



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01462

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His rank restored to airman first class.

APPLICANT'S CONTENTIONS

He suffered from undiagnosed anxiety and panic attacks. He was not advised he could have counsel representation and he did not fail a drug test.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 29 Jun 84, 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, for misconduct consisting of serious drug offenses. The specific reasons for the action were:

- On or about 21 Feb 84, the applicant's use of marijuana, as evidenced by the Article 15 dated 21 Mar 84 and the applicant's written acknowledgement of his use of marijuana.

On 2 Jul 84, the applicant acknowledged receipt of the involuntary discharge action. It is further noted he consulted with his military legal counsel and concluded it was in his best interest to not oppose the separation action.

On 16 Jul 84, the Staff Judge Advocate found the discharge action legally sufficient.

On 18 Jul 84, the discharge authority directed the applicant be discharged as soon as possible, with a general service characterization. Probation and rehabilitation were considered, but not offered.

AFBCMR Docket Number BC-2023-01462

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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 24 Jul 84, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Drug Abuse" and he was credited with 1 year, 9 months, and 21 days of total active service.

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

POST-SERVICE INFORMATION

On 9 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 (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 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 9 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

AFPC/DPMSPP recommends denying the application based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant was demoted in accordance with AFR 39-10, paragraph 5-49c in violation of Article 134 for serious drug offenses and involuntarily separated. The applicant stated he was not advised he could have counsel; however, he signed a written statement indicating he understood military counsel was available and provided an official statement under the guidance of military legal counsel reflecting his own decision to not oppose separation action for administrative separation. In addition, he was given the opportunity to appeal the separation action and demotion action in which he chose not to appeal when it was given to him. The applicant failed to produce any documentation that would justify the promotion to airman first class (E-3). AFR 39-29, *Promotion of Airmen*, dated 3 Jan 98, references the promotion policy in paragraph c which states an airman cannot be promoted unless the immediate commander approves the promotion in writing.

The complete advisory opinion is at Exhibit D.

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his records based on his mental health condition. This advisory is limited to the applicant's mental health condition. Contentions relating to not being represented by counsel and not failing his drug test should be addressed by personnel and/or legal subject matter experts as deemed appropriate. A review of the available records finds no evidence the applicant had any mental health conditions including anxiety or panic attacks during service. He was briefly seen at the Mental Health Clinic (MHC) during service following the discovery and admission of his marijuana use and there were no reports or complaints made by the applicant he had any anxiety or panic attacks. He was also assessed to not have any chemical dependency problems. His separation physical examination with his Primary Care Manager (PCM) corroborated the notion that he did not have any mental health conditions or concerns because his psychiatric examination was normal and no mental health issues were reported as well. The applicant had submitted at least two statements at the time of service and did not discuss having any anxiety or panic attacks in any of these statements. The applicant claims he had undiagnosed anxiety and panic attacks and there is no evidence or records to confirm he had these conditions or symptoms during service. He was undiagnosed because there were no reports or disclosure he had anxiety or panic attacks to any of his mental health or medical providers at the time of service. In order to be diagnosed with a condition or disorder, reports of symptoms must be reported, displayed, and/or experienced. There is no evidence or record that any of these events occurred. Moreover, there are no records submitted by the applicant to confirm he was ever diagnosed with a mental disorder in his lifetime including relating to anxiety and panic attacks by a duly qualified mental health or medical provider, received treatment for these conditions or symptoms, or that these conditions had existed or occurred during his military service causing his misconduct and discharge for drug use. The burden of proof is placed on the applicant to submit the necessary records or evidence to support his contention and request. His personal testimony was determined to be insufficient and not compelling to demonstrate a nexus had existed between his drug use and undiagnosed anxiety and panic attacks. The applicant admitted to using marijuana on numerous occasions during service and no evidence he used drugs to cope with his mental health condition or that his mental health condition caused him to use drugs. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of his repeated drug use. The existing records find no evidence his mental health condition including anxiety and panic attacks had a direct impact or was a contributing factor to his misconduct and discharge. As a result, there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request for an upgrade of his discharge due to his contention of having a mental health condition. Liberal consideration is not appropriate to be applied to his request for restoration of rank because this request is not covered under this policy. It is reminded that liberal consideration does **not** mandate an upgrade per policy guidance. The following are answers 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 anxiety and panic attacks.
2. Did the condition exist or experience occur during military service?

There is no evidence the applicant's mental health conditions of anxiety and panic attacks had existed or occurred during his military service. There is no evidence or records he was diagnosed or treated for these conditions or symptoms during service. He was evaluated at the MHC following the discovery and his admission of drug use and there were no reports he had any mental health conditions including anxiety, panic attacks, and chemical dependency problems. He was also evaluated by his PCM for his separation physical examination and his psychiatric condition was assessed to be normal. There were no reports of any anxiety or panic attacks during this examination as well.

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

There is no evidence or records that the applicant's mental health condition including anxiety and panic attacks had a direct impact or was a contributing factor to his drug use and subsequent discharge for this reason. Therefore, his mental health condition 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 mental health condition also does not outweigh his discharge.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Jan 24 for comment (Exhibit F), 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. The Board concurs with the rationale and recommendation of AFPC/ DPMSP and finds no evidence of error or injustice. Furthermore, the Board concurs with the rationale of the AFRBA Psychological Advisor and finds insufficient evidence of mental health issues that would outweigh the misconduct. 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.

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-2023-01462 in Executive Session on 23 May 24 and 30 May 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 25 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 9 Nov 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 23 Jan 24.

Exhibit E: Advisory Opinion, AFPC/DPMSPP, dated 27 Nov 23.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 25 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.

7/15/2024

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Board Operations Manager, AFBCMR
Signed by: USAF