



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03056

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

The Air Force failed to consider her mental health when administratively discharging her. Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, states "Misconduct." The Air Force did not provide any separation between her patient medical privacy and employer to protect her from her unit's retaliation, which ultimately assisted her leadership systematically discharging her. The Department of Veteran's Affairs (DVA) recently gave her a 50 percent disability rating for service-related depression, due to the constant harassment and unfair treatment from her leadership about her personal decisions to not receive a medical procedure she did not trust.

In support of her request for clemency, the applicant provides DVA compensation information, her Air Force Discharge Review Board (AFDRB) decision, personnel and medical documents, and two Standard Forms 50, *Notification of Personnel Action*.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 3 Apr 01, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, reflects the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). She was discharged from the DEP and enlisted in the Regular Air Force 9 Aug 01 for a period of four years.

On 14 Mar 05, according to DD Form 214, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct" and she was credited with three years, seven months, and six days of total active service.

On 9 Dec 11, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to her discharge.

AFBCMR Docket Number BC-2022-03056

Work-Product

Work-Product

On 6 Dec 12, 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.

POST-SERVICE INFORMATION

On 29 Nov 22, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 13 Jun 23, and provided an Office of Personnel Management Certification of Investigation, an Appointment Affidavit, and a Statement of Prior Federal Service.

The applicant's complete response is at Exhibit G.

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 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 15 May 23, the 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor, having considered the entire record, including the applicant's submissions and contentions and all pertinent materials, finds there is insufficient evidence to support the applicant's request for an upgrade in her discharge. The applicant stated the Air Force failed to consider her mental health condition when administratively discharging her for misconduct. While a separation medical examination is not in the available military records, assuming regularity, one was likely completed. The Psychological Advisor opines there is only a partial nexus between her mental health condition and some of her misconduct, but her more substantive behaviors are not mitigated. The applicant was diagnosed with a working diagnosis of major depressive disorder (MDD) episode during her military service. "Failure to go" can be part of the sequela of symptoms associated with MDD. The more serious offenses; however, of disobeying a lawful order and being derelict in the performance of her duties in that she knowingly issued a pass for an unauthorized period of time, she deleted the pass from the computer system, and allowed this person to live on base unauthorized have no nexus with her mental health conditions. These behaviors are rather, willful, and conscious acts that are not mitigated by MDD. Further, before the applicant was discharged from the military, her temporary psychiatric profile was changed from S4 to an S1 indicating she was fit for regular military duties. Her record also indicated her MDD episode had been resolved, indicating she no longer met the criteria for this diagnosis. It is also noted her mental health condition as occupational problems. The applicant contended the DVA recently gave her a 50 percent disability rating for her service-connected depression, due to the constant harassment and unfair treatment from her leadership about her personal decisions to not receive a medical procedure. A service-connection by itself, that notes a mental health condition, does not necessarily mitigate misconduct. In the applicant's case, a substantive amount of her misconduct is not mitigated.

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? The applicant indicated she had "Other Mental Health" issues. The applicant was diagnosed with MDD during her time in service.
2. Did the condition exist or experience occur during military service? The applicant was diagnosed with MDD during her time in service.
3. Does the condition or experience excuse or mitigate the discharge? After reviewing her entire available record, this Psychological Advisor opines there is only a partial nexus between her mental health condition and her misconduct, but her more substantive behaviors are not mitigated. The applicant was diagnosed with a working diagnosis of major depressive episode during her military service. Failure to go can be part of the sequela of symptoms associated with MDD. The more serious offenses of disobeying a lawful order and being derelict in the performance of her duties in that she knowingly issued a pass for an unauthorized period of time, she deleted the pass from the computer system, and she allowed this person to live on Work-Product unauthorized have no nexus with her mental health conditions. These behaviors are rather, willful and conscious acts that are not mitigated by MDD.
4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate the most substantial or most serious offenses of her discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 May 23 for comment (Exhibit E), and the applicant replied on 14 Jun 23. In her response, the applicant contends the Psychological Advisor's assessment fails to sufficiently consider the nexus between her mental health condition and her misconduct, as well as the broader context and challenges she faced during her military service. The evidence presented supports the need for a thorough reevaluation of her discharge and the consideration of her mental health struggles in a fair and unbiased manner.

The applicant's complete response is at Exhibit H.

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. While there is a



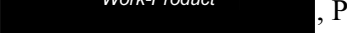
partial nexus between her mental health condition and some of her misconduct, the more serious offenses she committed are willful and conscious acts that have no nexus with her mental health conditions. Liberal consideration was applied to the applicant’s request due to the contention of a mental health condition; however, since the applicant’s mental health condition does not excuse or mitigate the most substantial or most serious offenses of her discharge, the applicant’s condition also does not outweigh the original discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency and to ensure fundamental fairness; however, given the limited post-service evidence presented, the Board finds no basis to do so. The Board encourages the applicant to apply in the future and provide additional evidence such as post-service certificates of achievements, civilian memberships, volunteer work, and character references or letters of appreciation. Therefore, the Board recommends against correcting the applicant’s records.

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-2022-03056 in Executive Session on 27 Sep 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 22 Nov 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 29 Nov 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 12 May 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 May 23.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 15 May 23.
- Exhibit G: Proof of Employment Background Check, dated 13 Jun 23.
- Exhibit H: Applicant’s Response to Advisory, dated 14 Jun 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.

3/15/2024



 Board Operations Manager, AFBCMR
 Signed by: 