



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01039

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. Review of his records for service connection by the Department of Veterans Affairs (DVA) for his undiagnosed Post-Traumatic Stress Disorder (PTSD).

APPLICANT'S CONTENTIONS

His undiagnosed PTSD resulted in poor decision making on his part which led to him receiving the discharge. He was stationed at [Work-Product] at the time of the [Work-Prod...]
[Work-Product] which resulted in the evacuation of the base. Since then, he has had long lingering issues of unresolved grief and guilt over leaving the local residents and contract workers behind while he and his family were evacuated back to a continental-United States (CONUS) base. He was in fear of coming forward to his superiors of his condition since he was a Mental Health Service Specialist and did not want to appear like he was faking it and just wanted a different position. This resulted in making a poor judgement on his part which resulted in committing an offense where he chose an Article 15 action. The result was a reduction in grade and a fine. Since he was close to his enlistment date, he was unable to re-enlist and subsequently unable to earn enough time in service at his lower rank to stay and ended his military career. Outside of the military, he has continued to struggle maintaining relationships; twice divorce and currently ended a five-year relationship.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3) who entered the regular Air Force on 7 Jan 86.

On 19 Oct 92, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for misconduct (commission of a serious offense). The specific reason for the action was on 2 Jul 92 and 12 Jul 92, the applicant intentionally engaged in a personal relationship with a mental health

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Controlled by: SAF/MRB
CUI Categories: [Work-Product]
Limited Dissemination Control: N/A
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patient, culminating in sexual intercourse, for which he received an Article 15, nonjudicial punishment (NJP).

On 21 Oct 92, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 27 Oct 92, the discharge authority directed the applicant be discharged for misconduct (commission of a serious offense) with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 5 Nov 92, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Other Serious Offenses" and he was credited with 6 years, 9 months, and 29 days of total active service.

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

POST-SERVICE INFORMATION

On 18 Jul 23, the Board sent the applicant a request for post-service information, 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 (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 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 (USD P&R) issued supplemental guidance 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 memorandum.

On 18 Jul 23, 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.

DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, implements the Board's statutory authority to act on applications. It states in accordance with Title 10 United States Code (U.S.C.) Section 1552, *Correction of military records: claims incident thereto*, the Secretary of the Air Force (SecAF) is authorized to correct any military record of the Department of the Air Force (DAF) when the SecAF considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians in the executive part of the DAF.

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 an upgrade of his discharge. The applicant committed a serious offense of having a personal relationship and sexual intercourse with a patient which resulted in a discharge. His military records reflected he had initiated and pursued a relationship with the patient and was well aware an intimate relationship with a patient was prohibited. He had been warned by the non-commissioned officer-in-charge (NCOIC) to not get personally involved with the patient, and the patient herself had discussed the issue with him. He chose to ignore their warnings and repeatedly proclaimed he was in love with her or they were in love. The patient's sworn statement to Office of Special Investigation (OSI) illustrated they met on more occasions, they developed plans to see one another, including meeting at specific spots at the hospital and choosing times for pickups and drop-offs, and he once hid when he spotted a colleague during one of their outings to prevent being discovered. The applicant acknowledged these behaviors in his statement to OSI and his behaviors showed they were planned and premeditated to continue and conceal their relationship. The applicant claimed he had undiagnosed PTSD from being evacuated from a natural disaster [redacted] while stationed at [redacted] which affected his judgment leading to his discharge. There is evidence in his records he sought supportive therapy following his evacuation/Permanent Change of Station (PCS) from [redacted] and the goal of his treatment was to reduce his anxious psychological residual from this event. His experience and treatment predate his misconduct. Although there was an indication he had anxiety, he was assessed to not meet diagnostic criteria for any mental disorders including PTSD in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSMIII-R) at the time of evaluation. Anxiety is a symptom of PTSD but is also a symptom of many other mental disorders. His anxiety appeared to have resolved because he denied having any mental health and anxiety symptoms such as "depression or excessive worry" and "nervous trouble of any sort" during his separation physical examination with his Primary Care Manager (PCM). He also denied having any mental health issues to the Chief of Mental Health Services when he was evaluated by referral from his supervisor due to his situation of being in a relationship with a patient. There was no evidence he had any other symptoms besides anxiety or had typical symptoms of PTSD such as avoidance, hypervigilance, sleep disturbances, negative or altered mood, flashbacks or dissociation, startled responses, etc. during service. There was no evidence he had PTSD during service and certainly no evidence he had PTSD affecting his judgment to engage in an inappropriate relationship with a patient. The applicant's engagement in an inappropriate relationship with a patient had occurred for about two weeks while the patient was hospitalized and continued after she was discharged from the hospital. They would become engaged and get married (confirmed by the patient via her letter to support the applicant dated 13 Oct 92) shortly after their relationship was revealed in Jul 92. These series of events do not demonstrate his behaviors were impulsive or that his judgment was impaired by his mental health condition or PTSD. There was no evidence he had any intellectual or cognitive impairment during service, and he knew the difference between right and wrong and to adhere to the right. Again, there was no evidence he had a mental health condition or was in emotional distress impairing his judgment at any time of his misconduct to be in an inappropriate relationship with a patient.

The Psychological Advisor finds the applicant's behaviors of being in a personal relationship and having sexual intercourse with a patient were egregious. The applicant, being a mental health

technician/specialist for over six years in the Air Force and a staff sergeant at the time of his misconduct, was in a position of trust and authority, and he knowingly and willingly violated policy and regulation about personal relationships with patients. He abused his position for personal gain. His behaviors were unethical and caused harm to the patient. His sworn statement to OSI showed he recognized the harm he had inflicted on the patient because of their relationship but chose to continue the relationship anyway. It was the patient that repeatedly reminded him of the wrongfulness of their relationship. He never initiated or considered terminating their relationship despite knowing it was wrong but to the contrary, he had pressured and even threatened her to continue their relationship and keep their relationship discrete. His behaviors of being in a relationship with a patient and his premeditative behaviors to conceal their relationship were serious and could not excuse, mitigate, or be disregarded by his mental health condition, whether diagnosed or undiagnosed. The Psychological Advisor opines the applicant had fortuitously received a general character of service for his serious offense/misconduct and finds insufficient evidence to support his request for an honorable character of service discharge. There was no error or injustice identified with his discharge.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. 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 had undiagnosed PTSD from [redacted] Work-Product [redacted] that resulted in the evacuation of the base. He claims his undiagnosed PTSD resulted in his poor judgment and discharge.

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

There is no evidence the applicant's undiagnosed mental health condition of PTSD had existed during his military service. There is evidence he sought and received supportive group treatment for anxious psychological residual related to his evacuation from the natural disaster/volcanic eruption at [redacted] Work-Product [redacted] but he was evaluated to not meet the diagnostic criteria for any mental disorders. He denied during his evaluation with the Chief of Mental Health Services and his separation physical examination with his PCM that he had any mental health concerns or symptoms.

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

There is no evidence the applicant was in emotional distress or had a mental health condition/PTSD impairing his judgment at the time of his misconduct. His military records revealed he repeatedly engaged in an inappropriate relationship with a patient for some time and his behaviors to engage and conceal their relationship were premeditated. He was well aware of his inappropriate behaviors and chose to engage in them anyway. His behaviors and misconduct were egregious and so his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition or experience does not excuse or mitigate his discharge, his mental health condition or 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 opinions to the applicant on 20 Sep 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. It appears 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 concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. There was no evidence the applicant had a mental health condition or was in emotional distress impairing his judgment at any time of his misconduct of being in an inappropriate relationship with a patient. Any mental health condition, whether diagnosed or undiagnosed, does not excuse or mitigate his misconduct. As for the applicant's request for review of his undiagnosed PTSD to be service-connected for DVA rating purposes, the Board does not have jurisdiction to grant such a request. Therefore, the applicant must apply to the DVA for service-connection of his conditions.

In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

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 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-2022-02992 in Executive Session on 18 Jan 24:

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Panel Chair

, Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, dated 31 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 18 Jul 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated, 20 Sep 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Sep 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.

2/9/2024

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Board Operations Manager, AFBCMR
Signed by: USAF