



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01566

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded.

APPLICANT'S CONTENTIONS

His condition after he returned from **Work-Product** put him in a state of not caring. He had frequent insomnia along with nightmares from his time overseas after 11 Sep 01. He is seeking help from his county behavioral health services, and he is seeking a character of discharge that will allow him to obtain these services with the Veterans Health Care.

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 20 Jan 99.

On 27 Oct 06, the convening authority published Special Court-Martial Order Number **Wor...** The Order stated the applicant was arraigned for the offense of wrongfully using methamphetamine (Article 112a) on or about 6 Jun 06 and on or about 12 Jun 06. The applicant pled guilty and was found guilty of the offense. The applicant was sentenced to confinement for five months, forfeiture of \$849.00 pay per month for five months, and reduction in grade to airman basic.

On 21 Dec 06, the convening authority published Special Court-Martial Order Number **Wor...** The Order stated the applicant was arraigned for the offense of wrongfully using methamphetamine (Article 112a) on or about 15 Sep 06 and on or about 22 Sep 06. The applicant pled guilty and was found guilty of the offense. The applicant was sentenced with a BCD.

On 5 Sep 07, the convening authority published Special Court-Martial Order Number **Wor...** The Order stated the applicant's sentence of a BCD, as promulgated in Special Court-Martial Order Number **Wor...** dated 21 Dec 06, has been affirmed. Article 71(c) having been complied with; the BCD will be executed.

AFBCMR Docket Number BC-2022-02992

Work-Product

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

On 2 Oct 07, the applicant received a BCD. His narrative reason for separation is “Court-Martial” and he was credited with 8 years, 8 months, and 13 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 14 Sep 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 Uniform Code of Military Justice (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 14 Sep 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 the available records finds the applicant's contentions were not supported by his objective military records. There is evidence the applicant served in **Work-Product**, which is reflected by his **Work-Product** Campaign Medal listed on his DD Form 214; however, there is no evidence he developed, experienced, or was diagnosed with PTSD or similar conditions from his deployment experience(s) during service. His available service treatment records revealed he initiated mental health treatment on 12 Jun 06 due to having anger issues directed towards his wife and stepson. He had attributed his behaviors to his childhood experiences and no mention of his military or deployment experiences causing his anger issues. He was given a diagnosis of Marital Problems and a rule of Alcohol Abuse. The provider did not discuss his alcohol usage or abuse in the note, but he subsequently attended a substance abuse education course on 28 Aug 06. The applicant's next encounter with a mental health provider was on 22 Sep 06 when he received a mental health evaluation while he was in confinement. This evaluation occurred one day after he was convicted at special court-martial for methamphetamine use. His mental health evaluation reported he had no mental disorder diagnosis but an evaluation with a medical provider performed on the same day reported his depression was a chronic condition but did not give him a diagnosis for depression. A few days later on 25 Sep 06, the applicant received an intake evaluation at Life Skills for mental health treatment. He was given a diagnosis of Major Depression, Single Episode, and no rationale was provided for this diagnosis such as the cause of his depression. The specifier of "Single Episode" of this diagnosis is inconsistent and contradictory to the medical provider's report that his depression was a chronic condition. A chronic condition indicates the condition or illness had been persisting for a long time or was recurring whereas a single episode means there is no prior history of depression and/or this was his first episode of depression. There were no records or reports he had depression prior to his examination with the medical provider so the single episode specifier for major depression was more consistent with his records. His confinement and special court-martial conviction were highly stressful events and could have caused his depression. The applicant met with a psychiatrist the following day for medication management treatment services for depression and it was reported he was suicidal and had attempted suicide with rat poison the previous week. The psychiatrist emphasized to the department officer the applicant needed continuous safety monitoring while in confinement. The cause of his suicidal thoughts and attempt were not reported but his attempt had occurred one day before his special court-martial conviction and could be related to this situation. A few days later on 29 Sep 06, the applicant received an evaluation with Alcohol and Drug Abuse Prevention and Treatment (ADAPT) and was given a diagnosis of Alcohol Dependence. No rationale was provided for his diagnosis, and he was enrolled and participated in their substance abuse treatment program for his alcohol dependency problems ending on 1 Dec 06. There was no mention of any drug or amphetamine use and no substance use disorder diagnosis was annotated in any of his service treatment records. There were no records his depression or alcohol dependency problems were caused or related to his deployment

experiences and in fact, none of his treatment records made any references to his service or experience(s) in **Work-Product**. The applicant's depression appeared to be in response to the aftermath of his misconduct and subsequent legal problems according to his records. His depression was not reported to be a symptom of PTSD. It is noted, most of the applicant's available service treatment records were missing content, and this was most likely caused by the introduction of electronic medical records occurring around the time the applicant was in the service. It appeared his paper records were not fully transferred to the electronic health record system. The burden of proof is placed on the applicant to submit the necessary medical records to support his request, which he did not do.

The applicant contended he had frequent insomnia and nightmares, but no records verified he had either of these problems during service. The applicant was discharged for illicit drug use and the applicant did not directly address his reason for discharge. There were no records showing he used methamphetamine to cope with his mental health condition. Since the applicant stated he had frequent insomnia and nightmares, methamphetamine would be counterintuitive to cope with or treat these symptoms because methamphetamine causes one to be alert and does not help with sleep problems or disturbances and could actually make these problems worse. Giving the applicant the benefit of the doubt his traumatic and stressful deployment experiences may have caused his drug use despite no records to support this notion, it was reminded he was convicted at special court-martial twice for methamphetamine use. This may indicate he had substance abuse or dependency problems, and this is an unsuiting condition. The Psychological Advisor finds insufficient evidence to corroborate the applicant's contentions and no records to support his mental health condition of PTSD developed from his deployment experience(s) in **Work-Product** had a direct impact on his misconduct and discharge. Thus, there is no error or injustice identified with 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 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 marked PTSD on his application to the AFBCMR and believed his mental health condition after he got back from **Work-Product** had put him in a state of not caring and having frequent insomnia and nightmares. He reported still receiving mental health treatment.

2. Did the condition exist or experience occur during military service?

There is no evidence the applicant's mental health condition of PTSD had existed or occurred during his military service. He was never diagnosed with this condition during service. He initiated mental health treatment in Jun 06 for having anger management issues causing him to have marital and family problems. He reported believing his childhood experiences caused his anger problems. He was given a diagnosis of Marital Problems with a rule out of Alcohol Abuse. He was given a diagnosis of Major Depression, Single Episode when he was in confinement and no explanation was provided for this diagnosis, although it is noted he was in confinement as a result of his special court-martial conviction. He had attempted suicide around the time of his conviction and his depression appeared to be related to his legal problems. He received a diagnosis

of Alcohol Dependence, and no explanation was provided for his issues. There is no evidence his mental health condition or mental disorder diagnoses given during service were related to his deployment.

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

There is no evidence the applicant's mental health condition of PTSD or any other mental health condition had a direct impact on his wrongful methamphetamine use, special court-martial conviction, and subsequent discharge from service. 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 opinions to the applicant on 20 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 a preponderance of the evidence does not substantiate the applicant's contentions. The Board took note there is evidence the applicant served in **Work-Product** which is reflected by his **Work-Product** Campaign Medal listed on his DD Form 214; however, there is no evidence he developed, experienced, or was diagnosed with PTSD or similar conditions from his deployment experience(s) during service. He initiated mental health treatment in Jun 06 for having anger management issues causing him to have marital and family problems. He reported believing his childhood experiences caused his anger problems. He was given a diagnosis of Marital Problem with a rule out of Alcohol Abuse. He was given a diagnosis of Major Depression, Single Episode when he was in confinement and no explanation was provided for this diagnosis, although it is noted he was in confinement as a result of his special court-martial conviction. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, the Board finds no evidence the applicant's mental health condition of PTSD or any other mental health condition had a direct impact on his wrongful methamphetamine use,

special court-martial conviction, and subsequent discharge from service. His mental health condition does not excuse or mitigate his discharge. Since there is no evidence his mental health condition excused or mitigated his discharge, his condition does not outweigh his original discharge.

Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the insufficient evidence presented, and in the absence of substantial post-service information, the Board finds no basis to do so. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness. However, the applicant did not present any post-service activity evidence to the Board. 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-2023-01566 in Executive Session on 20 Mar 24:

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Panel Chair
Panel Member
Panel Member

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

Exhibit A: Application, DD Form 149, dated 26 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 14 Sep 23.

Exhibit D: Advisory Opinion, AFRBA MH, dated 15 Oct 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Oct 23.

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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.

4/3/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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