



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01502

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable or his type of discharge be changed to a medical separation.

APPLICANT'S CONTENTIONS

He experienced a traumatic event on 1 Mar 80 where he was challenged by three military policemen while delivering ordinance to a location on base. The event triggered post-traumatic stress disorder (PTSD) symptoms. The PTSD symptoms contributed to his discharge. Because of his discharge, he has lost his veteran tax credit, and it impacts his finances.

In support of his request for a discharge upgrade, the applicant provides a personal statement and a copy of his DD Form 214, *Certificate of Release or Discharge From Active Duty*.

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 23 Mar 81, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section B, paragraph 2-15a. The specific reasons for the action were:

a. On 7 Jun 80, 8 Oct 80, 23 Oct 80, 30 Oct 80, 5 Nov 80, 17 Nov 80, 29 Nov 80, 11 Dec 80, 12 Dec 80, 17 Dec 80, 18 Dec 80, 19 Dec 80, and 23 Dec 80, he was late for duty to which he received multiple Records of Individual Counseling (RIC) and one Article 15 under the provisions of the Uniform Code of Military Justice (UCMJ).

b. On 12 Jul 80, he was in possession of marijuana where he received an Article 15 under the provisions of the UCMJ.

AFBCMR Docket Number BC-2023-01502

Work-Product

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

c. On 24 Nov 80, he missed his dental appointment where he received a RIC.

d. On 28 Nov 80, he was not prepared to take a scheduled volume review exercise where he received a RIC.

e. On 20 and 23 Feb 81, he failed to go at the time prescribed to his appointed place of duty where he received an Article 15 under the provisions of the UCMJ.

On 16 Apr 81, the Staff Judge Advocate found the discharge action legally sufficient.

On 27 Apr 81, the discharge authority directed the applicant be discharged under the provisions of AFM 39-12, section A, paragraph 2-4c, with a general (under honorable conditions) service characterization.

On 30 Apr 81, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitable-Apathy, Defective Attitude Evaluation Officer" and he was credited with 1 year, 1 month, and 26 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 25 Jan 24, 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 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 25 Jan 24, 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 AFRB Psychological Advisor finds insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records

finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request.

While the applicant contends he has PTSD from service, there is no evidence he was ever diagnosed with PTSD during his service or post-service. His Department of Veterans Affairs (DVA) mental health encounters note diagnoses of depression and anxiety. One of his last available mental health encounters specifically noted the applicant was upset and did not have a PTSD diagnosis. While he does have post-service mental health diagnoses and treatment, he is not service-connected for any mental health condition.

There is insufficient evidence the applicant was suffering from any mental health condition to mitigate or excuse his being late for duty 17 times, possession of marijuana, and failure to prepare for a scheduled volume review exercise, all within 1 year of service. The first evidence of any mental health issue was his diagnosis of major depressive disorder (MDD), approximately 37 years after his discharge from the military, seemingly related to financial difficulties. There is also insufficient evidence the applicant was unfit for duty during his time in service or at discharge. Even if the applicant did have a mental health condition while in service, it is difficult to determine when his contention of developing a mental health condition from the incident he described in his mental health encounters (having a weapon pointed at him) occurred in relation to his misconduct. In his self-authored statement (24 Mar 23) he reported the incident occurred on 1 Mar 80, which was four days before he enlisted in the Air Force. He also mentions being discharged on 1 Apr 80 which is one year before his actual discharge (30 Apr 81). It is possible he meant 81 in both references. If this is the case, his misconduct would have occurred before the incident he claims caused his mental health issues and therefore would not be mitigated. These later dates of his being confronted by a security detail on or around 1 Apr 81, are supported by his application in which he stated, "Just prior to my discharge I experienced a traumatic event (for me) and that event triggered PTSD symptoms that contributed to my discharge condition." This again indicates his misconduct occurred before this traumatic incident.

The available evidence supports the applicant did not have any mental health condition at the time of his misconduct and his misconduct came before his contended traumatic experience and is therefore not mitigated or excused by mental health reasons.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he developed PTSD after a traumatic event while serving in the military.
2. Did the condition exist or experience occur during military service?
There is insufficient evidence to suggest the applicant had any mental health condition while serving in the military or at discharge.
3. Does the condition or experience excuse or mitigate the discharge?

There is insufficient evidence the applicant was suffering from any mental health condition which mitigates or excuses his being late for duty 17 times, possession of marijuana, and failure to prepare for a scheduled volume review exercise, all within 1 year of service. The first evidence of any mental health issue was his diagnosis of MDD, approximately 37 years after his discharge from the military, seemingly related to financial difficulties. There is also insufficient evidence the applicant was unfit for duty during his time in service or at discharge. Even if the applicant did have a mental health condition while in service, it is difficult to determine when his contention of developing a mental health condition from the incident he described in his mental health encounters (having a weapon pointed at him) occurred in relation to his misconduct. In his self-authored statement (24 Mar 23) he reported that the incident occurred on 1 Mar 80, which was four days before he enlisted in the Air Force. He also mentions being discharged on 1 Apr 80 which is one year before his actual discharge (30 Apr 81). It is possible he meant 81 in both references. If this is the case, his misconduct would have occurred before the incident he claims caused his mental health issues and therefore would not be mitigated. These later dates of his being confronted by a security detail on or around 1 Apr 81, are supported by his application in which he stated, "Just prior to my discharge I experienced a traumatic event (for me) and that event triggered PTSD symptoms that contributed to my discharge condition." This again indicates his misconduct occurred before this traumatic incident.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the original 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 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 a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds no evidence to suggest the applicant had any mental health condition during his brief time in the service to include PTSD. Liberal consideration was applied to the

applicant's request due to the contention of a mental health condition; however, since there is no evidence a mental health condition or his contended traumatic 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 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-2023-01502 in Executive Session on 23 May 24:

Work-Product

Panel Chair

, 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 16 Nov 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 25 Jan 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Jan 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jan 24.

Work-Product

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.

10/2/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2023-01502

Work-Product