



CUI//SP-MIL/SP-PRVCY

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03035

Work-Product (MEMBER)

COUNSEL: Work-Product

Work-Product (APPLICANT)

HEARING REQUESTED: YES

APPLICANT’S REQUEST

- 1. The member’s bad conduct discharge (BCD) be upgraded to honorable with a narrative reason for separation of Secretarial Authority.
2. The member’s reentry (RE) code be changed to “2C” which denotes involuntarily separated with an honorable discharge; or entry level separation without characterization of service; or “2K” which denotes has been formally notified by the commander/civilian director of initiation of involuntary separation action.

APPLICANT’S CONTENTIONS

The member’s mother has power of attorney and submits this application before the Board. The member was suffering from undiagnosed schizoaffective disorder at the time of his offenses and was denied the proper mental health evaluation. He suffered from this illness throughout the military justice proceedings and because of the lack of accountability and apathy shown, the applicant is requesting a discharge upgrade on behalf of the member. The member has a legitimate, severe, and misdiagnosed illness and the circumstances of his discharge and post-trial treatment would cause significant reputational damage to the Department of Defense should the public hear of the facts. The member was released from confinement on 17 Aug 14, where he remained on involuntary excess leave until 29 Sep 17. The member’s commander forgot about him for three years after his trial; never checking on him and falsified the unit manning document. The base legal office failed to complete his discharge paperwork for these three years which resulted in a delay in his Department of Veterans Affairs (DVA) benefits, increased anxiety, and a loss of monetary benefits. Instead of apologizing for this error, the applicant was told she would not be charged for medical bills during the three-year delay. The Inspector General (IG) could not investigate the claims of misconduct because there was a low likelihood of evidence still being available.

In support of the request, the applicant provides a character reference letter, the member’s medical records, numerous court cases to support the contentions, articles related to mental illness, DoDI

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mental illness, DoDI CUI Categories: SP-MIL/SP-PRVCY Limited Dissemination Control: N/A POC: SAF.MRBC.Workflow@us.af.mil

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1332.28, *Discharge Review Board Procedures and Standards*, DVA and Social Security Administration (SSA) Letters, the IG complaint response, and copies of military documents related to the member's misconduct, trial, and discharge.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 3 Mar 10, AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB Thru TSgt)*, indicates the member received nonjudicial punishment (NJP), Article 15 for providing alcohol to individuals who were underage. He received a forfeiture of \$723.00 pay per month for 2 months; forfeiture of pay in excess of \$723.00 for 1 month was suspended until 2 Sep 10.

On 6 May 10, AF Form 3212, *Record of Supplementary Action Under Article 15, Uniform Code of Military Justice (UCMJ)*, indicates the member's NJP punishment of forfeiture of one month of pay was remitted.

On 15 Apr 14, AF Form 2098, *Duty Status Change*, indicates the member was placed in confinement.

On 8 May 14, the convening authority published Special Court-Martial Order Number [REDACTED]. The Order stated the member pled guilty to one charge and one specification of violating a no contact order (Article 90); one charge and two specifications of wrongfully using an intoxicating substance, spice and failing to maintain Aircrew Flight equipment (Article 92); one charge and four specifications of wrongfully using drugs, cocaine, marijuana, and psilocybin (Article 112a); and one charge and one specification of wrongfully impeding an investigation (Article 134). The member was sentenced to confinement for five months, reduction to the grade of airman basic, and discharged from the service with a BCD.

On 17 Aug 14, AF Form 2098, indicates the member was released from confinement.

On 29 Sep 17, AF IMT 100, *Request and Authorization for Separation*, indicates the member was relieved from assignment and discharged. On this same date, the member received a BCD. His narrative reason for separation is "Court-Martial (Drug Abuse)" and he was credited with seven years, eight months, and six days of total active service. The RE code annotated is "2L," which denotes civilian criminal court charges pending for an offense for which the Manual for Courts-Martial authorizes confinement for the same or most closely related offense, or court-martial charges have been preferred, or court-martial action is under appellate review.

On 14 Jul 21, the member submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge characterization, narrative reason, and RE code.

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On 7 Dec 21, the AFDRB denied the member's request for a discharge upgrade and a change to his narrative reason and RE code. The board applied liberal consideration to the member's petition due to his mental health contention and concluded the negative aspects of the member's willful misconduct outweighed the positive aspects of his military service; therefore, the characterization of the discharge received by the member was deemed to be appropriate. The AFDRB found no conclusive indication any mental health issues had a direct impact on the member's misconduct or discharge finding his hallucinations and psychosis were induced by his drug use and the origin of his psychosis was not caused by his military service. As for the contention the member's post-trial discharge was unnecessarily delayed three years, the AFDRB stated this contention was outside the scope of the board.

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

**POST-SERVICE INFORMATION**

On 23 Nov 22, the Board sent the applicant on behalf of the member a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, she has not replied.

**APPLICABLE AUTHORITY/GUIDANCE**

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the UCMJ (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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

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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 23 Nov 22, the Board staff provided the applicant on behalf of the member 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:

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- 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 completed a review of all available records and finds sufficient evidence to support the applicant's request for an upgrade to the member's discharge. The Psychological Advisor recommends an upgrade to at least a general (under honorable condition) but leaves the final determination to the Board.

The Psychological Advisor finds sufficient evidence the member was suffering from schizoaffective disorder while serving in the military which was first diagnosed on 24 Apr 17. He was first diagnosed with bipolar disorder on 22 Apr 15, and diagnosed with bipolar disorder, manic with psychotic features on 4 May 15. It is important to note both diagnoses occurred after his misconduct, charges, investigation, and incarceration. The stressors of these events likely caused an exacerbation of symptoms leading to these diagnoses. The Psychological Advisor opines his mental health diagnoses before his court-martial charges, which include adjustment disorder with anxiety, depression with anxiety, and insomnia, were likely prodromal signs of his schizoaffective disorder.

While it is possible his schizoaffective disorder went undiagnosed before charges were brought forward, there is no evidence he was unfit for duty at this time. There is evidence which demonstrates he was performing at his office, grade, rank, and rating. His performance evaluation ratings are all above average to truly among the best from 22 Sep 09 until 13 Oct 13. He was deemed worldwide qualified (WWQ) from a psychological perspective as late as 18 Dec 13. The first mention of the member's symptoms was noted in a mental health note dated 3 Jan 14, stating his symptoms were exacerbated by the stressors of an investigation, charges, and court-martial following his misconduct. Therefore, it can be concluded he was fit for duty up until the time he was incarcerated on or about 15 Apr 14. Mental health notes leading up to this time diagnosed him with adjustment disorder with anxiety, 26 Nov 13 until 10 Feb 14. Mental health notes after confinement continue to diagnose him with an adjustment disorder with anxiety after his confinement, 5 May 14 until 1 Aug 15.

Counsel contends the member was unable to receive the benefit of an annual mental health evaluation during his Periodic Health Assessment (PHA), a required evaluation the Air Force implemented in 2017. While this was not a requirement at the time, there is clear evidence the member was assessed for mental health issues at his PHAs, other medical/mental health

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encounters, and on an ongoing basis throughout his mental health treatment. His PHA on 10 May 11 and 16 Feb 12 both assessed his mental health condition. He had mental health assessments on 11 Dec 12 and 18 Dec 12 for his desire to retrain which assessed his mental health condition. A deployment health encounter on 29 Mar 13 assessed his mental health. An encounter at the mental health clinic dated 4 Oct 13 for a permanent change of station (PCS) assignment assessed his mental health. Finally, his mental health encounters from 22 Jul 11 through 25 Jul 17 all assess his mental health.

Counsel contends the member was not directly asked about delusions or hallucinations while initially seeking services through the military. The member's service record demonstrates he was evaluated for mental health issues to include delusions and hallucinations. His first mental health encounter, dated 22 Jul 11, demonstrates he was evaluated for delusions and hallucinations stating no manifest evidence of psychotic symptoms (delusions/hallucinations). While the mental health provider does not specifically state this question was asked, it is common practice during a psychological encounter to ask these routine questions to cover the complete spectrum of mental health symptomology. His mental health evaluation for retraining noted, no evidence of psychotic process, which would typically include questions about delusions and hallucinations to reach this determination. A mental health encounter mentioning his main concern as relationship/legal stressors, dated 30 Dec 13, noted no evidence of audio/visual (AV) hallucination. Follow-up mental health encounters throughout his treatment note the member was assessed for delusions and hallucinations.

Finally, council contends, due to his undiagnosed schizoaffective disorder, the member was unable to appreciate the wrongfulness of his actions at the time of the offenses and was unable to participate in his defense, and the charges should have been dismissed with prejudice. There is insufficient evidence the member was unable to participate in his own defense. During the time before and during his trial, he was diagnosed with an adjustment disorder with anxiety. There is no evidence he was suffering from any thought disturbance or mental health condition at this time sufficient enough to preclude him from appreciating the wrongfulness of his actions, lacking the ability to participate in his defense, or lacking the capacity to stand trial. Having a diagnosed mental illness in itself does not demonstrate a lack of capacity. Being diagnosed with an adjustment disorder with anxiety, in part due to the stressors of a trial, does not indicate he was not thinking rationally.

After considering the entire record and contentions, there is sufficient evidence to suggest the member had a mental health condition which would mitigate his misconduct. While not diagnosed, there is evidence the member did exhibit prodromal signs of schizoaffective disorder which would explain and mitigate his misconduct. Drug usage, including more potent illicit drugs, to manage symptoms of schizoaffective disorder, major mood episodes (depressive and manic) and delusions/hallucinations are part of the sequelae of behaviors associated with this diagnosis. His additional misconduct of dereliction in performance, violating a no-contact order, and communicating a threat do not appear to be mitigated by his mental health condition, but the majority of his misconduct, drug abuse, was mitigated. Liberal consideration is applied due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

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1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The member was diagnosed with adjustment disorder with anxiety, depression with anxiety, insomnia, bipolar disorder, cannabis dependence with psychotic disorder with hallucinations, and schizoaffective disorder while on active duty.

2. Did the condition exist or experience occur during military service?

The member was diagnosed with adjustment disorder with anxiety, depression with anxiety, and insomnia before his investigation, court-martial, conviction, and confinement. He was diagnosed with bipolar disorder, cannabis dependence with psychotic disorder with hallucinations, and schizoaffective disorder after release from confinement, but while still on active duty. Both his Compensation and Pension (C&P) evaluation and the report from the University evaluation concur his schizoaffective disorder was at least as likely as not (50 percent or greater probability) incurred in or caused by the claimed in-service injury, event, or illness. The Psychological Advisor also opines, while he was still fit for duty from a psychological perspective before confinement, his mental health symptoms were likely indicative of prodromal signs of his future schizoaffective disorder.

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

While not diagnosed, there is evidence the member did exhibit prodromal signs of schizoaffective disorder which would explain and mitigate his misconduct. Drug usage, including more potent illicit drugs, to manage symptoms of schizoaffective disorder to manage major mood episodes (depressive and manic) and delusions/hallucinations are part of the sequelae of behaviors associated with this diagnosis. While his mental health condition was not found to be a mitigating factor to his additional misconduct of dereliction in performance, violating a no contact order, and communicating a threat, his mental health condition did cause most of his misconduct. Therefore, his mental health condition would excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the member's mental health condition does excuse and mitigate his discharge, the member's condition does outweigh the original discharge.

The complete advisory opinion is at Exhibit D.

AF/JAJI recommends partially granting the applicant's request for a discharge upgrade to general (under honorable conditions) but not honorable on behalf of the member. On 8 May 14, the member pled guilty to four charges and their specifications under the UCMJ. On 17 Aug 14, he was released from confinement and was discharged from the Air Force on 29 Sep 17. During this time period he was on appellate leave to which his case was under review.

The member's civilian counsel raises the delay in discharge as a material error. However, beyond the assertions of the applicant and the attorney, there is a lack of evidence to explain why he was on appellate leave for over three years. He is fully disabled according to the Social Security Administration. The applicant has been appointed as his Power of Attorney and filed this complaint on his behalf. The member acknowledged his guilt of the offenses for which he was

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charged and sentenced accordingly by a military judge. However, he has a lengthy and significant history of mental health issues that cannot be overlooked. AF/JAJI notes the AFBCMR's Psychological Advisor already provided a mental health advisory, and the overall determination was sufficient evidence has been presented to support the applicant's request for an upgrade of the member's discharge. Although the member's schizoaffective disorder was not diagnosed until after his court-martial, the Psychological Advisor determined there is evidence he exhibited prodromal signs of the disorder which would explain and mitigate his misconduct. While the member's mental health condition may be a mitigating factor to the use of illegal drugs, it is not found to be a mitigating factor to his additional misconduct. Additionally, the Psychological Advisor's report specifically states there is insufficient evidence the member was unable to participate in his own defense in preparation for his court-martial.

Furthermore, the supplemental materials provided by the applicant, to include the Record of Trial, do not support the assertion the member was unable to participate in his own defense or that there was material error or injustice related to the military judge or the attorney's conduct. AF/JAJI notes the guidance for liberal consideration of mental health issues, the Kurta Memorandum, cuts against the requested correction to an honorable discharge as that would not be appropriate for some of the underlying 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." Accordingly, all of the member's misconduct was premeditated misconduct. Consequently, while his drug use is mitigated by his mental health condition, it does not excuse or mitigate the additional misconduct. Therefore, while upgrading the discharge from a BCD should be considered, upgrading his discharge from a BCD to honorable 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 6 Sep 23 for comment (Exhibit F), and the applicant replied on 12 Sep 23. In her response, the applicant contends, through counsel, she agrees with the overall recommendations of the two advisory opinions the discharge of the member should be upgraded to general (under honorable conditions) so he can finally get the medical treatment and benefits he has been denied. The mismanagement of the member's situation is outrageous as he should have been treated and medically discharged but he was retained because the Air Force needed him. Counsel goes on the outline how in each instance, the member's case was delayed by higher authorities and how these delays have negatively impacted the member's mental health.

Additional evidence submitted is a statement from the applicant outlining the direness of her son's (member) situation and how an upgrade to his discharge will enable him to receive the medical and mental health treatment needed, a news article regarding her son's treatment by the Air Force, and a letter from the Director, Work-Product Center for Community Mental Health.



The applicant's complete response is at Exhibit G.

**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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of her request to upgrade the member's discharge. While the Board finds no error in the original discharge process, the Board recommends partial relief based on liberal consideration and concurs with the recommendation of the AFRBA Psychological Advisor. In particular, the Board finds evidence the member did exhibit prodromal signs of schizoaffective disorder which would explain and mitigate his misconduct of drug usage to manage symptoms of his behaviors associated with this diagnosis. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. The Board finds the member's other misconduct does not appear to be mitigated by his mental health condition nor does the Board find a preponderance of evidence to support the member was not competent to stand trial or was unable to appreciate the wrongfulness of his actions at the time of the offenses. There is no evidence he was unfit for duty at time of his trial. The Board notes he was diagnosed with an adjustment disorder with anxiety before his trial; however, having a diagnosed mental illness in itself does not demonstrate a lack of capacity. Additionally, the Board finds the preponderance of evidence does not support the contention the member did not receive proper mental health evaluations as there are numerous medical reports/exams to the contrary showing he was assessed for his mental health issues. Finally, the Board acknowledges the delay in the member's discharge; however, finds a lack of evidence to explain why he was on appellate leave for over three years. Therefore, the Board recommends correcting the member's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to MEMBER be corrected to show on 29 September 2017, he was discharged with service characterized as general (under honorable conditions), and a separation code of JFF and corresponding narrative reason for separation Secretarial Authority.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

**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-2022-03035 in Executive Session on 27 Sep 23:

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

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Nov 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 23 Nov 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Apr 23.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 5 Sep 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Sep 23.
- Exhibit G: Applicant’s Response, w/atchs, dated 12 Sep 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.

1/24/2024  
*Work-Product* [Redacted]  
Board Operations Manager, AFBCMR  
Signed by: *Work-Product* [Redacted]