



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01677

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His numerous service-connected disabilities have been granted in connection with the accident of 10 Jul 82 which caused head trauma from being a passenger in the vehicle. He received a 70 percent disability rating from the Department of Veterans Affairs (DVA). He provides a study from the Lerner Center for Public Health at Syracuse University where veterans with a traumatic brain injury (TBI) drink more on a daily basis.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3) who entered the regular Air Force on 10 Feb 82.

On 13 Feb 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 5-46, for misconduct. Specific reasons included the following:

- a. On 7 Jun 82, as evidenced in AF Form 2734, *Substance Abuse Control Program – Incident Information*, he was apprehended while at Cannon AFB, New Mexico for driving while under the influence of alcohol.
- b. On 12 Jan 83, he received a Record of Individual Counseling (RIC) for reporting late to weekend duty due to alcohol-related reasons.
- c. On 31 Jan 83, he received a RIC for cancelling a Commander Directed Appointment with Mental Health for personal reasons.

AFBCMR Docket Number BC-2022-02992

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

- d. On 7 Feb 83, he was medically evaluated as evidenced in AF Form 2737, *Medical Evaluation – Potential Substance Abuse*, by both Social Actions and Mental Health based on several alcohol incidents.
- e. On 18 Apr 83, he received a Letter of Reprimand (LOR) for an alcohol-related altercation with his roommate.
- f. On 11 May 83, he received a RIC for misconduct and willful violation of various regulations and technical orders.
- g. On 12 Aug 83, he received a RIC for failing to perform a periodic evaluation on a Force Ejector T/S and repair a Mid-Band Simulator.
- h. On 17 Sep 83, he received a RIC for distributing tools without chitting them out nor issuing a hand receipt. Additionally, later lying about seeing the tools in question.
- i. On 26 Sep 83, he received a RIC for failing to follow proper procedures and operating instructions with tools and equipment.
- j. On 28 Sep 83, he received a RIC for failing to follow proper procedures when chitting out tools and equipment.
- k. On 30 Sep 83, he received a RIC for signing a delivered item without verifying it was the item ordered, which is again standard Tool Crib procedure.
- l. On 7 Feb 84, he received a RIC for reporting late to work, failed to get a haircut as directed, failed to follow procedures in the Tool Crib, and failed to return from lunch on time.

On 29 Feb 84, the Staff Judge Advocate found the discharge action legally sufficient.

On 1 Mar 84, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 2 Mar 84, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct – Pattern of Minor Disciplinary Infractions” and he was credited with 2 years and 23 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 16 Aug 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, 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 16 Aug 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 the available records and finds the applicant clearly had alcohol problems during service; however, finds no evidence the applicant's mental health condition, alcohol problems, or his TBI/head trauma from his motor vehicle accident (MVA) was a contributing factor to his misconduct resulting in his discharge from service. There is no error or injustice with the applicant's discharge from service from a mental health perspective. Therefore, his request for an upgrade of his discharge based on his mental health condition or TBI/head trauma could not be supported.

He was evaluated by his primary care manager (PCM) and by mental health providers a few times following his alcohol-related incidents and was recommended to participate in the local rehabilitation program. Treatment notes for his rehabilitation treatment were not available for review. He was assessed to be a "Problem Drinker" and he was not given any formal alcohol use disorder diagnosis, in fact he was never given any mental disorder diagnosis such as anxiety, depression, etc. during service. He reported during his mental health evaluation on 26 Jan 83 he did not drink until he entered the service but did not identify how or why his military service or duties caused him to drink. The cause or triggers for his alcohol problems were not reported in his records and there was no evidence or records stating he drank alcohol to cope with his mental health condition. His alcohol problems were unsuited and incompatible with service. His drinking problems may explain and cause his alcohol-related incidents and misconduct but do not excuse his behaviors and misconduct.

The applicant contended he sustained a head trauma or TBI while as a passenger from a MVA occurring in Jul 82. There is evidence in his service treatment records he was hospitalized at NE Regional Hospital from 5 Jul 82 to 6 Jul 82 for being involved in an MVA while in route to Cannon AFB, and his separation physical examination with his PCM on 18 Jun 84 confirmed he sustained head trauma in a car accident in Jul 82. Although there is evidence he had experienced head trauma, there is no evidence he had any continuing complications or difficulties as a result of his head trauma following the MVA. This notion is confirmed by his PCM reporting on his separation

physical examination document, “Head trauma in car accident, needed sutures, unsure of amount, loss of consciousness, unsure of time, No Complications, No Sequelae (NCNS).” NCNS was noted to specify there were no complications or pathological condition resulting from the injury or trauma. Furthermore, there are no records he needed continuing medical treatment from his medical providers or a referral to a neurologist following the injury and MVA, and there were no reports he had TBI or head trauma symptoms of headaches, sleeping problems, balance problems, vision problems, sensory issues, nausea or vomiting, etc. following his MVA. He experienced a loss of consciousness (LOC) after his MVA but again, he had no complications from his LOC. For mental health, he did not have any complaints or problems with his neuropsychological functioning after his MVA such as memory issues including short and long-term memories, difficulties with problem-solving, verbal or non-verbal reasoning, visual-spatial reasoning, hand-eye coordination, and/or proceeding speed, inattention or concentration problems, and/or mood changes. There were no cognitive deficits or impairments as a result of his MVA/head trauma reported that affected his overall functioning. Moreover, there is no evidence he had significant behavioral or cognitive changes following his MVA and no evidence his TBI caused his pattern of misconduct leading to his discharge. There is no evidence the applicant had any complications from his TBI/head trauma after service as well. There are no records he was diagnosed with a TBI or a similar condition from his DVA or post-service providers. This would support the impression his TBI/head trauma was NCNS as reported by his PCM.

The applicant submitted a news article to support his contention his alcohol problems may be the result of his TBI/head trauma. There is no evidence the applicant’s TBI/head trauma caused him to have alcohol problems. The applicant’s first alcohol-related incident, which was receiving a DUI, had occurred on 7 Jun 82. His DUI occurred one month prior to his head trauma/MVA so his DUI could not have been caused by his head trauma/injury. It appeared he already had alcohol problems prior to his head trauma. It is acknowledged the majority of his alcohol-related incidents occurred after his MVA but no evidence these incidents or his alcohol problems were caused by his MVA/head trauma or exacerbated or aggravated his drinking. He explained he was partying in the dorms with his friends the previous night causing him to report late to work, he was drinking to have fun with his friends. From this explanation, there is no evidence he was in emotional distress or had a mental health condition at the time he was drinking, or these were the reasons he drank. For his other alcohol-related incidents there were no explanations provided. However, his incident of walking while intoxicated was discussed during his mental health evaluation on 26 Jan 83, and the provider reported his First Sergeant informed the security police (SP) he was not drunk. The provider said it was an isolated incident. Regardless of whether he was or was not drunk, it was still considered an alcohol related incident. This incident also occurred on 25 Dec 82, so he could have been drinking in celebration of the holiday since there is no evidence he was in emotional distress or had a mental condition at the time he drank that night. Overall, there is no evidence he was in emotional distress, had a mental health condition, or had cognitive difficulties from his head trauma causing him to drink alcohol, develop problems with alcohol, or cause his alcohol-related incidents.

The applicant was not solely discharged from service because of his alcohol problems but also for failing to perform his duties properly/following proper procedures on numerous occasions, failing to get a haircut as directed by his non-commissioned officer (NCO), failing to return from lunch

on time, failing to attend his Commander Directed Appointment at Mental Health, and reporting late to work. These other misconducts were not related to his alcohol use or problems and had occurred as frequently or more frequently than his alcohol related incidents. The applicant did not address any of these non-alcohol-related incidents in his petition. All of these non-alcohol-related incidents did occur after his MVA/head trauma but [there is] no evidence they were caused by the cognitive impairment or residual effects of his TBI/head trauma or mental health condition. He had provided a couple of explanations for these misconducts at the time of service and explained he had an off-duty flying lesson he felt was more important than attending his Commander Directed Appointment at Mental Health, and he was reported to have refused to accept responsibility for his actions for failing to follow procedures on at least two occasions. None of these explanations or reactions were caused by his mental health condition or TBI. It appeared he knew what he was doing and made his own decision to not follow instructions or orders. There is no evidence he was in emotional distress, had a mental health condition, or had TBI symptoms impairing his judgment at the time of any of his non-alcohol-related incidents or any of his documented his misconduct resulting in his subsequent discharge from service.

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 is requesting his character of service be changed from "under honorable conditions" to "honorable" and he marked "TBI" on his application. He stated numerous service-connected disabilities have been granted in connection with the accident of Jul 82 which caused head trauma while as a passenger in that vehicle. A 70 percent disability rating award paperwork is included.

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

There is evidence the applicant sustained a TBI/head trauma from an MVA occurring on 5 Jul 82 and was hospitalized for this injury during his military service. There is no evidence he had any cognitive or neuropsychological changes, impairments, or any other lasting effects, complications, or sequelae from his head trauma after the MVA. This was confirmed by his separation physical examination performed by his PCM on 28 Jun 84. There are no records he needed continuous medical care and treatment for this injury and no evidence he was given a diagnosis of TBI or similar conditions from the MVA during or after service. The applicant did receive evaluations from his PCM and mental health providers following his alcohol-related incidents. He was assessed to be a "Problem Drinker" and was referred to attend the local rehabilitation program. He was not given any alcohol or substance use disorder diagnosis or any other mental disorder diagnosis such as anxiety, depression, etc. during service. There are no records he had anxiety, depression, etc. during service, and he denied during his separation physical examination of having any mental health conditions or symptoms including anxiety/nervous trouble of any sort, depression, sleep problems, memory problems, and periods of unconsciousness.

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

There is no evidence the applicant's TBI/head trauma from his MVA caused any of his documented acts of misconduct and or caused him to develop alcohol problems. He had a DUI

prior to his head trauma so this alcohol-related incident could not have been caused by his TBI/head trauma. It appeared he already had alcohol problems prior to his head trauma and no evidence his TBI/head trauma from the MVA exacerbated or aggravated his drinking problems. His drinking problems may explain and cause his alcohol-related incidents and related misconduct but does not excuse them. His drinking problems are unsuiting for military service. There is no evidence his mental health condition or TBI had a direct impact or was a contributing factor to his discharge and so his mental health condition or TBI/head trauma 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 or condition or TBI/head trauma may excuse or mitigate his discharge, his mental health condition or TBI/head trauma 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 25 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 finds no evidence during service, the applicant was given a mental health diagnosis, an alcohol or substance use disorder diagnosis, or a TBI diagnosis due to the MVA. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition and his contention of a TBI diagnosis. However, the Board finds his alcohol problems were unsuiting and incompatible with service and his drinking problems may explain and cause his alcohol-related incidents and misconduct but do not excuse his behaviors and misconduct; therefore, 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-2022-02992 in Executive Session on 17 Apr 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 30 May 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 16 Aug 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Oct 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 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.

10/2/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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