



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00144

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He felt he had to go absent without leave (AWOL) because his father had threatened to kill his family. He feared for their lives, did not know what else to do, and felt trapped without any other option. He believes he had some mental issues at the time because of abuse he suffered as well as shame surrounding his situation.

In support of his request for a discharge upgrade, the applicant provides character references.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Mar 61, the convening authority published Special Court-Martial Order (SPCMO) **Work-Product** **Work...** The order stated the applicant pled guilty and was found guilty of one charge and one specification of absenting himself from his organization without proper authority from 17 Dec 60 to 7 Feb 61 (Article 86). He was sentenced to confinement at hard labor for 6 months, forfeiture of \$55.00 per month for 6 months, reduction to the grade of airman basic, and discharge from the service with a bad conduct discharge (BCD).

On 22 Mar 61, the Staff Judge Advocate (SJA) reviewed the trial by court-martial and recommended the applicant be sentenced to confinement at hard labor for 4 months, forfeiture of \$52.00 per month for 4 months, reduction to the grade of airman basic, and discharge from the service with a BCD.

On 16 May 61, the convening authority published SPCMO **Work-Product** affirming the sentence recommended by the SJA.

AFBCMR Docket Number BC-2023-00144

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Controlled by: SAF/MRB

CUI Categories: **Work-Product**

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 5 Jun 61, the discharge authority directed the applicant be discharged with an UOTHC service characterization.

On 5 Jun 61, the applicant received an UOTHC discharge. His narrative reason for separation was by Special Court Martial and he was credited with three months and two days of total active service.

On 5 Sep 62, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 15 Nov 62, 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.

On 12 Mar 64, the applicant submitted a second request to the AFDRB for an upgrade to his discharge and re-enlistment code.

On 2 Apr 64, the AFDRB notified the applicant his case would be reconsidered only if he provided new evidence that was not previously considered.

On 28 Apr 94, the Air Force Board for Correction of Military Records (AFBCMR) notified the AF Manpower Personnel Center that no corrective action was indicated for the applicant's AFBCMR case (number 94-00075). There was no further documentation and/or evidence on this case in the record.

On 28 May 99, the AFBCMR notified the applicant a reconsideration for case number 94-0075 had been denied. There was no further documentation and/or evidence on this case in the record.

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

POST-SERVICE INFORMATION

On 19 Jan 23, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he 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 8 Aug 23 and provided a new DD Form 149, FBI report, and character references. According to the report, the applicant was charged with discharging a firearm in/at an occupied building on 20 Aug 03.

The applicant's complete response is at Exhibit D.

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 Post-Traumatic Stress Disorder (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 (MH) 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 MH 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 MH 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 USD P&R 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 27 Feb 24, 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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record and finds no evidence the applicant had any MH conditions including PTSD or a similar condition during service. While it is reasonable to assume the applicant may have been traumatized by his abusive childhood experiences, there is no evidence he had PTSD during service. If he was diagnosed with PTSD stemming from his childhood abuse experiences during his lifetime, this condition would be considered a prior service condition or had existed prior to service (EPTS); there is no evidence or records his EPTS condition or experiences were permanently aggravated by his military duties or service. Common symptoms of PTSD according to the current version of the Diagnostic and Statistical Manual of Mental Disorder-Fifth Edition, Text Revision, may include being distressed when thinking or being reminded of the traumatic experience(s), avoiding thoughts, people, places, etc. of the traumatic experience(s), difficulties remembering the traumatic event(s), having sleeping difficulties and/or nightmares, having flashbacks or other dissociative behaviors, being hypervigilant, and having poor concentration, alterations in mood or depressed mood, anxiety, anger, and irritability to name some symptoms. There is no evidence or record showing the applicant had or experienced any of these symptoms while AWOL or any time during his military service, or that he was experiencing any of these symptoms impairing his judgment at

the time he decided to go AWOL. His trial records confirm he had the requisite mental responsibility at the time of the commission of his offense/AWOL demonstrating he had no MH issues or psychological condition that caused his decision or behaviors, and he was aware of the consequences of his AWOL. His objective military records/trial records stated he had been informed of the seriousness of the offense of being AWOL and he realized the necessity of observing the rules regarding absences and AWOL should not be condoned or forgiven completely. There is ample evidence and records reporting he went AWOL to protect his mother from his father who had threatened her life. It is comprehensible for him to want to protect his family, but his actions do not excuse or mitigate his AWOL, especially being AWOL for about 52 days. One cannot simply leave their place of duty without permission. His AWOL was a serious offense resulting in a conviction at a SPCM and could not be excused or mitigated by his MH condition. He admitted during his SPCM trial he did not speak to his leadership or a chaplain about his problems nor had it occurred to him to reach out for help despite being briefed and lectured about guidance and counseling services being available by these individuals during his seven weeks at basic training. His decision to be AWOL was not quite impulsive as well, as it was reported he did not try to get leave because he was behind on leave time and did not think he could get extended leave as desired. He took some time to think about his situation and believed it would not be favorable to him before he decided to leave without authorization. Furthermore, during his post-trial interview with the SJA, he was vague with his description of how he helped his family while he was AWOL and stated he “just loafed around home” until he was apprehended by military authorities. Loafing around the house does not reflect a person who had or was experiencing PTSD, was in emotional distress, or was providing aid or assistance to protect his family. The chaplain reported from their interview the applicant did not contribute financially to his family prior to his service or during his AWOL, which elicited questions as to the type of assistance he was providing to his family. At his trial, it appeared there was a brief interaction or altercation in which his father tried coming into the house and the applicant took a gun and threatened his father away. There was no report his father returned to the house, continued to threaten his mother and family, or there were other problems at home after this incident that would cause his prolonged AWOL. His records did not reflect he was concerned about being AWOL nor was there any urgency on his part to return to the military after his situation at home had been resolved. He was noted to be immature and dependent on his mother, which may have contributed to his decision to be and stay AWOL, but these behaviors were not indicative of a mental disorder. These are also pre-existing problems or personality traits that were not caused or aggravated by his military service. In summation, the applicant’s decision to be AWOL was not caused by his MH condition, and there is no evidence or records supporting his MH condition had a direct impact on his misconduct and decision to be AWOL, his SPCM conviction, and subsequent discharge from service. The Psychological Advisor finds no identifiable error or injustice with his discharge from a MH perspective.

Liberal consideration is not required to be applied to the applicant’s petition because his EPTS condition of trauma, PTSD, or other mental issues developed from his childhood abuse experiences was determined to not have been aggravated by his military service (Kurta Memorandum #15). However, should the Board choose to apply liberal consideration to his petition, the following are responses to the four questions from the Kurta Memorandum from the records for review.

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

The applicant contended he felt he had to go AWOL because his father, who was abusive to his family, had threatened to kill his mother and siblings. He marked "PTSD" on his application and believed he had some mental issues from the abuse he had suffered.

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

The applicant's service treatment records were not available or submitted by the applicant for review. From the available records, there is no evidence or records of his MH condition of PTSD or any other MH condition that existed or occurred during his military service. His trial records reported he had the requisite mental responsibility at the time of the commission of his offense presumably from a MH or sanity board evaluation, indicating he was aware of the consequences of his behaviors. or he did not have a MH condition affecting his decision at the time of his offense/AWOL. The applicant's stressful and/or traumatic childhood abuse experiences had existed and occurred prior to this military service as evidenced by his testimony and military/trial records.

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

The applicant's MH condition stemming from his childhood abuse experiences was EPTS and no evidence was aggravated by his military service. The applicant was AWOL with the intent to protect his family, but his decision and behaviors were determined to not have been caused by his MH condition. There is no evidence he had a MH condition including PTSD impairing his judgment at the time of his decision to be AWOL, which led to his special court-martial conviction and discharge from service. Thus, his MH condition from his childhood abuse experiences does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there was no evidence his MH condition may excuse or mitigate his discharge, his MH condition also does not outweigh his original discharge. His AWOL is a serious offense and is not outweighed by his EPTS MH condition and experiences.

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 27 Feb 24 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 discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade 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. Specifically, there is no evidence showing he had a MH condition, including PTSD, which directly impacted or resulted in his misconduct and decision to go AWOL, SPCM conviction, and subsequent discharge from service. The applicant's EPTS MH condition from childhood abuse experiences does not excuse, mitigate or outweigh his original discharge for being AWOL, which is a serious offense. While he submitted several character references for clemency consideration, he did not provide sufficient documentation of his activities and accomplishments since his discharge. 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-2023-02976 in Executive Session on 18 Jun 24:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 21 Dec 22
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 19 Jan 23.
- Exhibit D: Applicant's Response and FBI report, w/atchs, dated 8 Aug 23.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, w/atchs, dated 22 Feb 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Feb 24.

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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.

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Board Operations Manager, AFBCMR
Signed by: USAF

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