



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-02523

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

At the time of discharge, he was considered unsuitable due to mental health issues. The toxic chemicals and waste on his assigned base had an adverse effect on his judgement and ability to be normal, which caused his mental health issues.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 30 Mar 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section A, paragraph 2-4c. The specific reasons for the action were:

- a. On 3 Jun 81, the applicant received a Record of Individual Counseling (RIC) for being involved in a domestic dispute in base housing.
- b. On 5 Aug 81, the applicant received a RIC for being financially irresponsible by writing checks with insufficient funds to cover them on multiple occasions, excessive credit card charges and not paying debts when due.
- c. On 2 Nov 81, the applicant received a Letter of Reprimand (LOR) for creating a domestic disturbance in base housing.
- d. On 5 Nov 81, the applicant received a LOR for writing a check which was returned for insufficient funds.
- e. On 18 Jan 82, the applicant received a LOR for attempting to commit suicide. As a result, his LOR was placed in his Unfavorable Information File (UIF).

**AFBCMR Docket Number BC-2022-02523
CUI//SP-MIL/SP-PRVCY**

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CUI//SP-MIL/SP-PRVCY

- f. On 12 Mar 82, the applicant received an Article 15 for being drunk and disorderly in station and assaulting an individual by lunging at him. As a result, he was reduced to the grade of airman.

On 12 Apr 82, an Evaluation Officer found the applicant unsuitable for further military service because of his demonstrated apathy and defective attitude nor is he a suitable candidate for rehabilitation. The Evaluation Officer recommended the applicant be discharged with a general (under honorable conditions) service characterization.

On 13 Apr 82, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On 14 Apr 82, the discharge authority directed the applicant be discharged under the provisions of AFM 39-12, paragraph 2-4c with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 23 Apr 82, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitability-Apathy, Defective Attitude." He was credited with 2 years, 10 months, and 16 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.

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?

CUI//SP-MIL/SP-PRVCY

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 9 Nov 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 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for an upgrade to his discharge. The applicant was discharged for his apathetic and defective attitude that was unsuited for continued military service. This reason for his discharge is not categorized as a mental health condition/character or behavior disorder, but his reported misconducts do fall under that category. Although it is possible he was exposed to toxic chemicals and burn pits, there was no substantive evidence these exposures caused him to develop any mental health issues or caused his discharge from service. The applicant clearly had behavioral problems that were unsuitable for continued military service and not all behavioral problems are the result of a mental health condition. Therefore, the Psychological Advisor finds no error or injustice with his discharge.

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 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 was exposed to toxic chemicals and burn pits while stationed at his assigned base causing him to develop mental health issues and impairing his judgment. He alluded this situation possibly caused his discharge.
2. Did the condition exist or experience occur during military service?

There is no evidence he developed any mental health conditions or issues caused by his exposures to toxic chemicals and burn pits. The applicant was referred for a substance abuse evaluation following his alcohol related incident of domestic disturbance occurring on 31 Oct 81 and was recommended to attend the Substance Awareness Seminar; he reportedly completed this recommendation. There was no alcohol or substance use disorder annotated in his available records. There is evidence he had to be hospitalized for attempting suicide on or about 10 Jan 82 and a subsequent mental health evaluation, presumably by command referral, performed on or about 12 Feb 82 found his marital problems were the primary source of his difficulty. However, he was assessed to be free of any mental defects or derangement and was able to distinguish between right and wrong and to adhere to the right. He was given a diagnosis of Adjustment Disorder with Mixed Emotional Features that was specified to be a transient situation disorder due to acute or special stress (marital problems).

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

There is no evidence the applicant's mental health condition had a direct impact to his numerous misconducts leading to his subsequent discharge from service. Giving the applicant the benefit of the doubt his depression stemming from his marital problems may have resulted with his domestic disturbances, his mental health condition could not adequately explain all or most of his misconduct nor does it excuse or mitigate his behaviors. The applicant had physically assaulted his wife and a Security Police officer on two separation occasions and his behaviors are egregious that could not be disregarded by his mental health condition. His remaining misconduct were not found to have been caused by his mental health condition as discussed previously. Therefore, his mental health condition does not excuse or mitigate his discharge.

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 E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Apr 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 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. 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; however, since there is no evidence his mental health condition 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. 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-2022-02523 in Executive Session on 26 Jul 23:

Work-Product Panel Chair
Work-Product, Panel Member
Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Sep 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 9 Nov 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 29 Mar 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 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.

2/19/2024

Work-Product
Board Operations Manager, AFBCMR
Signed by: *Work-Product*