



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00421

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. Change his narrative reason for separation to "Secretarial Authority" or medical (if appropriate).
3. Change his separation code to reflect a disability or an appropriate hardship.
4. Change his RE-code to RE-2Q or RE-1J, if appropriate.

APPLICANT'S CONTENTIONS

His discharge is unjust because it did not take into account the presence of a mental health disorder/service-connected disability. He has a medical diagnosis of Chronic PTSD and a service-connected VA rating for PTSD and Major Depressive Disorder (MDD). During his service, he experienced several events that subsequently caused him PTSD and MDD, starting while he was in tech school where he witnessed the brutal sexual assault of a female airman. Then, at his first duty station, he was subjected to daily racial discrimination, attacks, an incident involving the discharge of an assault rifle in the office, and a life threatening auto accident. As a result of his disorders, his behavior deteriorated and caused him financial hardships, alcohol abuse, and suicidal ideation causing him to withdraw socially which in turn exacerbated his symptoms and behavioral mishaps.

Before the presence of PTSD and MDD, there were no signs of behavioral, financial, or administrative issues in his record. He was on the base's official basketball team and participated in base events. For years, he has struggled as his life and relationships have suffered due to his mental health. He has felt alone, forgotten, and without hope regarding his discharge and the ability to change it. He is currently in therapy regarding his conditions and his service connected disability.

Having "Misconduct" on his DD Form 214, *Certificate of Release or Discharge from Active Duty*, has hurt his employment opportunities and prevented him from accessing veteran services such as education and home loans and having his discharge upgraded and the narrative reason changed would lift and remove these barriers in his life. Thankfully, the Hagel Memo and the Kurta Memo have made provisions to help in cases like his and prays that with this new evidence, and new laws and findings regarding discharge upgrades pertaining to mental health disorders, he hopes in the interest of justice the Board finds merit in his request.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 8 May 03, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On or about 24 Apr 03, [he] failed to go to a mandatory appointment for which [he] received a Letter of Reprimand (LOR), dated 25 Apr 03.
- b. Between on or about 15 Apr 03 and on or about 18 Apr 03, [he] failed to go to [his] appointed place of duty for which received a LOR, dated 18 Apr 03.
- c. On or about Apr 03, [he] was past due on [his] car payment and [his] checking account was overdrawn for which he was verbally counseled.
- d. On or about 7 Mar 03 and 8 Mar 03, [he] failed to maintain his dormitory quarters for which he was verbally counseled.
- e. On or about 19 Nov 02, [he] failed to obey a lawful order for which he received a LOR, dated 12 Dec 02. Additionally, [he] was placed on a control roster and an Unfavorable Information File was established.
- f. On or about 19 Nov 02, [he] was delinquent in his personal loan for which he was verbally counseled.
- g. On or about 24 Oct 02, [he] failed to comply with AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel*, for which he received a Record of Individual Counseling (RIC), dated 30 Oct 02.
- h. On or about 22 Oct 02, [he] was late for work for which he received a RIC, dated 24 Oct 02.
- i. On 10 Sep 02, [he] failed to appear in the circuit court of <redacted> County, Missouri for which he received a LOR, dated 19 Sep 02.
- j. On or about 22 Aug 02, [he] was late for work for which he received a RIC, dated 24 Oct 02.
- k. On or about 19 Aug 02, [he] failed to report for work for which he received a RIC, dated 23 Oct 02.

On 9 May 03, the Staff Judge Advocate found the discharge action legally sufficient.

On 14 May 03, the discharge authority directed the applicant be discharged for Misconduct, with a general (under honorable conditions) service characterization.

On 15 May 03, the applicant received a general (under honorable conditions) discharge. His DD Form 214, reflects the following: narrative reason for separation is "Misconduct"; separation code

is “JKN”; reentry code (RE) is “2B.” He was credited with 1 year, 10 months, and 27 days of total active service.

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

POST-SERVICE INFORMATION

On 26 Jun 23, the Board sent the applicant a request for post-service information (Exhibit C), 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 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 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 26 Jun 23, 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.

This psychological advisor has reviewed the available records and finds his available objective military records do not corroborate his contentions nor the statements provided by his therapist, wife, and friend/former colleague. His service treatment records are not available or submitted by the applicant for review so there is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis including PTSD, anxiety, and depression/Major Depressive Disorder (MDD) during military service. Thus, there is no record to substantiate he had a mental health condition during service. He claims he experienced several traumatic experiences such as witnessing a female airman getting sexually assaulted by two airmen during tech school, a gun being discharged in the office in front of him, he was involved in a horrific/life threatening auto accident, and he was racially discriminated against and attacked. There is no documentation in his military records that these incidents had existed or occurred during his military service. Despite no actual evidence of any of these occurrences, the benefit of the doubt is given to the applicant that it is possible he had these experiences. However, the validity of his traumatic experiences is not of concern, but it is whether the residual effects of these experiences affected his psychological and emotional functioning causing or impacting his patterns

of misconduct leading to his discharge from service. His military records do not support this notion. The applicant submitted a few statements at the time of service and he did not discuss any of his traumatic experiences or having a mental health condition from these experiences that caused his misconduct and problems. In his written comment to his RIC, dated 23 Aug 02, for being late, he admitted he was informed to call if his appointment was going to be late but said he was never told to call if his papers were ready. His supervisor did acknowledge the applicant had personal issues with his nephews but he still needed to pay attention to his primary obligations, especially since that was his third letter of counseling (LOC) that week. There was no discussion of any mental health issues that caused him to report to work two hours late, taking excessive time for an appointment, or taking an extra hour for lunch. He may have had personal problems, but they were not indicative of mental health issues. In his rebuttal to his LOR, dated 18 Apr 03, he apologized for his actions and admitted that he was not truthful and was misleading on his reporting for duty. This explanation showed he was aware of his situation, knew what he was doing at the time, and was intentional with his behaviors. His inability to be truthful was not caused by having a mental health condition, i.e., PTSD, anxiety, and depression. In his response to his administrative discharge action, he reported his family was the cause of his financial problems and *"my main problem was letting my family influence my decisions."* Again, these explanations do not support that his problems, behaviors, or decisions were caused by his mental health condition or health condition or disorders, but by others and extraneous circumstances. He claims that as a result of his mental health condition or disorders, his behaviors deteriorated causing him to have financial hardships, alcohol abuse problems, and suicidal ideation and his social withdrawal exacerbated his symptoms and misconduct. There are records he had financial problems, but as quoted from his own statement, his financial problems were the result of his family problems and not from his mental health condition. There is no evidence or records he had any alcohol issues, suicidal ideation, or social withdrawal problems as claimed.

The applicant provided letters to corroborate his contentions. The letter from his therapist reported he had been diagnosed with PTSD, Chronic, due to the alleged aforementioned traumatic experiences that occurred during his military service between Jun 01 and May 03. This psychological advisor does not dispute his therapist's assessment and diagnosis; however, his therapist's assessment and diagnosis were completed over 16 years after his discharge and are not reflective of his functioning and clinical presentation at the time of service. His therapist's assessment and diagnosis were applicable at the time of the evaluation. His therapist did not evaluate him during his military service and could not definitively assert he had PTSD or that he began to experience symptoms of PTSD during military service. The applicant's objective military records find no evidence or records that he had PTSD or symptoms of this condition during service even in the absence of his service treatment records. When there are no service treatment records available, the remaining records would be used to support or dispute the contentions. His documented behaviors and performance by his leadership, and the statements he made at the time of service, do not support or suggest he had PTSD or similar conditions during service. A condition like PTSD may develop instantaneously after a traumatic event, but could also have a delayed onset. The applicant was not diagnosed with PTSD until over 16 years after discharge and this information may suggest that he had delayed onset of PTSD, which is not an uncommon occurrence. He appeared to have post-service stressors as reported during his C&P examination that could have triggered, exacerbated, and aggravated his PTSD or other mental health condition. His therapist opined his military service aggravated his mental health condition, but this opinion was not supported by his military records. The applicant's spouse and his friend/former colleague also submitted statements claiming he had PTSD during service. The applicant's friend/former colleague, in particular, claimed that after his traumatic experience of a firearm being discharged in the office in front of him and being in a horrific auto accident (Note: the friend/former colleague did not specify when the auto accident occurred) he displayed anger outbursts, would start fights with people, had chased and hit an individual that he thought pointed a gun at them while they were

on the highway, self-medicated with alcohol, cheated on his wife, had appetite and weight loss issues, and became paranoid and suspicious. There are no records that any of these incidents took place and most of these incidents were serious offenses, and if they did occur, he would have received disciplinary actions, a referral to a substance abuse evaluation, and/or legal charges. Again, none of these events or actions occurred and the applicant's leadership did not document any of these specific problematic behaviors in his RIC's, LOR's, Enlisted Performance Report, or Memorandum for Records, and the applicant did not discuss these issues in his statements in response to his disciplinary and discharge actions as well. The applicant did receive an LOR for failing to appear in the circuit court and his appearance failure resulted in a warrant being issued for his arrest. The reason for his legal problem was not identified and it is possible that it could have been related to one of the incidents referred to by his friend/former colleague, but this could not be confirmed. There could be many reasons for his court appearance, and the applicant never addressed his court appearance during his military service or in his petition.

The applicant has been service connected by the Veteran's Administration (VA) for MDD, moderate recurrent with anxious distress (claimed as PTSD) with an evaluation of 50% effective on 23 Aug 22, 19 years after his discharge. The VA specified symptoms that qualified him for a 50% rating are anxiety, chronic sleep impairment, depressed mood, difficulties in adapting to a work-like setting, stressful circumstances, work, establishing and maintaining effective work and social relationships, disturbances of motivation and mood, occupational and social impairment with reduced reliability and productivity, panic attacks, and suspiciousness. There is no evidence or records he experienced any of these symptoms during service. There is no evidence or records he had any unfitting mental health condition, including PTSD or MDD during service that would meet the criteria for a referral to the Medical Evaluation Board for a medical discharge or disability. He was never placed on a duty limiting condition profile for his mental health condition, was never deemed not world-wide qualified due to his mental health condition, and no statements from his commander of any observations or concerns his mental health condition had impacted his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. For awareness about the different ratings: The military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), *only* offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not base on post-service progression of disease or injury. To the contrary, the VA operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for *any* medical condition with an established nexus with military service, or the length time transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

An extensive review of the available records finds insufficient evidence has been presented to demonstrate a nexus had existed between the applicant's mental health condition, including PTSD and MDD, and his reason for discharge for misconduct. There is no evidence that his mental health condition was a mitigating factor to his discharge, and there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition and traumatic experiences. It is reminded that liberal consideration does *not* mandate an upgrade per policy guidance. The following are responses 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 contends he has been diagnosed with Chronic PTSD and has been service-connected for PTSD and MDD by the VA for traumatic experiences he endured during his military service. His traumatic experiences were witnessing a female airman get sexually assaulted by two airmen while he was in tech school, a firearm being discharged in the office in front of him, he was involved in an auto accident in which he and his friend almost died, and he was racially discriminated against and attacked. He claims as a result of his mental health condition or disorders from these traumatic experiences, his behaviors deteriorated causing him to have financial hardships, alcohol issues, and suicidal ideation and his social withdrawal exacerbated his symptoms that were used to discharge him with a general, under honorable conditions character of service.

2. Did the condition exist or experience occur during military service?
The applicant was diagnosed with PTSD, Chronic, by his therapist about 16 years after discharge and was service-connected for MDD, moderate recurrent with anxious distress (claimed as PTSD) by the VA with an evaluation of 50% effective on 23 Aug 22, 19 years after discharge. There is no evidence or record of the applicant's mental health condition of PTSD or MDD or that its symptoms had existed during his military service. His service treatment records are not available for review and the available military records finds no records that he had any mental health condition or issues during service. There are also no records that any of his traumatic experiences had occurred during his military service. He submitted a letter from his friend/former colleague attesting to being in an auto accident with the applicant at the time he was in service, but there was no documentation of this event in his available records to corroborate this report.

3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence or records that the applicant's mental health condition, including PTSD or MDD from his numerous traumatic experiences sustained during service had a direct impact or was a mitigating factor to his discharge based on the available records for review. Thus, his mental health condition developed from his traumatic experiences does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition from his traumatic experience does not excuse or mitigate his discharge, his mental health condition or traumatic experience also does not outweigh his 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 21 Dec 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 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 the Psychological Advisor and determines insufficient evidence has been presented to demonstrate a nexus between the applicant’s mental health conditions, to include PTSD and MDD, and the reason for his discharge. As such, since his mental health condition from his traumatic experience does not excuse or mitigate his discharge, his mental health condition or traumatic experiences also do not outweigh his original discharge. Therefore, the Board finds there is no error or injustice with his discharge from a mental health perspective. However, in the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information / criminal history provided by the applicant, the Board finds no basis to do so. Lastly, the Board determines the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander’s discretion, nor was the discharge unduly harsh or disproportionate to the offenses committed. Therefore, the Board recommends against correcting the applicant’s record.

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-2023-00421 in Executive Session on 17 Apr 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 23 Jan 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 26 Jun 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Dec 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Dec 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.

5/10/2024

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Board Operations Manager, AFBCMR
Signed by: USAF