



Work-Product

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01355

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT’S REQUEST

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

APPLICANT’S CONTENTIONS

He was a young airman and he used poor judgment and made a mistake. He paid for his bad decision, and he would like to request his discharge be upgraded. If he was given additional mental health support, he would have been able to retire from the Air Force like many of his friends. His mental health problems are now under control with medication, a support system, his job of five years, and being more involved in the community and church.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1) who entered the regular Air Force on 19 Aug 03.

On 17 May 06, the convening authority published Special Court-Martial Order Number [Work-Product] The Order stated the applicant pled guilty and was found guilty of one charge and two specifications of using marijuana, on diverse occasions (Article 112a). The other three specifications of wrongful possession of marijuana and wrongful use of cocaine were withdrawn after arraignment. The applicant was sentenced with forfeiture of \$500.00 pay per month for four months, four months of confinement, and reduction in grade to airman basic.

On 24 Jul 06, 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 5.54 for misconduct, drug use and possession on diverse occasions.

On 4 Aug 06, the discharge authority directed the applicant be discharged for minor disciplinary infractions with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

AFBCMR Docket Number BC-2022-02992

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On 4 Aug 06, 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” and he was credited with four years, four months, and three 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 15 Jun 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

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the UCMJ (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 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 15 Jun 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 an upgrade of his discharge. The applicant was initially evaluated by Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) on 21 Jul 04 following his driving while intoxicated (DWI). He did not report having any mental health conditions or concerns and did not receive any mental disorder diagnosis from the evaluation by the ADAPT evaluator. Another mental health provider had screened him for mental health symptoms and development disorders on the same day as his ADAPT evaluation

and the results found he had no clinical range of distress and had an estimated minimal/mild range for suicidal or violent risk. There were no mental health concerns detected or reported that would warrant him receiving mental health treatment for his condition or emotional distress. These two evaluations occurred almost a year prior to his drug use and appeared to have no nexus to his drug use and misconduct. The applicant was continuously screened and evaluated for any potential mental health conditions or symptoms after these evaluations by his Primary Care Manager (PCM). During the time frame of his reported drug use between on or about 23 Jun 05 and on or about 12 Jul 05, the applicant met with his PCM on 11 Jul 05 for complaints of sleep issues, particularly for having difficulties waking up in the morning. He was noted to have been drinking and smoking, but no mental health condition was reported or identified to have possibly caused his sleep problems. During the visit the applicant was screened for depression, and he denied feeling down, depressed, hopeless, or having little interest in the past month. Confirming his reports, the applicant completed a Periodic Health Assessment (PHA) the following day on 12 Jul 05 with his PCM and denied he experienced any recent emotional stress, reported having no critical stress history with his job or lifestyle, denied having any emotional problems/concerns such as feeling down, helpless, panicky, or anxious, and denied having interpersonal relationship problems. His separation physical examination with his PCM also reflected no mental health conditions or problems reported by the applicant. The applicant submitted a statement to the Office of Special Investigations (OSI) at the time of service and denied using or being around cocaine and did not know how the substance was detected in his system. He did not address his marijuana usage and did not discuss having any mental health condition that may cause him to use or possess drugs. Witnesses who were interviewed and provided sworn statements during the investigation made no concerns for his mental health condition and did not report he displayed any bizarre or peculiar behaviors. One of the witnesses observed the applicant became nervous and defensive when making a comment to the applicant he needed to stop smoking. Additionally, the witness claimed the applicant stated he would drink some medicine to clear his system or words to that effect to clear out his system should he be called for a urinalysis. The witness's claims were never verified but if it is true, the applicant's behaviors would indicate he was aware of his actions and had contemplated his actions should he be called for a urinalysis. His actions did not signify his mental health condition caused his thought processes or actions. From the information gathered by his available service treatment records, there is no evidence he had a mental health condition at any time of his military service and certainly no evidence he had a mental health condition or was in emotional distress impairing his judgment at or near the time of any of his reported misconduct. Furthermore, there is no evidence he used drugs to cope with his mental health condition. There is no evidence his mental health condition had a direct impact or was a contributing factor to his acts of misconduct and subsequent special court-martial conviction and discharge.

The applicant alleges if he had been given additional mental health support, his military career would have been saved. He also alleges he was not given the professional medical or mental health assistance he needed. His service treatment records do not substantiate his allegations. The applicant was seen by mental health providers at ADAPT and Life Skills Support Center (LSSC) at least two times during service so he was aware of the existence of these clinics and their services. He denied having any mental health concerns with them. He received recurring screenings from his PCM for any potential mental health and psychological symptoms even during the times of his reported drug use and he consistently denied having any mental health issues or emotional distress.

Should he have disclosed his stressors and problems to the mental health providers or his PCM, he would have received a referral or offer to receive mental health treatment. The applicant purely speculated he could save his military career if he received treatment. It is highly doubtful since he repeatedly denied having any mental health issues and possibly was unwilling to disclose his problems during service. These factors make it difficult for treatment to be successful if the individual is unwilling to acknowledge the existence of problems. There was no reason for him to receive mental health treatment during service especially since he denied having any mental health concerns. It is reminded, mental health treatment is voluntary, and he could have initiated treatment of his own volition as well. The applicant vaguely reported his mental health condition was under control with medications and he is presenting functioning well. However, the applicant provided no records, evidence, or a compelling statement to demonstrate his unspecified mental health condition had caused his misconduct or discharge or his condition could excuse or mitigate his discharge. His Department of Veterans Affairs (DVA) treatment records initially reported he had endorsed having little interest in pleasurable activities without reporting an identifiable cause for this feeling within a year after his military service; however, proceedings and recurring evaluations over the years consistently reported he endorsed having no anxiety, depression, PTSD, and TBI to his DVA providers. He never received any mental health treatment from the DVA. It is obvious his post-service mental health treatment is/was provided by a non-DVA provider. It does not matter from where he received his mental health treatment, but the lack of treatment records does not support his contentions. The applicant also did not provide any clarifying information about his mental health condition such as the type of condition he was diagnosed with or treated after service, when the condition was developed or began, how the condition was incurred, how the condition affected his functioning or misconduct during service, etc. His available military records and treatment records do not sufficiently support his request for an upgrade of his discharge based on his mental health condition. Therefore, the Psychological Advisor finds no error or injustice with his discharge from service from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his 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 was a young airman, made a mistake, used poor judgment, and alluded caused by his mental health condition. The applicant did not specify the type of mental health condition he was diagnosed with or treated by his post-service mental health provider. He did not clearly discuss how his mental health condition may excuse or mitigate his discharge.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant had a mental health condition or was diagnosed with any mental disorder diagnosis during service. His unspecified mental health condition did not exist or occur during his military service according to his available records. He was evaluated by two mental health providers from ADAPT and LSSC and was screened numerous times by his PCM for any mental health condition or symptoms, and he consistently denied having any mental health condition, concerns, or symptoms to all his providers.

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

There is no evidence the applicant's unspecified mental health condition had a direct impact or was a contributing factor to his discharge. He was screened by his PCM during the time frame of his drug use and possession and denied having any mental health condition or emotional distress that may impair his judgment leading to his misconduct and discharge. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence his mental health condition may excuse or mitigate his discharge, his 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 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 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. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds no evidence the applicant had a mental health condition or was diagnosed with any mental disorder diagnosis during service. His unspecified mental health condition did not exist or occur during his military service according to his available records. He was evaluated by two mental health providers and was screened numerous times by his PCM for any mental health condition or symptoms during service. 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 unspecified mental health condition 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 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.

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-2023-01355 in Executive Session on 21 Feb 24:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 Apr 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 15 Jun 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Oct 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 10 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.

3/8/2024

X **Work-Product**

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 Board Operations Manager, AFBCMR
 Signed by: USAF