
RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-02250

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to medical or honorable, and his narrative reason from separation be changed from "Misconduct (Serious Offense) to an unspecified reason.

APPLICANT'S CONTENTIONS

He was under psychological care at the time of his discharge. During his time at basic military training (BMT) he witnessed his bunkmate hang from a stall attempting to end his life. He was physically assaulted by a military training instructor (MTI), who was later court-martialed for serious crimes against other trainees. He does not have proof of his assault because in his attempt to file a claim, he was threatened by the supervisor of the MTI to not make himself a target. He chose to remove from his memory some of the things done to him, but the experience still haunts him. He contemplated suicide regularly and suffered from depression. After his discharge, the Department of Veterans Affairs (DVA) granted him with service-connected disability benefits for post-traumatic stress disorder (PTSD) and depression. He was not under psychological care long enough to be properly diagnosed nor was he in the correct frame of mind to continually seek care to be diagnosed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 15 Jul 10, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFDP 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

On or about 8 Jun 10, he was disrespectful in a text to his superior commissioned officer. He failed to obey a direct order by failing to return phone calls from members of his chain of command and was absent from his unit without authority for three days. As a result, he was reprimanded and issued nonjudicial punishment (NJP) action pursuant to Article 15, under the Uniform Code of Military Justice (UCMJ) and reduced to the grade of airman (E-2).

On 19 Jul 10, the applicant provided a response to the discharge action and accepted the decision he be separated with a general (under honorable conditions) service characterization and agreed it was time for him to exit the Air Force.

On 20 Jul 10, according to DD Form 2697, *Report of Medical Assessment*, the applicant reported, since his last medical assessment (15 Jun 09), he had gained almost 30 pounds, had stomach pains and acid reflux, and was taking anti-inflammatory medication.

On 27 Jul 10, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged for Commission of a Serious Offense: Other Serious Offenses. Probation and rehabilitation were not offered.

On 30 Jul 10, the applicant received a general (under honorable conditions) discharge with narrative reason for separation of "Misconduct (Serious Offense)." He was credited with 1 year, 1 month, and 13 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 25 Aug 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

The Department of Defense (DoD) and the DVA disability evaluation systems (DES) operate under two separate laws. Under Title 10, United States Code (U.S.C.), Physical Evaluation Boards must determine if a member's condition renders them unfit for continued military service relating to their office, grade, rank or rating. The fact that a person may have a medical condition does not mean the condition is unfitting for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. If the board renders a finding of unfit, the law provides appropriate compensation due to the premature termination of their career. Further, it must be noted the Air Force disability boards must rate disabilities based on the member's condition at the time of evaluation, in essence a snapshot of their condition at that time. It is the charge of the DVA to pick up where the AF must, by law, leave off. Under Title 38, the DVA may rate any service-connected condition based upon future employability or reevaluate based on changes in the severity of a condition. This often results in different ratings by the two agencies.

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 Under Secretary of Defense for Personnel and Readiness (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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 25 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 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 member's service has been honest and faithful, this characterization is warranted when significant negative aspects of the member'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 of an error or injustice with his discharge from a mental health perspective. The applicant reported he was under psychological care at the time of his discharge; however, this contention is not corroborated by his objective service treatment records. His mental health treatment services were terminated on 29 June 10, two weeks before he was notified for discharge and one month before his official discharge date from service, because of his unwillingness to

engage in treatment. He received brief, five attended sessions, mental health treatment services from the period of 13 May 10 to 29 Jun 10 [sic]. He reported during his first session on 13 May 10, when his First Sergeant escorted him to the mental health clinic for having suicidal ideation with plans, his depression or depressive symptoms were triggered by his recent permanent change of station (PCS) assignment, feeling burdensome to his command, he gained a significant amount of weight, and had some minor family issues. In a follow-up session on 20 May 10, he reported having difficulties adjusting to being in the military and reported his symptoms were directly related to him not wanting to be in the military and his symptoms worsened when he arrived to his duty station in Apr 10. There was no report or evidence he experienced trauma specifically witnessing his bunkmate's suicide attempt or being physically assaulted by his MTI during BMT that caused or triggered his depression and suicidal thoughts as he alleged in his petition to the AFBCMR. He was given a diagnosis of Adjustment Disorder with Depressed Mood due to his adjustment difficulties and situational stressors and there was no evidence he was improperly diagnosed as claimed. There was no evidence he had PTSD or similar conditions due to his personal trauma during service.

At the time of the applicant's mental health treatment termination on 29 Jun 10, he was determined to be worldwide qualified (WWQ), he was not placed on a profile, he did not have any duty limiting conditions (DLC) to include mental health, and a Medical Evaluation Board (MEB) or Commander Directed Evaluation (CDE) was not required. During his separation physical examination with his primary care manager (PCM) on 20 Jul 10, he was assessed to not have any psychiatric/mental health issues and did not have any mental health disorder diagnoses. Moreover, there were no statements from his chain of command his mental health condition had impacted his ability to reasonably perform his military duties in accordance with this office, grade, rank, or rating. Based on the cumulative information presented, the applicant does not have any unfitting mental health conditions meeting criteria to be referred to a MEB for a possible medical discharge. Receiving mental health treatment and/or mental disorder diagnosis does not automatically make a condition as unfitting. More information such as non-deployability status, DLC profile, impairment to military due to his mental health condition, are necessary and required for a referral and he did not meet those requirements.

The applicant is also requesting an upgrade of his character of service to honorable and change his narrative reason for separation. There is no evidence the applicant's mental health condition had a direct impact or was a mitigating factor to his discharge. The applicant explained at the time of service he failed to obey a direct order to return phone calls from his chain of command because he was feeling stressed from the vandalism to his car, his family's safety, and felt unsupported. He admitted the order was reasonable but stated "I decided that checking in was less important than taking care of my situation (this was a mistake)." It is comprehensible he was under a significant amount of stress at the time, but his decision was willful, and he knew what he was doing at the time. His stress was not derived from a mental health condition or disorder. In response to his discharge action, he acknowledged his absent without leave (AWOL) was a serious offense and his commander was gracious to offer him a less punitive punishment. He did not clearly explain his reason for being AWOL for three days but stated "certain things came up in my personal life that caused me to react in an unprofessional manner" and implied he was not suited for the military. He did not provide a rationale for his misconduct for being disrespectful to a superior commissioned officer in any of his statements. There was no evidence his mental health condition caused any of his misconducts that resulted with his discharge and therefore, his request for an upgrade of his discharge and change to his narrative reason for separation could not be supported.

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 was under psychological care at the time of his discharge. He claimed during his time at BMT, he witnessed his bunkmate hang from a stall attempting to end his life, and he was physically abused by an MTL. He reported suffering from depression and PTSD from these experiences that may cause his discharge.

2. Did the condition exist or experience occur during military service? There is no evidence the applicant reported experiencing any of these traumatic experiences during service. He was never diagnosed with PTSD or a depressive disorder from these experiences during service. There is evidence he sought brief mental health treatment, individual psychotherapy from his mental health provider and medication management from his PCM, from May to Jun 10 for having depression or depressive symptoms to include suicidal ideation triggered by his recent PCS, feeling burdensome to his command, gaining a significant amount of weight, had some minor family issues, and difficulties adapting to the military. He was given a diagnosis of Adjustment Disorder with Depressed Mood by his mental health provider and PCM.

3. Does the condition or experience excuse or mitigate the discharge? There is no evidence the applicant's mental health condition to include PTSD or depression had a direct impact or was a mitigating factor to his misconduct and discharge. He explained at the time of service he did not obey a direct order for returning his leadership's phone calls because he was frustrated and stressed with not receiving support after his vehicle was vandalized and willfully did not answer and/or return their calls. He was stressed at the time, but his stress was not derived from a mental health condition or disorder. He also did not provide an adequate explanation for his reason for being AWOL for three days and being disrespectful to a superior commissioned officer. There is no evidence he had any unfitting mental health condition to include PTSD or depression meeting criteria for a medical discharge. His mental health condition or experiences does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition or experiences does not excuse or mitigate his discharge, his mental health condition or experiences 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 31 Mar 23 for comment (Exhibit E) but has received no response.

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, 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. The Board finds

the applicant's mental health condition is not warranted to process through the Disability Evaluation System as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. Specifically, the applicant's mental health conditions were not a medical basis for career termination, nor did they meet the criteria for referral to a Medical Evaluation Board for a medical discharge or retirement. Liberal consideration was applied to the applicant's request for an upgrade in his discharge due to his mental health conditions and finds insufficient evidence his conditions excused or mitigated his behaviors or misconduct resulting with 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. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his good citizenship since his 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.

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-2022-02250 in Executive Session on 21 Jun 23:

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 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 25 Aug 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Mar 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Mar 23.

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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.

1/31/2024

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Board Operations Manager, AFBCMR

Signed by:

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AFBCMR Docket Number BC-2022-02250

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