

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00446

XXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to:

- a. Change Block 25. *Separation Authority*, from "AFM 39-12" to "AFM 39-10."
- b. Change Block 26. *Separation Code*, as required.
- c. Change Block 27. *Reenlistment Code*, from "2C" to "1C."
- d. Change Block 28. *Narrative Reason for Separation*, to remove derogatory comments.

APPLICANT'S CONTENTIONS

He served in the Air Force for eight years. During those years, he was stationed at [Work-Pro...] Air Force Base (AFB) and [Work-Pr...] Air Base (AB), where he performed excellently. His Airman Performance Reports were in the 8s and 9s. When he was re-stationed at [Work-Product] AFB, he was placed under heavy job, rank, and race discrimination to the point that they required him to repeat most of his 7-level training because they did not believe a Black 7-level staff sergeant was capable of this achievement. It can be exactly compared to the years during World War II when Blacks were discriminated against in the Army Air Corps. The same thing happened to him. They placed pressure on him to leave the Air Force. One reason the applicant did notice was that they did not recognize he was an Air Force Reserve Officer Training Corps (AFROTC) enlistee and had started out well ahead of the rest of his class, and they resented this, all the way up to that point. It made them feel as though he was this Black guy leading them and in this career field there were not many Black or African Americans.

He was [not] offered any legal counsel during this time and it was solely based upon job pressures, him being an African American E-5 leading the pack so well that he seemed arrogant to the rest of the group. In fact, his job performance was above reproach while serving at the last two prior Air Force bases. He was an AFROTC cadet, and they just could not understand why he was so oriented to the Air Force and its culture without taking credit for it. This was an isolated event that happened at [Work-Product] AFB after returning from [Work-Pr...] AB.

Because he was not offered any administrative or judicial assistance at the time of discharge, he was unaware of the circumstances of the type of discharge and that he would not be able to reenlist. It was as if he was just following the orders from a commander who had no idea who he was. The main thing is the Narrative Reason for Separation, since he has been separated for some time. The narrative is untrue and defaces his character when presented to anyone. He thinks it is defamation of his character. He has since remained in the Aerospace/Aviation industry and has obtained four college degrees, and this he believes should be supporting evidence of his character.

The fact that he could outweigh what was placed on his DD Form 214 is the only reason this was delayed and led to the rationale that this Separation Authority should have been AFM 39-10 with the ability to reenlist. In fact, because of this type of discharge, he was denied reenlistment shortly after he was discharged. It presents a discriminatory, defaming picture of him and he still has an

Air Force buddy that can testify to this not being characteristic of him. In addition, he still has a vivid memory of all the circumstances which led to pressure on him to leave.

In support of his request for a discharge upgrade, the applicant provides post-service certificates of achievement and copies of college degrees/diplomas.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force staff sergeant (E-5).

On 3 Aug 81, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Misconduct, Personal Abuse of Drugs; Resignation or Request for Discharge for the Good of the Service; and Procedures for the Rehabilitation Program*, dated 1 Sep 66 (Incorporating Change 11, dated 20 Jul 76), Chapter 2 – *Reasons for Discharge*, Section A – *Discharge for Unsuitability*, paragraph 2-4c.. The specific reasons for the action were:

- a. Government-owned vehicle accident on 18 May 80.
- b. Statement, dated 2 Jul 80, regarding [the applicant's] decertification on C-130s and duty performance not allowing for recertification.
- c. Signing off on in-flight write-ups when not qualified to do so on 28 Jul 80.
- d. Failure to follow technical order and receiving numerous write-ups for improper work on 2 Aug 80.
- e. Failure to follow technical order and checklist and decertified on C-130 on 27 Aug 80.
- f. Shirking of duties on 16 Sep 80.
- g. Placed on control roster due to substandard duty performance on 10 Oct 80.
- h. Failure to take initiative and correctly fill out forms on 22 Oct 80.
- i. Failed CMS on 17 Oct 80.
- j. Failure to make appropriate progress while on control roster on 21 Oct 80.
- k. Failure to perform assigned tasks on 27 Oct 80.
- l. Failure to follow proper safety procedures on 28 Oct 80.
- m. Failure to properly perform duties on 6 Nov 80.
- n. Failure to complete assigned duties on 6 Nov 80.
- o. Unprofessional conduct on 1 Dec 80.
- p. Statement, dated 4 Dec 80, regarding failures to progress and follow instructions, and failure to adapt.
- q. Numerous errors and sloppy work on 8 Dec 80.
- r. Failure to obey an order on 16 Dec 80.
- s. Failure to meet standards and requiring constant supervision on 5 Jan 81 and on 16 Jan 81.
- t. Failure to obey a lawful order on 4 Feb 81.
- u. Inadequate duty performance on 18 Mar 81.
- v. Failure to follow proper procedures on 27 May 81, 29 May 81, 6 Jul 81, 16 Jul 81, and 20 Jul 81.
- w. Hostile attitude on 14 Jul 81.
- x. Decertification on Lox service on 21 Jul 81.

On 13 Aug 81, the Staff Judge Advocate found the discharge action legally sufficient.

On 19 Aug 81, the discharge authority directed the applicant be discharged under the provisions of AFM 39-12, Chapter 2, Section A, paragraph 2-4c, with an honorable service characterization.

On 21 Aug 81, the applicant received an honorable discharge. His Narrative Reason for Separation is “Unsuitability – Apathy & Defective Attitude”, with Separation Code of “HMJ” [Code no longer active], and Reenlistment Code of “2C” [Involuntarily separated with an honorable discharge]. He was credited with 8 years and 1 day of total active service.

On 5 Jul 83, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) to change his Narrative Reason for Separation and Reenlistment Code.

On 8 Dec 83, 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 and the advisory at Exhibit E.

POST-SERVICE INFORMATION

On 5 Jun 24, 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 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, a copy of an email requesting his military records from the National Personnel Records Center, and his resume.

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 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 5 Jun 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to his records based on his mental health condition.

This advisory is limited to the applicant's mental health condition. The Board may elect to receive an advisory from personnel and/or legal subject matter experts to address his non-mental health-related contentions. A review of the applicant's available records finds the applicant was diagnosed with Atypical Personality Disorder, Chronic, Moderate severity that was determined to Exist Prior to Service (EPTS) during his inpatient hospital stay for an evaluation. The results of his Minnesota Multiphasic Personality Inventory were found to be within normal limits, but he was assessed and observed to tend to deny any wrongdoing and attributed his difficulties to other people's actions. The applicant also had a history of resenting authority, having significant difficulties with following suggestions from supervisors, and behaving inappropriately, which was considered to be disobeying lawful orders. These were the reasons he was given a personality disorder diagnosis. There is no error identified with this diagnosis and the diagnosis appeared to be consistent with the applicant's functioning and behavioral traits. His personality disorder was determined to have been EPTS and no clear explanation was provided for this specifier. However, personality disorders tend to be stable, pervasive, and enduring and typically begin in adolescence or early adulthood. This may be the reason his condition was EPTS. There is no evidence the applicant's military service had aggravated his EPTS condition. He was reported to not have any significant or severe mental illness. He was not recommended for administrative separation due to his personality disorder nor was his personality disorder a reason for his discharge. Nevertheless, the applicant's personality traits/disorder were assessed to have caused his maladaptive behavioral problems and repeated acts of misconduct as determined by his mental health evaluation. His personality disorder may have caused and could have explained his behaviors and misconduct, but they do not excuse or mitigate his discharge. Personality disorders are unsuited conditions for continued military service. The applicant contends he does not believe he has a personality disorder and submitted no records to support his claim. If his contention was supported and factual, then it is not possible his mental health condition had caused his numerous misdeeds and discharge as there is no nexus established between his mental health condition and reason for discharge. As a result of a review of his available records and his contentions, this

psychological advisor finds no identifiable error or injustice with his narrative reason for separation from a mental health perspective.

This psychological advisor opines liberal consideration is not required or appropriate to be applied to the applicant's request because he denied having any mental health condition, did not designate his mental health condition as a reason for his request, and had no evidence his EPTS personality disorder was aggravated by his military service (Kurta Memorandum #15). Should the Board choose to apply liberal consideration to his request due to his history of receiving a mental health disorder during service, the following are responses to the four questions from the Kurta Memorandum from the records for review. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant reports he was diagnosed with Atypical Personality Disorder, Chronic to Moderate EPTS during service and this condition was not explained to him. He now understands that it could be classified as four different personality disorders such as Antisocial Personality Disorder, Borderline Personality Disorder, Histrionic Personality Disorder, and Narcissistic Personality Disorder. He had never heard of any of these types of disorders and believes his disorder may have supported attempts at discharging him. He did not discuss how his mental health condition may excuse or mitigate his discharge.

2. Did that condition exist, or experience occur, during military service?
The applicant's service treatment records reveal he was diagnosed with Atypical Personality Disorder, Chronic, Moderate that was assessed to be EPTS from his inpatient hospitalization from 3 Jun 81 - 8 Jun 81. This diagnosis was derived from his behaviors of tending to deny any wrongdoing, attributing his difficulties to other people's actions, his history of resenting authority, having significant difficulties with following suggestions from supervisors, and behaving inappropriately, which was considered to be disobeying lawful orders.

3. Does that condition or experience excuse or mitigate the discharge?
The applicant denies having any mental health condition before, during, or after service and thus, it would not be possible that his mental health condition may have caused, excused, or mitigated his discharge. His personality disorder diagnosis was found to be appropriate based on his reported behavioral traits and problems. The applicant's personality disorder was not a reason for his discharge, but this condition may have caused the numerous acts of his misconduct but does not excuse or mitigate his discharge. Personality disorders are unsuited conditions for continued military service. His personality disorder was assessed to be EPTS and there is no evidence it was aggravated by his military service.

4. Does that condition or experience outweigh the discharge?
Since there is no evidence his mental health condition may excuse or mitigate his discharge, his mental health condition also does not outweigh his original discharge.

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 5 Jun 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 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 Title 10, United States Code § 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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of his request.

The Board concurs with the rationale of the AFRBA Psychological Advisor regarding the lack of evidence to support a change in the applicant's record based on his mental health condition. The applicant denied having any mental health condition and did not designate his mental health condition as a reason for his request. Additionally, given the applicant's mental health condition likely existed prior to his military service, and there is no record this condition was aggravated by military service, liberal consideration is not required.

Further, there is no evidence to support the applicant's contention of racial discrimination or lack of administrative or judicial counsel during the discharge process. In fact, in a 4 Aug 81 signed memorandum to his commander, the applicant stated military counsel had been made available to him and he was notified of his right to employ civilian counsel if he so desired. In this same memorandum, the applicant offered a waiver of his rights associated with an administrative discharge board contingent upon receipt of an honorable discharge.

While the Board finds no error in the original discharge process, nor cause to apply liberal consideration in accordance with the Kurta Memorandum, the Board recommends partial relief based on fundamental fairness. In particular, the length of time since the misconduct, the applicant's long and continuous employment in the aviation field, and his successful completion of post-service education in aeronautics/aviation warrant a change in the Narrative Reason for Separation, corresponding Separation Code, and Reenlistment Code. Finally, the applicant's FBI report reflects no criminal history post-discharge. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant'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 APPLICANT be corrected to show the DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with his 21 Aug 81 discharge, be amended to reflect a Separation Code of JFF, a Narrative Reason for Separation of Secretarial Authority, and a Reenlistment Code of 3K.

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-2023-00446 in Executive Session on 12 Sep 24:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 21 Nov 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 5 Jun 24.
- Exhibit D: Applicant's Response, w/atchs, undated.
- Exhibit D: FBI Report, dated, 21 Jul 23.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 20 May 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Jun 24.

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.

X

Board Operations Manager, AFBCMR