overlap with symptoms of MDD." Even

putting the mental health considerations aside, counsel contends the applicant should still be granted relief based on her service record and exemplary post-discharge conduct.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's response to the advisory opinion, 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. Liberal consideration was applied to the applicant's request due to evidence of a mental health condition while in service; however, there is insufficient evidence her mental health treatment had a direct impact on all of her behaviors and misconduct resulting in her discharge; therefore, the condition does not excuse, mitigate, or outweigh her discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency under fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. The applicant retains the right to request reconsideration of this decision. The applicant may provide further post-service evidence depicting her good citizenship since her discharge, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness. Therefore, 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02022 in Executive Session on 24 May 23:

Work-Product

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, received 9 Aug 22 and 23 Aug 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 24 Aug 22.
- Exhibit D: Applicant's Response, w/atchs (FBI Report), dated, 15 Oct 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Jan 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jan 23.
- Exhibit G: Applicant's Response, w/atchs, dated 22 Feb 23.

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Work-Product

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.

12/20/2023

X

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

AFBCMR Docket Number BC-2022-02022

Work-Product