

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02641

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to reflect:

1. Type of Separation changed to Honorable.
2. Character of Service changed to Honorable.
3. Narrative Reason for Separation changed to Secretarial Authority.
4. Separation Code [SPD] changed to JFF.
5. Reentry (RE) Code changed to 3K.
6. No annotation to indicate administrative re-issue or upgrades.

APPLICANT'S CONTENTIONS

She asserted that should her DD Form 214 remain, without correction, she will be subject to an ongoing injustice as circumstances that led to her uncharacterized Entry Level Separation (ELS) from the Air Force stem from her experiencing service-incurred signs and symptoms of her undiagnosed mental health disorder. She further contended had she received professional mental health assessment and treatment during the several days leading up to her discharge, she would have received proper treatment resulting in her ability to remain in the Air Force, fulfilling her enlistment obligation and receiving an earned honorable discharge.

Official Air Force procedures and protocols in place today regarding early separation of airmen were specifically created to identify when the commanding officer believes the service member may be suffering from a severe mental disorder. Had the Department of Defense Instruction (DoDI) 6490.04, issued 4 Mar 13, been issued prior to Jun 94, her section commander would have issued her a mental health exam, resulting in her receiving diagnosis of a mental health disorder and appropriate treatment to continue her enlisted service.

In 2020, she found herself with much time indoors without other obligations and revisited her Air Force records, deciding to investigate upgrading her Air Force discharge. After speaking with a Disabled American Veterans (DAV) Service Officer, she was informed of her right to submit a service-connected disability claim. She decided to pursue filing a service-connected disability claim with DAV as her representative. Regrettably, it was her erroneous assumption that upon filing her claim, if granted, her DD Form 214 would automatically be upgraded to read honorable, and remarks/narrative would reflect her medical disability without disclosures.

After she received notification that she had been granted a 50 percent service-connected disability, she immediately contacted the DAV about receiving her upgraded DD Form 214 reflecting an honorable discharge. It was then that she was informed she would need to apply to the Air Force Board for Correction to Military Records (AFBCMR) to receive consideration for a discharge upgrade.

She further contended her discharge warrants clemency consideration, when the totality of her discharge circumstances is examined, including her performance ratings and post-service accomplishments. Her out of character behavior and conduct culminated in her uncharacterized

entry level separation directly as a result of her exacerbated mental health condition. Her military service rendered while enlisted in the Air Force was honest, faithful, and meritorious and her service records contain no letters of reprimand, admonishments, or sanctions. She is also asking the Board to apply liberal consideration when considering how her undiagnosed/untreated mental health condition and its exacerbation affected her behaviors, choices, and mission support performance.

In support of her request for clemency, the applicant provides a personal statement, medical records, character references, college transcripts, and other documents related to her request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Dec 93, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the Regular Air Force.

On 13 Jun 94, 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 5-22b(2), *Failure to Adapt to the Military Environment*. The specific reasons for the action were:

- a. On 12 May 94, the applicant kept a doctor's appointment and the doctor did not place her on quarters. However, she called her supervisor and told him she did not feel well and was going to stay home that day. As a result, she was given a Record of Individual Counseling, dated 13 May 94.
- b. On 17 May 94, she was obviously upset and unable to concentrate on her work. She was having problems with her spouse regarding a very large telephone bill. After counseling with her supervisor, she turned the conversation to how slowly she felt she was progressing in her training. She expressed the belief that the military should not interfere with her personal life, and she did not tend to think of the Air Force as a way of life. As a result, she received a Record of Individual Counseling, dated 18 May 94.
- c. On 7 Jun 94, she had a treatment at the hospital and even though the doctor did not place her on quarters, she indicated she did not feel well and wanted to take a day of leave. The nurse told her the treatment was a simple procedure and should not cause her discomfort. However, because of her attitude toward her job, she went outside her chain of command to complain, and solicit a day off. Her behavior was totally unacceptable. As a result, she received a Record of Individual Counseling, dated 8 Jun 94.
- d. On 10 Jun 94, her lunch hour period was from 1100 – 1200 hours. She returned to work seven minutes late and did not show any concern for the violation or the counseling she received. As a result, she received a Record of Individual Counseling, dated 10 Jun 94.

On 13 Jun 94, the Staff Judge Advocate found the discharge action legally sufficient.

On 14 Jun 94, the discharge authority directed the applicant be discharged for Entry Level Performance or Conduct, under AFR 39-10, paragraph 5-22b(2), *Failure to Adapt to the Military Environment*, with an entry level service characterization. Probation and rehabilitation were considered, but not offered.

On 24 Jun 94, the applicant received an entry level separation. Her Narrative Reason for Separation is "Entry Level Performance and Conduct", Separation Code is JGA [Entry Level Performance and Conduct], Reentry Code is 2C [Involuntarily separated with an honorable discharge; or entry level separation without characterization of service], and she was credited with 6 months, and 10 days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and D.

POST-SERVICE INFORMATION

The applicant provided an FBI report as supporting documentation to her original application. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, medical records, character references, and college transcripts.

AIR FORCE EVALUATION

AFPC/DPMSSR recommends denying the application. The discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority. There was no error or injustice with the discharge processing.

The applicant's Master Personnel Record was reviewed. The commander provided ample evidence to the Base Discharge Authority (BDA) to support separation. Furthermore, the paragraph in the provision of the Air Force regulation cited was Unsatisfactory Progress and there was no indication that either the commander or BDA determined that paragraph 5-11 (Conditions that Interfere with Military Service; mental disorders) should be considered or included as the basis for discharge.

The complete advisory opinion is at Exhibit C.

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 record.

This psychological advisor has reviewed the available and submitted records and finds the applicant clearly had difficulties adjusting to the military causing her behavioral/performance problems and subsequent discharge. Her records indicated she had anxiety and depression due to her dissatisfaction with her spouse and personal problems and not directly caused by her actual military duties. She provided explanations to all of her Records of Individual Counseling received in service and believed she had undiagnosed mental health conditions that caused her behaviors and performance problems. Although not all of her explanations could be substantiated by her military records, benefit of the doubt is given to the applicant that they are possible. She was given a diagnosis of Adjustment Disorder, with Mixed Anxiety and Depressed Mood, chronic by her post-service provider and Compensation and Pension (C&P) examiner relating to her military service. This psychological advisor concurs with this diagnosis as she most likely had this condition during service based on the available records. However, she was given "chronic" specifier by these individuals. The applicant's condition was not chronic during service as her condition did not last more than six months. Her documented problems and mental health symptoms began in May 94 and so by the time she was discharged from service, she had only been experiencing her stressors symptoms for less than six months. Her condition would be best specified as "acute" rather than "chronic" in accordance with the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, effective when she was in the service and with the current Fifth Edition, Text Revision. There were no records to confirm she continually

or persistently had anxiety and depression after she was discharged from the service. She did not engage in mental health treatment until 1999, about five years post-discharge. It is not certain her anxiety and depression post-service were caused by her military service/duties as again, her anxiety and depression were derived from her personal problems that occurred while she was in the service. Acute conditions may eventually become chronic with time, but her clinical presentation post-service was not identical to her presentation during service. She may have had the same diagnosis, but it appeared her condition exacerbated post-service causing her condition to become chronic years after discharge. Her acute mental health condition during service would be considered unsuited for continued military service because it had interfered with her ability to function appropriately in a military setting and would meet criteria for an administrative discharge, which she had already received but for a different reason. Her mental health condition may cause some of her misconduct, but her performance and conduct were incompatible with her service. Regardless of whether she received a diagnosis or the reason of her discharge, her character of service would be the same. She was discharged under ELS and was furnished with an Uncharacterized character of service because she was notified of discharge action within serving 180 days of continuous active military service. This is in accordance with AFR 39-10, the regulation she was discharged under, and Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, current regulation for military separations. Therefore, there is no error or injustice identified with her character of service discharge. The applicant contends should she have been command-referred to a mental health evaluation per current regulation, and received mental health treatment, she could have remained in the service. This contention is not quite accurate. It is at the commander's discretion to refer a service member for a mental health evaluation if there is cause and based on the situation. While a mental health evaluation may have been helpful to assess her mental status at the time, it was not required and most likely would not have change the outcome of her situation. The applicant had expressed she wanted to get out of the Air Force and did not believe she should change her lifestyle to fit into the more structured Air Force's way of life. Her noncommissioned officer in charge reported the applicant had informed him she never felt she would fit into the military and had attempted to get out several times throughout her time in the Delayed Enlistment Program, basic training, and technical school. Her sentiments and most of these events had occurred even before her entrance into the military and were well before her first documented misconduct in May 94 and when her personal problems began. Her C&P examination reported after basic training, she went to group counseling twice a week for two weeks to discuss coping being away from home, she was given a four-hour exam to assess whether she was a danger to herself or others, and she was interviewed by a psychiatrist. She was able to complete basic training without problems of being homesick. The information was from her reports and there were no records available to substantiate her reports. It is possible she may have been able to adapt to the military if she received therapy services, but this is also speculative and possibly doubtful based on her reported attitudes and behaviors near or at the time of discharge. Her problems were different at the time of discharge versus during basic training. She was not amenable to any assistance or counseling she had received from her leadership and her desire to leave the military had increased over time. Also, the applicant could have self-referred to therapy services and a command-referral was not required or necessary. She wanted to separate from the military for various reasons and not just because of her mental health condition. Thus, her request for the desired changes to her records could not be supported due to no identifiable 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 contends her ELS discharge stemmed from undiagnosed mental health condition. She believed had she received professional mental health assessment and treatment during the

several days up until her discharge, they may have resulted with her ability to remain in the Air Force to fulfill her enlistment obligation and earn an Honorable discharge.

2. Did the condition exist or experience occur during military service? There is evidence the applicant had difficulties adjusting to the structure of the military environment and had anxiety and depression caused by her dissatisfaction with spouse and personal problems during service. She was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed, chronic by her mental health provider and C&P examiner several years post-service. It is possible this condition with acute not chronic specifier had existed or occurred during service based on her available records. Her service treatment records were not available for review to corroborate she received any mental health evaluation or treatment services.

3. Does the condition or experience excuse or mitigate the discharge? There is evidence her mental health condition may have caused some of her performance and conduct problems during service. However, if she was discharged for having an unsuiting mental health condition, she would have received an administrative discharge, the same type of discharge she had already received, and her character of service would remain the same. She was notified for discharge before completing 180 days of continuous active service and is considered ELS. Her uncharacterized service characterization is appropriate based on past and present regulations. Her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate her discharge, her condition also does not outweigh her original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 2 May 23 for comment (Exhibit E) but has received no response.

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 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 4 May 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

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:

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 DAF.

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.

Entry Level Separation (ELS). Members are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service

following a break of more than 92 days of active service. The date of notification is used to determine the member's status.

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 rationales and recommendations of AFPC/DPMSSR and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The basis for the applicant's discharge was entry level performance or conduct, which was supported by the multiple Records of Individual Counseling she received. There was no indication or evidence of a mental health disorder as cause for the applicant's behavior during her service. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate her discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented and the entry level separation guidance, 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-2022-02641 in Executive Session on 30 Nov 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 26 Sep 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSR, w/atch, dated 11 Apr 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 20 Apr 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 May 23.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 4 May 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