

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01893

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

At the time of his incarceration in jail for fighting and marijuana at **Work-Product** Air Force Base (AFB), **Work-Product**, he was confined to the dormitory and not allowed to see his legal counsel due to a winter storm. He was not allowed to reschedule his appointment and subsequently was put in jail and his military career was damaged permanently. He has submitted a six-page letter which substantiates his history in the military. He is quite certain the military has all the necessary evidence to verify his claim. He is at 70 percent Post-Traumatic Stress Disorder (PTSD).

He recently spoke with a Department of Veterans Affairs (DVA) representative and was informed he should look into getting his discharge upgraded now that the DVA looks at PTSD. They never did before which is why he was never given help over the years.

In support of his request for clemency, the applicant provides rating decision documentation from the DVA.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 8 Dec 80, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (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 A, paragraph 2-4c. The specific reasons for the action were:

a. On 18 Jan 78, [the applicant] had in his possession some amount of marijuana and, on 28 Jan 78, he unlawfully struck another airman in the eye with his hand. As a result, he was punished under Article 15, Uniform Code of Military Justice (UCMJ) on 8 Feb 78.

b. On 17 Feb 78, without authority, [the applicant] left his appointed place of duty, to wit: Building P-2, **Work-Product** AFB, IL. As a result, he was punished under Article 15, UCMJ on 28 Feb 78.

c. On 8 Feb 78, [the applicant] was counselled by the Executive Support Officer for his defective attitude.

d. On 5 Aug 80, [the applicant] reported for duty 1 hour and 15 minutes late. As a result, he was counseled by his supervisor.

e. On 6 Aug 80, [the applicant] reported for duty 25 minutes late. As a result, he was counseled by his supervisor.

f. On 13 Aug 80, between 2030 and 2100 hours, [the applicant] left his appointed place of duty and, without authority, failed to return. As a result, he was counseled by the Night Shift Supervisor on 14 Aug 80.

g. On 25 Aug 80, without authority, [the applicant] went from his appointed place of duty, to wit: Inspection Branch, Building 1350. As a result, he was punished under Article 15, UCMJ on 8 Sep 80.

h. On 30 Aug 80, [the applicant] reported for duty at Building 1350, Spot Number 2, one hour late. On 3 Sep 80, he failed to report for duty on time. As a result, he received a Letter of Reprimand on 5 Sep 80.

i. On 31 Oct 80, [the applicant] left his place of duty without authority and, on 3 Nov 80, he failed to report for duty. As a result, he was punished under Article 15, UCMJ on 13 Nov 80.

On 16 Dec 80, the Staff Judge Advocate found the discharge action legally sufficient.

On 19 Dec 80, the discharge authority directed the applicant be discharged under the provisions of AFM 39-12, paragraph 2-4c, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 19 Dec 80, 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 three years, two months, and seven days of total active service.

On 3 Apr 23, according to a DVA Rating Decision letter, provided by the applicant, his evaluation of PTSD (previously rated as unspecified trauma-and stressor-related disorder) which was evaluated at 50 percent, assigned from 25 Oct 18, was increased to 70 percent, effective 21 Apr 22.

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

POST-SERVICE INFORMATION

On 12 Apr 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; 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 (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 12 Apr 24, 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 finds insufficient evidence to support the applicant's request for the desired change to his records from a mental health perspective.

This advisory is limited to the applicant's mental health condition. His contention of not being able to consult with his legal counsel should be addressed by a legal or personnel subject matter expert, as deemed necessary. A review of the available records finds there is no evidence or records the applicant had any mental health condition including PTSD during service. He reported to his providers at the DVA decades after his military discharge that he experienced trauma during service from witnessing a plane crash in 1979 in which a friend and/or five service members died, and he was part of mission recovery. The applicant would have PTSD symptoms, anxiety, and fear of working on planes after this incident. There are no records to support his report. He also reported being sexually harassed during his time in jail during service. There are no records to confirm any of his traumatic experiences had occurred or existed during his military service; however, the validity of these experiences is not disputed, but rather, whether the residual mental health effects from these traumatic experiences had interfered with his ability to function appropriately in a military setting. There is no evidence or records to support this notion. The applicant received a mental health evaluation on 16 Sep 80 during service and the results yielded he did not have any mental disorder. He did report in his statements to his commander or leadership he had mental stress from being informed by his base commander he was being retained in the service when he had anticipated and planned on being discharged. The applicant explained he went Absent Without Leave (AWOL) because he needed to find a place to live and was stressed from this situation. Although he was stressed by his housing and financial situation, his decision to be AWOL was not caused by having a mental health condition or disorder, like anxiety, depression, or PTSD, but for survival needs and basic necessities. His mental anguish or emotional distress was caused by his discharge situation and not by his traumatic experiences of a plane crash or being sexually harassed. There were also other explanations he provided for his other acts of misconduct that caused discharge during service. The applicant reported he did not intentionally leave his place of duty because he thought he had permission from a superior and the situation was a bit confusing, he denied possessing marijuana, he got into an altercation with another airman because he was being provoked and his explanation was corroborated by two witnesses, and his personal problems, which were identified in his records as his marital and financial problems, caused his defective attitude and problems in Aug 80. These explanations do not demonstrate his actions were caused by his mental health condition or by having a mental health condition that impaired his judgment, influencing his maladaptive behaviors. There were no explanations provided for his other instances of leaving his place of duty and reporting late to work on a few other occasions. There is no evidence these misconducts or issues were caused by his mental health condition. There are records the applicant had personal problems with his wife leaving him and taking their money and furniture, causing him to have financial problems that may cause some of his difficulties. These problems were not caused by his traumatic experiences or military duties. His mental stress was the result of the consequences, i.e. Article 15, of his own misconduct.

The applicant was diagnosed with PTSD by his DVA providers over 20 years after his traumatic experiences and his military discharge. He endorsed PTSD symptoms of having nightmares and sleep disturbances, having intrusive memories, avoiding thinking or talking about his experiences and reminders of the events, having anger and irritability, hypervigilance, hyperstartle/easily startled, blaming self or others, having negative feelings, feeling numb, losing interest, trouble with recall, being distant from others, reckless behavior, and difficulties concentrating. With the exception of his reckless behaviors, there is no evidence or records he experienced the remaining and majority of PTSD symptoms from his traumatic experiences during service. It appeared the applicant had a delayed onset of PTSD causing him to develop these symptoms and meeting the diagnostic criteria for PTSD decades after the traumatic experience(s) had occurred. Delayed onset of PTSD is not an uncommon occurrence. His symptoms may also be complicated and exacerbated by his prior and post-service stressors according to his DVA treatment records. The applicant has also received service-connection for PTSD with a rating of 70 percent based on his reported symptoms and experiences of anxiety,

chronic sleep impairment, depressed mood, difficulty in adapting to work-like settings, stressful circumstances, to work, establishing and maintaining effective work and social relationships and understanding complex commands, disturbances of motivation and mood, forgetting directions, names, and recent events, impaired impulse control, inability to establish and maintain effective relationships, mild memory loss, occupational and social impairment, panic attacks more than once a week, and suspiciousness. There is no evidence or records he had any of these symptoms or experiences from his traumatic experiences during service. He had work problems, but they were caused by his pattern of misconduct and uncertainty or confusion surrounding his discharge and not from his traumatic experiences as proposed by his DVA rating. Receiving service-connection from the DVA does not demonstrate causation or mitigation of his discharge but merely suggests his condition or experience was related to his military service in some capacity.

After an exhaustive review of the available records, this psychological advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition. There is no evidence his mental health condition, including PTSD, had a direct impact or was a contributing factor to his numerous misconducts resulting in his subsequent discharge. There is no error or injustice identified with this discharge from a mental health perspective. His testimony and submitted records are determined to be not sufficient or compelling enough to support his request.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. The following are responses to the four questions from the Kurta Memorandum from the information presented in the 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 Air Force Board for Correction of Military Records. He did not discuss the traumatic experience(s) he endured during service, how this experience(s) was related to his military service, when it had occurred during service, the symptoms he had during service and how they affected his behaviors or caused his misconduct, and how his mental health condition/PTSD may excuse or mitigate his discharge. The applicant submitted a DVA Rating Decision document reporting his rating was increased to 70 percent for PTSD, effective 21 Apr 22. He reported to his providers at the DVA that his traumatic experiences during service were witnessing a plane crash in which his friend and/or five service members died, and he was part of mission recovery, and he was sexually harassed while he was in jail. The applicant was diagnosed with PTSD from these experiences by his providers at the DVA over 20 years after his military discharge.

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

There is no evidence or records that any of the traumatic experiences detailed in the previous question had existed or occurred during his military service. There is also no evidence he had any mental health condition, including PTSD, or a similar condition during service. He developed and was diagnosed with PTSD decades after service. The applicant received a mental health evaluation during service on 16 Sep 80 and the results found he did not have a mental disorder.

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

There is no evidence the applicant's mental health condition, including PTSD, from his traumatic experiences had a direct impact or was a mitigating factor to his discharge. His explanations provided at the time of service find no evidence his mental health condition caused any of his acts of misconduct or problems causing his discharge from service. He reported being stressed from learning from his commander he would be retained in the service, needing a place to live, having financial problems, and personal/marital problems. These problems were not caused by his traumatic experiences, but his mental stress was the result of the consequences of his own

misconduct. Thus, his mental health condition and/or traumatic experiences do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition and/or traumatic experiences do not excuse or mitigate his discharge, his condition and/or experiences also do 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 opinion to the applicant on 11 Jun 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 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 Title 10, United States Code § 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. There is no evidence the applicant was diagnosed with a mental health condition, including PTSD, during military service. The applicant received a mental health evaluation during service, on 16 Sep 80, and the results found he did not have a mental disorder. Additionally, the applicant does not discuss the traumatic experience(s) he endured during service, how this experience(s) was related to his military service, when it occurred during service, the symptoms he had during service and how they affected his behaviors or caused his misconduct, and how his mental health condition/PTSD may excuse or mitigate his discharge. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

Further, the applicant provides no evidence to support his contention of lack of access to legal counsel. There is also no mention of lack of legal counsel in his rebuttal statement to the discharge action; however, according to the 93 BMW memorandum, dated 15 Dec 80, the applicant was counseled by the evaluation officer on 11 Dec 80. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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-2023-01893 in Executive Session on 16 Oct 24:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 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 12 Apr 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 30 May 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Jun 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.

X

Board Operations Manager, AFBCMR