



**CUI//SP-MIL/SP-PRVCY**

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00083

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

While serving in the Air Force, he was treated for a mental health condition which took over a year to receive a diagnosis. While being treated, he was over medicated and self-destructive.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force airman (E-2).

On 20 Sep 10, the applicant's commander recommended the applicant be discharged from the Air Force, for Misconduct: A Pattern of Misconduct, under the provisions of AFD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 5 Mar 10, the applicant received a Letter of Reprimand (LOR) for showing disrespect to multiple Noncommissioned Officer's (NCOs) and failed to adhere to proper military customs and courtesies.
- b. On 19 Apr 10, the applicant received a LOR for disrespecting other enlisted members and questioning the integrity of an NCO.
- c. On 18 Jun 10, the applicant received an Article 15 for operating a vehicle while drunk. As a result, forfeiture of \$811.00 pay, 30 days extra duty and reduction to the grade of airman, with reduction below airman first class suspended through 7 Dec 10, with a new date of rank of 9 Jun 10.

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- d. On 2 Aug 10, the applicant received a LOR for disobeying lawful orders given by two NCOs by failing to provide documentation proving he would be attending all day appointments.
- e. On 26 Aug 10, the applicant received a vacation of suspended Article 15 for making a false official statement. As a result, he was reduced to the grade of airman, with a new date of rank of 9 Jun 10.

On 29 Sep 10, the Staff Judge Advocate found the discharge action legally sufficient.

On 6 Oct 10, the discharge authority directed the applicant be discharged for Misconduct: A Pattern of Misconduct with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 19 Nov 10, the Secretary of the Air Force Personnel Council (SAFPC) directed the applicant be discharged by execution of the approved AFI 36-3208 action. SAFPC found there was no causal relationship between the applicant's medical condition and his misconduct, and that there were insufficient mitigating factors to disregard the disciplinary action.

On 9 Dec 10, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Other)." He was credited with 3 years, 3 months, and 12 days of total active service.

On 6 Jul 11, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 28 Sep 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. In view of the foregoing findings, the Board further concludes there exists no legal or equitable basis for upgrade of discharge and determines the discharge should remain unchanged.

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

**POST-SERVICE INFORMATION**

On 18 Jan 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

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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 18 Jan 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.

### **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge. Based on a review of available records, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. Based on the applicant's self-statements for his misconduct and his in-service mental health conditions, there is no nexus between his misconduct and his diagnoses of adjustment disorder and occupational problems.

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 reported that he was under treatment for mental health conditions.
2. Did the condition exist or experience occur during military service?  
The applicant was diagnosed with adjustment disorder and occupational problem during his military service.
3. Does the condition or experience excuse or mitigate the discharge?  
The Psychological Advisor agrees with the previous two Boards' decisions in that there is no relationship between the applicant's misconduct and his conditions, specifically his diagnosed mental health conditions (adjustment disorder and occupational problem) that were diagnosed during his time in service. While his adjustment disorder appears to be diagnosed as a result of his recently diagnosed Crohn's Disease, his mental health diagnosis is not a mitigating factor for his misconduct. Operating a vehicle while intoxicated, making a false official statement, disobeying a lawful order from two NCOs, failing to follow proper customs and courtesies, and being disrespectful to multiple NCOs are not part of the sequelae of symptoms associated with his mental conditions.
4. Does the condition or experience outweigh the discharge?  
Since the applicant's mental health condition does not excuse or mitigate his 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 29 Jun 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 opinion 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 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-00083 in Executive Session on 25 Oct 23:

**Work-Product**, Panel Chair  
**Work-Product**, Panel Member  
**Work-Product** Panel Member

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

- Exhibit A: Application, DD Form 149, dated 28 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 18 Jan 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Jun 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 29 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.

3/26/2024

*Work-Product*

Board Operations Manager, AFBCMR

Signed by:

*Work-Product*