



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01865

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was discharged after his return from Iraq when he was dealing with post-traumatic stress disorder (PTSD) issues. He served his country proudly. He had no place to go after his discharge and it was extremely difficult being a homeless veteran. Due to his homelessness, he had to put the request for upgrade of his discharge on hold.

After being homeless for more than a year, he did an outstanding job of pulling himself together. He is currently attending college and studying neurology. He provides letters of support in his behalf.

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 22 May 08, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 6 Jan 08, he failed to go to his prescribed place of duty. For the offense, he received nonjudicial punishment (NJP) dated 27 Feb 08.
- b. On 14, 19 and 20 Mar 08, he failed to go at the time prescribed to his place of duty. For the offense, he received NJP dated 29 Apr 08.

An undated memorandum reflects the Staff Judge Advocate found the discharge action legally sufficient.

On 5 Jun 08, the discharge authority directed the applicant be discharged for misconduct: minor disciplinary infractions, with a general discharge. Probation and rehabilitation were determined not appropriate in the applicant's case.

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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 16 Jun 08, the applicant received an under honorable conditions (general) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 8 months, and 10 days of total active service.

On 13 Sep 23, the applicant applied to the Air Force Discharge Review Board (AFDRB) for upgrade of his discharge. However, he was informed his request could not be processed because his discharge was more than 15 years prior. The applicant was advised to submit his request to the AFBCMR.

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

POST-SERVICE INFORMATION

On 18 Oct 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 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 18 Oct 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

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

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for upgrade of his discharge.

There is insufficient evidence that the applicant had PTSD or any other mental health condition during his time in service or at discharge. The applicant underwent a medical examination at discharge and the provider determined he did not have depression, he felt fine and he had no complaints. He also did not desire mental health services at the time. There is no evidence the applicant sought mental health services while in the military. In response to one of his NJP's, the applicant indicated he missed physical training (PT) because he had to return a car due to not being able to afford it any longer. His admission to his misconduct has no nexus with any mental disorder. There are no mitigating factors for his misconduct (failure to report) from a psychological perspective.

The applicant does not have any Department of Veterans Affairs (DVA) service connection and there is insufficient evidence he developed PTSD post-service as a result of his military experiences. Eight years after his discharge, the applicant had an appointment for immunizations at the DVA. He completed a four question PTSD screening instrument and marked "yes" to the questions. While it was noted he was evaluated for PTSD, nothing was documented. There was no documentation concerning a PTSD evaluation, about the onset or etiology of symptoms and there was no diagnosis of PTSD or any other mental health condition. It was, however, noted the applicant was homeless. The applicant was provided information on seeking various housing options.

Liberal consideration is applied due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum:

1. Did the applicant have a condition or experience that may excuse or mitigate the discharge? The applicant contends he had PTSD at the time of his discharge.
2. Does the condition exist or experience occur during military service? There is insufficient evidence that the applicant had PTSD or any other mental health condition during his time in service or at discharge.
3. Does the condition or experience excuse or mitigate the discharge? The applicant was never diagnosed with any mental health condition while in service. There is insufficient evidence he developed PTSD post-service, as a result of any military experiences. As the applicant does not have any mental health disorders, including PTSD, there are no mitigating factors for his misconduct (failure to report).
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 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 22 Nov 23 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 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 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 show the applicant had any mental health condition, including PTSD, while in service. Further, the applicant's post-service DVA records also do not include a PTSD, or any other mental health, diagnosis. The Board applied liberal consideration to the applicant's request for upgrade of his discharge due to the mental health contention; however, since the applicant does not have PTSD or any mental health disorders, there are no mitigating factors for his misconduct. In the interest of justice, the Board considered upgrading the applicant's discharge on the basis of clemency; however, finds insufficient evidence at this time to upgrade his discharge on the basis of clemency. Therefore, the Board recommends against correcting the applicant's records.
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-2023-01865 in Executive Session on 28 Mar 24:

Work-Product [redacted] y, Panel Chair
Work-Product [redacted] e, Panel Member
Work-Product [redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 24 May 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, AFDRB, dated 14 Sep 23.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 18 Oct 23.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 22 Nov 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Nov 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.

6/12/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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