

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02097

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was diagnosed with bipolar 1 disorder while on active duty. The original diagnosis prior to discharge was schizophrenic disorder. This information should be in his service treatment records and Department of Veterans Affairs (DVA) records. He was not aware he could request an upgrade to his discharge until recently. He was discharged from the Air Force with a general (under honorable conditions) discharge due to minor disciplinary infractions. This all occurred while he was suffering from bipolar disorder.

In support of his request for liberal consideration, the applicant provides his DVA medical records.

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 24 Jul 87, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-46, for minor disciplinary infractions. The specific reasons for the action were:

- a. On 20 Feb 87, created a disturbance and had a confrontation with his roommate.
- b. On 21 Feb 87, was disorderly during a dormitory meeting.
- c. On 22 Feb 87, charged with engaging in an affray/destruction of government property and making false statements.
- d. On 23 Feb 87, wrongfully possessed a concealed nunchaku.
- e. On 25 Feb 87, was disrespectful to a noncommissioned officer during Base Orientation.
- f. On 1 Mar 87, was disrespectful to his supervisor.
- g. On 1 Mar 87, communicated a threat to another Airman.
- h. On 3 Mar 87, created a disturbance at the Accounting and Finance Office
- i. On 3 Mar 87, charged with prisoner misconduct while in confinement.

On 17 Aug 87, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant receive a general discharge without the offer of probation and rehabilitation.

On 21 Aug 87, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 27 Aug 87, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Minor Disciplinary Infractions" and he was credited with 3 years, 1 month, and 8 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.

POST-SERVICE INFORMATION

On 14 Mar 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); 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 issued clarifying guidance (Kurta Memorandum) 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 Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilke Memo, 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 Wilke Memo.

On 14 Mar 23, 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 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 AFRBA Psychological Advisor finds there is insufficient evidence to support the applicant's request for an upgrade in his discharge.

The applicant is petitioning the Board to change the characterization of his service from under honorable conditions (general) to honorable. The applicant contends he was diagnosed with bipolar 1 disorder while on active duty. The original diagnosis prior to discharge was schizophrenic disorder and this information will/should be in his service treatment records and DVA medical records.

There is insufficient evidence that the applicant had bipolar disorder or schizophrenic disorder at the time of his discharge. While it appears the applicant had a preliminary diagnosis of bipolar disorder, the applicant successfully challenged this diagnosis (this initial mental health diagnosis is not in the available record, but it is alluded to in several available documents. Therefore, this psychological advisor is unable to evaluate the basis of this preliminary diagnosis). A psychiatric review of the record at the time determined that he did not have bipolar disorder. He was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. This examiner appears to have done a thorough examination of the applicant with respect to a possible bipolar disorder and methodically goes through the criteria for bipolar disorder and rules each of them out, with the result that the applicant did not meet the criteria for bipolar disorder.

The applicant himself in a self-authored statement, dated 8 Mar 23, contends he "did a nosedive," following falling in love with a master sergeant's daughter and was later transferred. They subsequently broke up. A chaplain from the Office of the Installation Staff Chaplains concurred with this contention in a statement, dated 30 Jul 87, noting the applicant, "broke up with his fiancée while home on leave before arriving here. It is shortly after arriving here that he demonstrated all the negative behavior." This rationale, which is supported by the consultation/evaluation completed on 8 Jun 87, outlines that his reaction was based on a situational event that resulted in his misbehavior, rather than a mental health disorder.

The applicant was diagnosed with bipolar disorder sometime after military discharge. Again, there is insufficient evidence he had this condition while serving in the military. A compensation and pension evaluation completed on 2 May 12 made two erroneous statements. The first is that the applicant, "worked as electrician in the Air Force until his medical discharge due to his bipolar disorder in August of 1987." This statement is not supported by his record. The applicant was not medically discharged from the military due to his bipolar disorder. The applicant was discharged with a general discharge for misconduct. The examiner also noted that "The veteran first began to experience his bipolar condition while in active duty in the Air Force." This statement is also not supported by the applicant's record. The applicant may have had a preliminary diagnosis of bipolar disorder, but this was changed to adjustment disorder after the applicant contested this finding and was re-evaluated. The applicant has also made this later contention, "I was diagnosed with bipolar 1 disorder while on active duty" which is not supported by available documentation.

For a time after discharge from the military, the applicant did not appear to suffer from the symptoms of bipolar disorder. Again, in the applicant's self-authored statement, he recounts that he stayed on for three years following discharge to assist with ministering. He also started his first electric company during this time. It is difficult to determine when he was first diagnosed with bipolar disorder, but potentially it was between 9 and 20 years after his military service (based on available records). His mental health diagnosis of adjustment disorder with mixed disturbance of emotion and conduct is not a mitigating factor for his misconduct. There is no nexus between his offenses of disorderly conduct, prisoner misconduct, creating a disturbance, communicating a threat, disrespect, wrongfully concealing nunchakus, destruction of government property, and making false statements and his mental health condition. Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition as unfitting. The applicant was fit for duty during his military service and at discharge. The applicant consistently earned 9 out of a possible 9 on his performance evaluations. He was promoted to senior airman (E-4) within three years of service. His last promotion was below the zone. He was deemed fit for duty by a psychiatric evaluation. His separation examinations did not find a psychiatric condition. There is no evidence he had a duty-limiting profile during his time in service. He was determined to be S-1 on his PULHES indicating that he was fit for duty. He appears to have remained World-Wide Qualified. There is no evidence that his condition (adjustment disorder) may have impacted his ability to perform the duties of his office, grade, rank, or rating.

Additionally, a DVA rating post-service is not evidence that he was not fit for duty at the time of his military service. The military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. 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 contends he had bipolar disorder and schizophrenic disorder while serving in the military.

2. Did the condition exist or experience occur during military service? There is insufficient evidence that the applicant had bipolar disorder or schizophrenic disorder at the time of his discharge. While it appears that the applicant had a preliminary diagnosis of bipolar disorder, the applicant successfully challenged this diagnosis. A psychiatric review of the record at the time determined that he did not have bipolar disorder. He was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct.

3. Does the condition or experience excuse or mitigate the discharge? His mental health diagnosis of adjustment disorder with mixed disturbance of emotion and conduct is not a mitigating factor for his misconduct. There is no nexus between his offenses of disorderly conduct, prisoner misconduct, creating a disturbance, communicating a threat, disrespect, wrongfully concealing nunchakus, destruction of government property, and making false statements and his mental health condition.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the 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 23 Aug 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 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 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 and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is insufficient documentation supporting the applicant's contention of bipolar disorder or schizophrenic disorder at the time of his discharge. Additionally, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. In this respect, the Board found the discharge was not unduly harsh or disproportionate to the offenses committed. 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/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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-2022-02097 in Executive Session on 14 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, w/atchs, dated 31 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 Mar 23.
- Exhibit D: Advisory Opinion, BCMR Mental Health, dated 23 Aug 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 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.

X

Board Operations Manager, AFBCMR