



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02871

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

He was young and the Air Force was different than it is now. He wishes he would have taken his enlistment more seriously. He was traveling the world and new bases were not set up yet and it affected him mentally. Additionally, he was a linesman and the chemicals he was exposed to had an effect on his mindset. He regrets not fulfilling his commitment and has a strong work ethic because of the Air Force and has retired from his civilian job after 40 years with only 3 days of missed work.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1) who enlisted in the active duty on 15 Mar 57.

On 21 Nov 58, the applicant pled and was found guilty at a summary court-martial for the offense of failing to go to his place of duty. The applicant was sentenced to base restriction for 30 days and forfeiture of \$50.00.

On 27 Mar 59, the convening authority published Special Court-Martial Order (SCMO) Number [REDACTED]. The order stated the applicant pled not guilty and was found not guilty of one charge and one specification of failing to go to his appointed place of duty (Article 86); and pled guilty and was found guilty of one charge and seven specifications of disobeying a lawful order to report in (Article 92). The applicant was sentenced to confinement of hard labor for 4 months and forfeiture of \$55.00 per month, for 4 months.

On 16 Jul 59, the convening authority published SCMO Number [REDACTED]. The order stated the applicant pled guilty and was found guilty of one charge and one specification of being AWOL from 20 Mar 59 through 21 Mar 59 (Article 86); pled not guilty and was found guilty of one charge and one

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CUI Categories: [REDACTED] Work-Product
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specification of escaping confinement on or about 20 Mar 59 (Article 95); and pled guilty and was found guilty of one charge and one specification of unlawfully entering the Personal Effects Room of Building T-242 on or about 21 Mar 59 (Article 134). The applicant was sentenced to confinement of hard labor for 4 months, forfeiture of \$70.00 per month for 4 months, and a bad conduct discharge from military service.

On 18 Dec 59, the convening authority published SCMO Number [Work-P...] The order, promulgated in SCMO Number [Wor...] modified a portion of the applicant's sentence regarding forfeiture of pay to \$35.00 per month for four months.

On 30 Dec 59, the applicant was found guilty at a summary court-martial for the offense of being absent without leave (AWOL) from 24 Dec 59 through 29 Dec 59. The applicant was sentenced to confinement of hard labor for 15 days and forfeiture of \$20.00.

On 13 Jan 60, the applicant received a "under than honorable conditions" discharge. His narrative reason for separation is "Separation Designation Number (SDN) 292 and SCMO [Work-P...] and he was credited with 2 years, 2 months, and 18 days of total active service.

On 23 Sep 60, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 4 Oct 60, 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 advisories at Exhibit D and Exhibit E.

POST-SERVICE INFORMATION

On 5 Oct 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 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 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 Wilkie 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 Wilkie Memo.

On 5 Oct 23, 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.

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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request based on his mental health condition. The Psychological Advisor finds the applicant's contentions were not supported by his objective military records. The applicant did not clarify or identify the actual mental health condition or disorder he had during service. There is no evidence he was exposed to chemicals affecting his mental, intellectual, or emotional functioning. He submitted no records to substantiate his claim. There is no evidence he had any mental health condition during service or even after service. His objective military records reflected he had engaged in numerous and serious misconducts of being AWOL several times, failing to go, and unlawfully entering a government building resulting in him being convicted at a summary court-martial twice. His testimony at his last special court-martial revealed he believed if he escaped from confinement, he would be discharged from the military. This explanation for his AWOL indicated he knew what he was doing at the time, his acts were intentional, and he understood the reason and purpose of his elopement and AWOL. His behaviors could be considered as premeditative due to possible planning. There is no evidence the applicant had a mental health condition or was in emotional distress at the time of any of his misconduct leading to his subsequent special court-martial conviction and discharge. His legal counsel at the time had attributed his behaviors as being young and immature, and the applicant and others had concurred with this sentiment. None of these reasons provided were caused by or related to his mental health condition. Being young and immature is not a mental health condition. The applicant contended he was 17 years old when he entered the Air Force and his records indicated he was 19 years old when he was discharged. There were several service members who were the same age as him while he was in the military, and they were able to adhere to the Air Force's standards and appropriate conduct. His behaviors, which were not a mental or behavioral health condition, were unsuited and incompatible with military service. The applicant also stated his off-duty hours were where he made mistakes and

had poor judgment. His documented acts of misconduct did not exclusively occur during his off-duty hours and in fact, his AWOL from 20 Mar 59 through 21 Mar 59 and his unlawful entry into a government building on 21 Mar 59, the basis of his discharge, had occurred during his duty hours. He eloped from confinement and then was determined to be AWOL and was located on government property. Therefore, and after an exhaustive review of the available records, the Psychological Advisor finds no evidence his mental health condition had a direct impact or was a contributing factor to his discharge. There is no error or injustice identified with discharge from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his contention of a mental health condition. It is noted liberal consideration does not mandate an upgrade per policy guidance. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contended he was 17 years old when he entered the service and made mistakes and poor judgments during his off-duty hours. He marked "Other Mental Health" on his application and explained, "Traveling the world and new bases weren't even set up yet affected me mentally I was a linesman and the chemicals affected my mindset." The applicant did not clarify or identify the actual mental health condition or disorder he had during service.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during service. There is no evidence he had a mental health condition during service. There is no evidence he was exposed to chemicals affecting his mental, intellectual, or emotional health and functioning.
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 or was a contributing factor to his misconduct of being AWOL and unlawfully entering a government building resulting in his special court-martial conviction and subsequent discharge from service. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of any of his misconduct. His testimony at his special court-martial trial reported he eloped from confinement because he thought he could be discharged from service. This indicated he knew what he was doing at the time and his behavior may be considered as premeditative because it was possibly planned and clearly purposeful. His mental health condition does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since there is no evidence his mental health condition may excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

AF/JAJI finds no additional information has been provided by the applicant to suggest clemency in the form of a discharge upgrade is warranted.

According to personnel records, the applicant was court-martialed four times during his brief active duty career. Additionally, the applicant received nonjudicial punishment in 1958 for AWOL for three days. The applicant's punishment for the second special court-martial included a bad conduct discharge. However, his DD Form 214 shows he received an under other than honorable conditions discharge characterization. This discrepancy is not clear from a review of the records provided.

On 19 Oct 23, the AFRBA Psychological Advisor provided a report based on the applicant's assertion is military duties affected him mentally. The Psychological Advisor determined there was insufficient evidence to support the applicant's request for a discharge upgrade based on his mental health condition. There are no reports of the applicant's mental health condition being a contributing factor to his misconduct, and the Psychological Advisor found no record of the applicant receiving any mental health evaluation, treatment, or mental disorder diagnosis during his service. Furthermore, the applicant did not provide post-service treatment records.

It is noted the guidance for liberal consideration of mental health issues – Memorandum for Secretaries of the Military Departments Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, (A.M. Kurta, 25 Aug 17), also known as the Kurta Memorandum – cuts against the requested correction to the applicant's discharge characterization would not be appropriate for the applicant's crimes according to the memorandum's standards. According to Paragraph 19 of the attachment to the Kurta Memorandum, "Premeditated misconduct is not generally excused by mental health conditions [...] Review Boards will exercise caution in assessing the causal relationship between asserted conditions or experiences and premeditated misconduct." The limited information provided in the available documents indicates the applicant's mental health condition did not contribute in any significant way, if it contributed at all, to the misconduct. Furthermore, the misconduct was willful in it required deliberation on the part of the applicant and was therefore "premeditated" as the term used in the Kurta Memorandum. Therefore, a discharge upgrade is not warranted.

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 2 Nov 23 for comment (Exhibit F), 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 AFRBA Psychological Advisor and AF/JAJI 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, the Board found no evidence the applicant's mental health condition had a direct impact or was a contributing factor to his misconduct of being AWOL and unlawfully entering a government building resulting in his special court-martial conviction and subsequent discharge from service. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of any of his misconduct. His testimony at his special court-martial trial reported he eloped from confinement because he thought he could be discharged from service. This indicates to the Board he knew what he was doing at the time and his behavior may be considered as premeditative because it was possibly planned and clearly purposeful. Since there is no evidence his mental health condition excused or mitigated his discharge, his condition does not outweigh his original discharge.

Nonetheless, 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 substantial 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.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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-2022-02871 in Executive Session on 20 Mar 24:

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Panel Chair
, Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, dated 18 Oct 22 and 26 Apr 23.
- 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 5 Oct 23.
- Exhibit D: Advisory Opinion, AFRBA MH, dated 19 Oct 23.
- Exhibit E: Advisory Opinion, AF/JAI, dated 27 Oct 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Nov 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.

4/2/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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