



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-2022-02821

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He had an undiagnosed mental health condition during service. He has been diagnosed with depressive disorder by the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 7 Oct 15, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2. The specific reasons for the action were:

- a. On 22 May 11, the applicant received a Letter of Reprimand (LOR) for failing to report to mandatory physical training.
- b. On 23 Apr 12, the applicant received a LOR for his lack of control while drinking and becoming involved in a verbal altercation, which then turned physical and ended with him being hit and kicked in the face, ultimately sending him to the hospital.
- c. On 16 Oct 12, the applicant received a LOR for failing to follow the posted speed limit.
- d. On 20 Feb 14, the applicant received a Memorandum for Record for being late for work and failing to notify the proper personnel of his tardiness.
- e. On 6 May 15, the applicant received a LOR for refusing to step aside for a law enforcement officer to investigate a possible fight at a residence. He was subsequently arrested for resisting a law enforcement officer without violence. As a result, an Unfavorable Information File (UIF) was established.

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- f. On 5 Oct 15, the applicant received an Article 15 for being drunk and disorderly, assaulting a law enforcement officer by pushing him in the chest and attempting to trip him. For this misconduct, he received a reprimand, reduction to the grade of airman, and forfeiture of \$1,027.00 pay per month for 2 months.

On 19 Oct 15, the Staff Judge Advocate found the discharge action legally sufficient.

The discharge authority directed the applicant be discharged for Pattern of Misconduct: Conduct Prejudicial to Good Order and Discipline, under the provisions of AFI 36-3208, paragraph 5.50.2 with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 26 Oct 15, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)." He was credited with five years, nine months, and eight days of total active service.

On 15 Jan 16, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 5 Jan 17, 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.

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

POST-SERVICE INFORMATION

On 13 Apr 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 (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

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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 13 Apr 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

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. There is no evidence the applicant had a depressive disorder or depression secondary to a medical condition at the time of his service or discharge. He was never diagnosed with a mental health condition while in the military other than an Alcohol Use Disorder. The applicant did not report any depressive symptoms, until after he knew he was being separated from the military. His mild depression appears to be the result of his separation from the military and occurred after his misconduct. There is no evidence his mild depression impacted his behaviors causing his discharge. There is no evidence he was using alcohol to manage his depressive symptoms. Rather, medical records indicate his drinking occurred during social gatherings.

Military records indicate during his time in-service, the applicant had no impairment or functional limitation due to mental health reasons. Even if there was evidence in the record the applicant had a mental health condition, it would not excuse or mitigate his most serious instances of misconduct. These behaviors are concerning especially since the applicant was a Security Forces Squadron member, he had been trained and performed duties in law enforcement, and he understood intimately the standard operating procedures in such situations he willfully chose to not abide to the conduct of his profession. There is no nexus of these behaviors and other misconduct listed as his reasons for discharge with his contended mental health claims.

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?

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The applicant was diagnosed post-service with depression secondary to a medical condition. The applicant has a service connection of 70 percent for mood disorder. He was diagnosed with alcohol use disorder while in service.

2. Did the condition exist or experience occur during military service?
There is no evidence of a diagnosis for depression secondary to a medical condition during his time in service. This was diagnosed post-service. There is also some evidence he had mild depressive symptoms during military service. However, he was never diagnosed with depression. His mild depression appears to be the result of his separation from the military and occurred after his misconduct. There is no evidence his mild depression impacted his behaviors causing his discharge. He was diagnosed with alcohol use disorder by Alcohol and Drug Abuse Prevention and Treatment (ADAPT) while in service.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant had any mitigating mental health conditions at the time of his misconduct leading to his general (under honorable conditions) discharge. Even if there was evidence in the record the applicant did have a mental health condition, it would not excuse or mitigate his most serious instances of misconduct of assault of a police officer and resisting a law enforcement officer.
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 C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 31 May 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 and recommendation 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. 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. 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-2022-02821 in Executive Session on 26 Jul 23:

Work-Product [Redacted] Panel Chair
Work-Product [Redacted], Panel Member
[Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 14 Oct 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Mar 23.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 13 Apr 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 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.

2/9/2024

Work-Product [Redacted]

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