

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00957

XXXXXXXXXX

**COUNSEL:** NONE

AKA XXXXXXXXXXX

**HEARING REQUESTED:** NOT INDICATED

### APPLICANT'S REQUEST

1. His Uncharacterized Entry Level Separation (ELS) be upgraded to honorable.
2. Extend time of service to receive Department of Veterans Affairs (DVA) medical benefits.

### APPLICANT'S CONTENTIONS

He was brought to the United States in 1996 from Europe after being held captive as a child for over 10 years. He was badly hurt with medical devices and unimaginable things were done to him by military people and was then pushed into the military where he was isolated. He has been diagnosed with post-traumatic stress disorder (PTSD) and has a Supplemental Security Income (SSI) disability determination. All of his diagnosis is military connected and related yet he is not receiving military medical benefits and DVA medical care for the things that happened in the military and also aggravated while serving.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 19 Jul 00, 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 reason for the action was on or about 14 Jun 00, the applicant was diagnosed by a psychiatrist as having an adjustment disorder with mixed disturbance of emotions and conduct, as described in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), which is so severe that his ability to function effectively in the military environment is significantly impaired.

On 24 Jul 00, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On/about Jul 00, the discharge authority directed the applicant be discharged with an ELS. Probation and rehabilitation were considered, but not offered.

On 1 Aug 00, the applicant received an uncharacterized discharge. His narrative reason for separation is "Personality Disorder" and he was credited with six months and five days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and 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 31 Jan 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

### **AIR FORCE EVALUATION**

AFPC/DP2SSR recommends denying the application. Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit C.

### **ADDITIONAL AIR FORCE EVALUATION**

The AFRBA Psychological Advisor has reviewed the available records and finds insufficient evidence to support the applicant's requests for the desired changes to his records. He was discharged for having an unsuited mental health condition of Adjustment Disorder with Mixed Emotions and Conduct. This diagnosis was assessed by at least three duly qualified mental health providers while he was admitted to an inpatient psychiatric unit for further evaluation, observation, and treatment. His diagnosis was appropriate based on the rationale provided in the mental health evaluation report. The applicant made several contentions and claims about his experiences prior to, during, and after his military service. His military records do not corroborate any of those claims. From the applicant's personal testimony, he discussed experiencing significant trauma as a child. He was diagnosed with PTSD and Generalized Anxiety Disorder (GAD) by his post service civilian mental health provider 20 years after discharge, and while the onset or cause of these conditions was not discussed by his provider,

there was no evidence these conditions had occurred or existed during service, no evidence he experienced any symptoms of these conditions during service, and he was not diagnosed with these conditions during service. There were no records he developed or experienced any trauma from his military duties. His childhood traumatic experience occurred and existed prior to his service and no evidence his military service aggravated his prior service experience or condition. He marked "Traumatic Brain Injury (TBI) on his application and did not address this condition. There was no evidence he sustained a TBI during service. He was also diagnosed with Unspecified Schizophrenia Spectrum and Other Psychotic Disorder by his DVA provider over 20 years after discharge. His DVA provider opined he had symptoms of this condition throughout his life and "as well as within 2 years of his military service". The applicant was never diagnosed with this condition during service, but the Psychological Advisor concedes it is possible he had this condition during service as there were a few hints in his records. His behaviors conjured unusual behaviors that may be reflective of his psychosis or psychotic symptoms. His DVA provider assessed he had psychotic symptoms throughout his life, which indicated it existed prior to service (EPTS). Since it may be possible he had psychotic symptoms during service, there was no evidence his military service and duties aggravated his EPTS condition. Furthermore, should his EPTS condition be known or reported during his enlistment process, it would have made him disqualified for military service. It is uncertain from the limited records if the applicant was aware of his behaviors and mental health issues/concerns at the time of service.

Although there is no error or injustice identified with the applicant's discharge, there is an identifiable error with the narrative reason for separation currently listed on his DD Form 214, *Certificate of Release from Active Duty*. His narrative reason for separation is listed as "Personality Disorder." The applicant was diagnosed with Personality Disorder Not Otherwise Specified (NOS) by his military providers, but this was not the reason for his discharge and not the condition making him unsuitable for military service. He was recommended and approved for discharge for Adjustment Disorder with Mixed Emotions and Conduct. His Adjustment Disorder and Personality Disorder are both unsuiting conditions and his narrative reason for separation was an administrative error. To correct this error, the Psychological Advisor recommends the Board change his narrative reason for separation to "Condition Not A Disability." This narrative reason is the appropriate and correct reason for his actual separation from service and is an acceptable narrative reason per liberal consideration guidance, Kurta Memorandum #17.

Liberal consideration is applied to the applicant's request for an upgrade of his discharge due to the contention of a mental health condition. Liberal consideration is not appropriate to be applied to his request for a medical discharge or disability because this request is not covered under this policy. 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 contended he was hurt in the military and his conditions were badly triggered. He claimed he was given military medical devices but was not given access to the DVA or military for care or "the undoing of military things". He also claimed he was a political prisoner for over 10 years as a child. He reported he had been given a diagnosis of PTSD and received SSI disability. He marked "TBI" on his application and did not address this condition in his petition. He submitted a letter from his post service provider reporting he had been treated and diagnosed with PTSD and GAD beginning 20 years after discharge. No additional information was provided about these conditions. The applicant did not discuss his mental health condition(s) or his military experiences in detail and did not explain how his mental health condition or experience may excuse or mitigate his discharge.

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

There is no actual evidence the applicant's mental health condition of PTSD, GAD, and/or TBI had existed or occurred during service. He was diagnosed with these conditions, sans TBI, 20 years after discharge. The applicant discussed his childhood traumatic experiences, and it was possible he may have had PTSD during service, but no records are available to substantiate this impression. His childhood traumatic experiences were EPTS. He was diagnosed with Unspecified Schizophrenia Spectrum and Other Psychotic Disorder by his DVA provider over 20 years after discharge. He was never diagnosed with this condition during service, but it was possible he may have experienced psychotic symptoms during service based on his reported behaviors in his military records; however, his DVA provider assessed he had this condition throughout his life indicating this condition was also EPTS. There was no evidence his EPTS conditions or experiences were aggravated by his military service. The applicant was hospitalized following his return from his first absent without leave (AWOL) and was diagnosed with Adjustment Disorder with Mixed Emotions and Conduct due to his difficulties adjusting to the military environment causing maladaptive behavioral problems and poor coping skills and Personality Disorder NOS. No explanation was provided for this latter diagnosis.

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

The applicant was discharged from service for having an unsuiting mental health condition of Adjustment Disorder with Mixed Emotions and Conduct. His adjustment disorder diagnosis was found to be appropriate and valid based on his reported symptoms and clinical presentation during service. There is no error or injustice identified with his diagnosis and discharge. His unsuiting mental health condition caused his maladaptive behavioral problems and subsequent discharge but does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge especially since he was discharged under ELS and his discharge characterization for ELS was consistent with regulation.

The complete advisory opinion is at Exhibit D.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS**

The Board sent copies of the advisory opinions to the applicant on 5 Oct 23 for comment (Exhibit E) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 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. Further, the Board concurs with the rationale and recommendation of AFPC/DP2SSR and the AFRBA Psychological Advisor. There is no actual evidence the applicant's mental health condition of PTSD, GAD, and/or TBI had existed or occurred during service. The applicant was diagnosed with these conditions, except for TBI, 20 years after discharge. Liberal consideration was applied; however, the applicant's unsuiting mental health condition caused his maladaptive behavioral problems and subsequent discharge but does not excuse or mitigate his discharge. Additionally, the applicant was credited with six months and five days active service and the

characterization of the applicant's service was in accordance with AFI 36-3208. Service credit for duty not performed is not appropriate.

While the Board finds no error in the original discharge process, the Board recommends partial relief. In particular, the applicant's DD Form 214 reflects a narrative reason for separation of Personality Disorder while the applicant was recommended and approved for discharge for Adjustment Disorder with Mixed Emotions and Conduct. 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 on 1 Aug 00, he was discharged with a narrative reason for separation of Condition, Not a Disability.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

### **CERTIFICATION**

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00957 in Executive Session on 21 Feb 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 28 Mar 23.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.  
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Sep 23.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Oct 23.  
Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 31 Jan 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.

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Board Operations Manager, AFBCMR