

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00797

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He had undiagnosed post-traumatic stress disorder (PTSD) at the time of his discharge due to his unstable mental health after Vietnam. Though he was aware of his discharge characterization, he did not realize it would affect him when applying for additional financial needs (i.e., property tax, insurance, etc.).

In support of his request, the applicant provides Department of Veterans Affairs (DVA) documents and a County Assessor Determination Letter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 8 Oct 71, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *"Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program."* The specific reasons for the action were:

- a. On 16 Jul 70, he was punished under Article 15, Uniform Code of Military Justice (UCMJ) for violating Article 86 for failure to repair and he was ordered to forfeit \$25.00.
- b. On 8 Jan 71, he was convicted in a civilian court for driving his vehicle with defective tires and was fined for the offense.
- c. On 17 Mar 71, he was reported for driving a defective vehicle and having no road tax.
- d. On 2 Apr 71, he was reported for aiding and abetting a person to drive with no driver's license, no insurance, and no road tax. He was later convicted in a civilian court and was fined and had his driver's license withdrawn.
- e. On 11 Apr 71, he failed to report an accident within 24 hours in which he was reported for driving without due care and attention. He was counselled by his leadership on his responsibilities as a driver. He was later convicted in a civilian court and was fined for the offense.

- f. On 4 May 71, he was punished under Article 15, UCMJ for violating Article for failure to repair and he was ordered to forfeit \$25.00 and perform 14 days extra duty.
- g. On 14 May 71, he was reported for driving without test certificate, no road tax, and operating an unsafe vehicle. He was later convicted in a civilian court and was fined for the offense.
- h. On 17 Jun 71, he failed to pass an open ranks inspection, given by the Wing Commander, due to his personal appearance.
- i. He failed to respond in a timely manner to two base recalls.
- j. On 29 Sep 71, his wife reported that he had beaten her while “he was high.”

On 28 Oct 71, the applicant’s commander amended the discharge recommendation to include:

- a. On 21 Oct 71, he was convicted by summary court-martial for failure to repair in violation of Article 86, UCMJ, and he was ordered to forfeit \$50.00.

On 15 Nov 71, the Staff Judge Advocate found the discharge action legally sufficient.

On 15 Nov 71, the discharge authority directed the applicant be discharged for Unfitness with a General service characterization. Probation and rehabilitation were considered, but not offered.

On 3 Dec 71, the applicant received a general (under honorable conditions) discharge. He was credited with 4 years and 19 days of total active service.

On 10 Jul 08, a DVA Decision Letter, dated 21 May 09, provided by the applicant, indicates he was granted a service connection disability for PTSD.

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

POST-SERVICE INFORMATION

On 12 Jul 23, the Board sent the applicant a standard request for post-service information (Exhibit C). This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant submitted post-service information with the initial application, he did not respond to the request for an FBI background check or other criminal history data.

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 12 Jul 23, Board staff provided the applicant a copy of the liberal consideration and clemency 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 there is sufficient evidence to support the applicant's request for an upgrade in his discharge. The applicant is service connected for PTSD. He had a DVA Compensation & Pension (C&P) examination that determined he, "presents with the full range of Post Traumatic Stress Disorder symptoms that more likely than not were caused by his combat experiences" and that "these symptoms have caused impairment in social and occupational functioning, which appear to have begun after his service in Vietnam as evidenced by his documented decline after his service in Vietnam." The applicant's predominant misconduct is part of the sequelae of PTSD. His failure to go, to report, and to respond in a timely manner has a nexus with avoidant behavior. Most of his vehicle and driving offenses are related to reckless and self-destructive behaviors which are also correlated with the symptoms of PTSD. Most of his vehicle and driving offenses appear to be minor and do not account for his more serious misconduct which is also mitigated by his mental health diagnosis. The applicant's performance evaluations support his difficulties after deployment to Vietnam. His overall rating went from him earning "9s" out of a possible "9", down to earning "6s." Critical comments during this time include remarks about personal appearance not being in accordance with military standards, a disregard for proper customs and courtesies to his superiors, and a lack of initiative and negative attitude. There were no critical comments noted on previous evaluations before Vietnam.

After considering the entire record and contentions, there is sufficient evidence to suggest the applicant had a mental health condition that would mitigate his misconduct. 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 contends that he had undiagnosed PTSD at the time of his discharge.
2. Did the condition exist, or experience occur, during military service? A C&P examination completed on 13 Jan 09 diagnosed the applicant with PTSD related to his military experiences while deployed to Vietnam.
3. Does the condition or experience excuse or mitigate the discharge? The AFRBA Psychological Advisor opines that the applicant's predominant misconduct is part of the sequelae of PTSD. His failure to go, to report, and to respond in a timely manner has a nexus with avoidant behavior. The majority of his vehicle and driving offenses are related to reckless and self-destructive behaviors which are also correlated with the symptoms of PTSD. Most of his vehicle and driving offenses appear to be fairly minor and do not account for his more serious misconduct which is also mitigated by his mental health diagnosis. His charge of spousal abuse was an allegation that was never investigated. The legal review of his discharge recommended giving it limited weight since there was no evidence to support the allegation. Of his misconduct, only aiding and abetting a person to drive without proper license and required documents and failing to pass inspection do not have a nexus with his PTSD diagnosis.

4. Does the condition or experience outweigh the discharge? The predominant degree of the applicant's misconduct is excused and mitigated by the applicant's mental health condition. The applicant's diagnosis of PTSD incurred while in service, from his deployment to Vietnam, outweighs 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 17 Oct 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 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 majority of the Board concludes the applicant is the victim of an injustice. While the Board finds no error in the original discharge process, the majority of the Board recommends relief based on liberal consideration. In particular, the applicant's predominant misconduct is part of the sequelae of PTSD. His failure to go, to report, and to respond in a timely manner has a nexus with avoidant behavior. The majority of the applicant's vehicle and driving offenses are related to reckless and self-destructive behaviors which are also correlated with the symptoms of PTSD. The predominant degree of the applicant's misconduct is excused and mitigated by the applicant's mental health condition. The applicant's diagnosis of PTSD incurred while in service, from his deployment to Vietnam, outweighs the original discharge. Therefore, the majority of the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 3 Dec 71, he was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2023-00797 in Executive Session on 21 Feb 24:

, Panel Chair
, Panel Member
, Panel Member

A majority of the panel voted to correct the record. XXXXXXXXX voted against correcting the record and did not provide a minority opinion. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Mar 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 12 Jul 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Oct 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Oct 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.

X

Board Operations Manager, AFBCMR