



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01166

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

He served honorably from 1 Jun 81 until 23 May 85, it was not until he began having work related stress he brought into his personal life that he began self-medicating with marijuana and alcohol to cope. He was wrong not to seek mental health support to help him deal with his issues but mental health was looked at very differently back then and he did not want the stigma of a mentally unstable veteran on his background. He has lived an honest, trouble-free life since his separation from active duty and is currently employed by the local Work-Product government where he remains in good standing.

In support of his request for clemency, the applicant did not provide any supporting documents.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 28 Oct 85, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-49c and 5-49d for commission of a serious offense. The specific reasons for the action were:

- a. On or about 3 Sep 85, as evidenced in the 24 Sep 85, Nonjudicial Punishment Proceedings, he used marijuana.
- b. On or about 20 Oct 85, as evidenced by the 21 Oct 85, DD Form 1569, *Incident/Complaint Report*, and confession, he wrongfully appropriated \$148.00 belonging to the United States government.

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 7 Nov 85, the Staff Judge Advocate found the discharge action legally sufficient, and on this same date, the discharge authority directed the applicant be discharged for misconduct consisting of drug abuse and commission of a serious offense with an UOTHC service characterization. Probation and rehabilitation were considered, but not offered.

On 18 Nov 85, the applicant received an UOTHC discharge. His narrative reason for separation is "Misconduct – Drug Abuse" and he was credited with 4 years, 5 months, and 18 days of total active service.

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

POST-SERVICE INFORMATION

On 6 Dec 23, 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 on 29 Apr 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. However, the applicant also provided an arrest record from the Superior Court Commonwealth of the [REDACTED] showing he had been convicted of two criminal offenses (1987 and 1992). The applicant also provided three character statements.

The applicant's complete response is at Exhibit F.

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 Post-Traumatic Stress Disorder (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, 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 6 Dec 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.

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 completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. A review of the applicant's available records does not support his contentions. He repeatedly denied during service to his commander and providers that he did not use marijuana and if he did, believed he unknowingly ingested brownies or food with marijuana. He wrote in his response to his Article 15 he attached affidavits from two individuals who came forward of their own free will to support his claim he did not knowingly use marijuana. He also identified a woman in his statement calling his commander or first sergeant and his defense counsel to report she had put the marijuana in the brownies. It appeared he went to great lengths to prove he did not use or knowingly ingest marijuana. If his statement at the time of service is not true, then there are concerns about his conduct. His statements and actions at the time of service are vastly contrasted by his contention for this petition. He claims in this petition he had work-related stressors he brought into his personal life that led him to cope with marijuana and alcohol and did not seek help because of the stigma. He did not identify his work-related stressors, but his service treatment and military records did reflect he was under investigation at least twice for possession of drugs and larceny, was reported to have engaged in a couple of alcohol-related incidents, and previously had administrative discharge action initiated in 1982. His records were sparse so the results of his first investigation for possession of drugs and the reason for his first administrative discharge action were not included in his records. These are highly stressful occupational problems to have, but these were also caused or were the result of his own misconduct. He did not clarify his work-related stressors, but the benefit of the doubt is given to the applicant it is possible he used marijuana or alcohol to cope with his stressors despite his inconsistent reporting. Nevertheless, there is no evidence the applicant was ever diagnosed with a mental health condition during service or he had a mental health condition such as anxiety, depression, trauma, etc. at the time of his alcohol or marijuana use. He did report having depression and nervousness during his separation physical examination with his primary care manager (PCM) on 29 Oct 85, but it was clarified he had these symptoms or problems since Sep 85 due to "career problems." It is reminded he received an Article 15 on 24 Sep 85 for wrongful use of marijuana on or about 3 Sep 85. His depression and nervousness were the result of his occupational problems caused by his own misconduct.

There is also no evidence or records he was diagnosed with any mental disorders including depression or anxiety during service.

There is evidence the applicant had issues with alcohol during service such as engaging in an unspecified alcohol-related incident in Dec 81, being charged with disorderly conduct (fighting) while intoxicated in Jan 83, and having to attend and complete an alcohol anonymous (AA) seminar in Feb 83. His evaluation on 14 Jan 83 reported he denied having any alcohol problems, and his provider reported it was doubtful he had significant alcohol problems. He was never given any alcohol or substance use disorder diagnosis during service. Regardless, there is evidence of alcohol issues during service but no evidence or reports he used alcohol to cope with his personal stressors although again, this is possible. Since he completed the AA seminar in Feb 83, there are no records thereafter reflecting he had any alcohol-related incidents or alcohol problems including up until his discharge from service in Nov 85. There is no evidence or records his alcohol problems caused him to use marijuana or wrongfully appropriate \$148.00 from the government nor was he in an intoxicated state from alcohol at the time of any of these misconducts that caused his subsequent discharge from service. His problem with alcohol was not a reason or contributing factor that caused his discharge from service. The applicant did not submit any records to support he had or was ever diagnosed with a mental health condition. The Psychological Advisor will accept his contention he coped with his occupational and personal stressors with marijuana and alcohol as evidence, despite no other records being available to support his contention due to liberal consideration. However, the Psychological Advisor finds his contention and personal testimony are not compelling or sufficient enough and lacks substantive information to support his contention and to excuse or mitigate his discharge. His inconsistent reporting is difficult to disregard and makes it difficult to distinguish the actual reason for his behaviors and misconduct. Moreover, his marijuana use is not the only reason for his discharge. He was also discharged for wrongfully appropriating \$148.00. He did not address this misconduct in his petition. He confessed in his statement to the investigator during service that he knowingly took money that did not belong to him. There is no evidence or records he had a mental health condition or was in emotional distress impairing his judgment at the time of this misconduct. Therefore, after an exhaustive review of the available records, the Psychological Advisor finds 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. The following are responses to the four questions in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant marked "Other Mental Health" on his application to the AFBCMR and did not identify the actual mental health condition or disorder he had. He contends having work-related stress he brought into his personal life and began self-medicating with marijuana and alcohol to cope. He did not clarify his work-related stressors.
2. Did the condition exist or experience occur during military service?
There are records the applicant had work/occupational problems such as he was under investigation at least twice for possession of drugs and larceny, engaged in at least two alcohol-

related incidents, and had a previous discharge action initiated in 1982. There are no records of any problems in his personal life. There is evidence he tested positive on a urinalysis (UA) for marijuana, but he repeatedly denied using or knowingly using marijuana. There is evidence he had alcohol issues during service but no records stating he had coped with alcohol but this is a possibility. He was referred and completed the AA seminar in Feb 83 and no records or reports he had any alcohol related incidents or problems with alcohol after this time including around the time of his discharge in Nov 85. There are no records he received any therapy or counseling treatment services for any mental health conditions such as anxiety, depression, trauma, etc., or for other personal stressors during service. He reported experiencing depression and nervousness during his separation physical examination with his PCM but was clarified to have begun in Sep 85 due to his career problems. He was never given any mental disorder diagnosis during his military service.

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

The applicant contends he coped with his work-related stressor causing problems in his personal life with marijuana and alcohol. This contention is accepted as evidence, but his contention was not found to be compelling or sufficient and lacks substantive information to support his contention. He did not specify his work-related stressors and did not identify the type of mental health condition or disorder he had. There is no indication his work or personal stressors caused him to develop a mental health condition or disorder and no records were submitted to substantiate his contention. His military records do not support his contention as well and in fact, were contradictory to his contention. Again, he repeatedly denied he used or knowingly used marijuana at the time of service and submitted affidavits from two individuals claiming he did not knowingly use marijuana and another individual contacting his leadership to declare she put marijuana in the brownies. These actions were used to demonstrate to his commander he did not use marijuana. If his statement at the time of service is not true, then there are concerns with his conduct. His inconsistent reporting makes it difficult to decipher his actual behaviors. The applicant was also discharged for wrongfully appropriating \$148.00 and admitted to taking the money in his statement to an investigator. There is no evidence his personal stressors caused this misconduct and no evidence he had a mental health condition or was in emotional distress when he took the money. He did not address this misconduct. Based on the available records, 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 opinion to the applicant on 20 Feb 24 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 under fundamental fairness or clemency 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 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. Additionally, 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition or experience had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.
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-2023-01166 in Executive Session on 11 Jun 24:

Work-Product Panel Chair

Work-Product, Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, dated 14 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 6 Dec 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Feb 24.

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Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Feb 2024.

Exhibit F: Applicant's Response, w atchs, dated 29 Apr 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.

7/29/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product

AFBCMR Docket Number BC-2023-00119

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