



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01187

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He has reformed his behavior and is now an upstanding citizen in his community.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

On 5 Dec 03, 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 specifically, minor disciplinary infractions as indicated on the applicant's Receipt of Notification Memorandum to which the applicant submitted a statement for consideration. The specific reasons for the action were:

- a. On or about 23 Sep 02, he was derelict in the performance of his duties by willfully failing to refrain from drinking alcohol while under the age of 21 and received an Article 15.
- b. On 4 Nov 02, he received a Letter of Reprimand (LOR) because it was discovered his brother had been residing in his dorm room for a period of one month. Additionally, it was discovered he had been using his suite mate's personal belongings without approval and had loaned his suite mate's personal property to his friends without the suite mate's consent. He also damaged his suite mate's personal property.
- c. On 2 Dec 02, he received a Letter of Counseling (LOC) for disregarding on-call responsibility for Medical Logistics because at approximately 2330 on 1 Dec 02, the emergency room (ER) paged the on-call technician and did not get a response. The ER in turn had to contact a master sergeant (MSgt) for this situation and not showing up to

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work at 0700 on 2 Dec 02 and had to be called and woken up. He was previously verbally counseled on 26 Nov 02 for the same issue.

- d. On or about 1 May 03, he failed to report to his appointed place of duty at the prescribed time and received a second LOR.
- e. On or about 17 Sep 03, without authority, he failed to go at the time prescribed to his appointed place of duty, and received a second Article 15.

On 19 Dec 03, the Staff Judge Advocate found the discharge action legally sufficient, and on that same date the discharge authority directed the applicant be discharged for misconduct, with a general discharge service characterization. Probation and rehabilitation were not offered.

On 29 Dec 03, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 11 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 Exhibit D.

POST-SERVICE INFORMATION

On 7 Nov 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 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 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 7 Nov 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.

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 available records finds no evidence or records the applicant had any mental health condition and did not receive any mental health treatment during service. His available military records contained several statements he had submitted at the time of service to explain his behaviors, and he did not attribute any of his behaviors or acts of misconduct to having a mental health condition or was caused by his mental health condition. The explanations he provided also did not suggest or indicate his behaviors were caused by his mental health condition. He explained he was late to work because he was feeling sick and not getting enough sleep the previous night causing his supervisor to call him and wake him up resulting in receiving an LOC. He also explained he lost track of time at the gym because he did not have a watch causing him to be late to work which resulted in his Article 15. He did not address his numerous other misconducts of underage drinking, his brother residing in the dorm with him for a month, taking and using his suite mate's personal belongings without consent, damaging his suite mate's property, not responding to the ER while on-call, and other times he failed to report to his appointed place of duty at the prescribed time. There is no evidence or records he was in emotional distress or had a mental health condition impairing his judgment at the time of any of his documented misconduct. The applicant stated in his petition he felt very low of himself and did not elaborate on this experience or feeling. There is no indication or evidence this experience or feeling was a symptom of a mental health condition. The applicant did not identify the mental health condition he had and did not discuss how his mental health condition may excuse or mitigate his discharge. From the existing objective military record, there is no evidence or records to support that his mental health condition had a direct impact or was a contributing factor to misconduct and subsequent discharge. His personal testimony alone for this petition was too vague to support his request for an upgrade of his discharge and was determined to not be compelling or sufficient enough to support his request. Therefore, the Psychological Advisor finds there is 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 did not discuss 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 are no records the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during service and so his mental health condition did not exist or occur during military service.
3. Does the condition or experience actually excuse or mitigate the discharge?
Since there is no evidence or records the applicant had any mental health condition during service, his mental health condition does not actually excuse or mitigate his discharge. There is no evidence or records his mental health condition had a direct impact or was a contributing factor to his acts of misconduct resulting in his discharge from service.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his mental health condition 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 10 Jan 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. Furthermore, 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 had a direct impact on his behaviors and misconduct resulting with his discharge, his condition does not excuse, mitigate, or outweigh his discharge. 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.

The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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-2023-00119 in Executive Session on 23 May 24 and 30 May 24:

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Panel Chair

s, 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 14 Mar 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, (Post-Service Request and Liberal Consideration Guidance), dated 7 Nov 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Jan 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 10 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.

6/7/2024

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Board Operations Manager, AFBCMR
Signed by: USAF