



Work-Product

## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01991

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He suffered from separation anxiety and being away from home led him to act out in inappropriate ways. Being more mature, he sees where his actions were less than desirable. It has been over 50 years since his separation, he has had no adverse contact with civil authorities, and he has enjoyed a long period of employment with Continental Airlines. As such, he believes he is deserving of consideration to have his discharge characterization upgraded.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 16 Sep 68, 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*. The specific reasons for the action were apathy, defective attitudes and inability to expend effort constructively as outlined below:

a. Violation of UCMJ, Article 15; [he] on or about 13 Aug 68 [showed] disrespect to an NCO for which he was reduced in rank to Airman Basic and performed extra duty for 14 days.

b. Violation of UCMJ, Article 15; [he] on or about 9 Sep 68 failed to obey a lawful order for which he was placed into correctional custody for 14 days.

On 3 Oct 68, the Staff Judge Advocate found the discharge action legally sufficient.

On 3 Oct 68, the discharge authority directed the applicant be discharged for Unsuitability, with a Under Honorable Conditions service characterization.

On 10 Oct 68, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "AFM 39-12 SDN 46A, Para 2-4c, Chap 2, Sec A [*Apathy, Defective Attitudes, and Inability to Expend Effort Effectively*] and 380 CRS's ltr dated 3 Oct 68" and he was credited with 1 year, 4 months, and 22 days of total active service.

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Controlled by: SAF/MRB  
CUI Categories: Work-Product  
Limited Dissemination Control: N/A  
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On 7 Nov 70, the applicant submitted his request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge as he “would go back to the Air Force, if it is possible.”

On 14 Jan 71, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

## **POST-SERVICE INFORMATION**

On 2 Nov 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 (Exhibit D).

## **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 2 Nov 23, 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.

**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 finds insufficient evidence to support the applicant's request.

The applicant was discharged from service for displaying apathy, defective attitudes, and an inability to expend effort constructively. His leadership had documented several examples of these behaviors (Military Personnel Records) and had provided him with numerous counseling sessions and disciplinary actions to help repair his behaviors. He was not amenable to these efforts. There is no evidence his reported apathetic and defective attitudes were mental health conditions or caused by any mental health condition or disorder. The applicant did receive mental health treatment during service with the earliest notes dated 20 Oct 67. At this meeting, he was noted to have work problems, was dissatisfied with his job, and was immature. He was briefly prescribed trials of psychotropic medications of Thorazine and Stelazine, and the reasons for these prescribed psychotropic medications were not discussed in his treatment records. These medications are

classes of anti-psychotic medications and his psychiatrist, who had also performed his command-referred psychiatric/mental health evaluation, had assessed he did not have any neurosis or psychosis from the evaluation. Therefore, it is not known why he was prescribed these medications. It is possible he was prescribed these medications for other psychiatric symptoms but yet again, these symptoms were not documented in his records. He did not use or take these psychotropic medications in the long term and the medications were discontinued altogether for unspecified reasons about a month later on 21 Nov 67. It was noted he had made improvements and was not tired on Stelazine. A couple of months later, on 13 Jan 68, the applicant presented to the emergency room (ER) for complaints of hyperventilation but reported no new anxiety-provoking incidents except that he continued to report disliking his work. He reported the same information to his psychiatrist a few days after his ER visit indicating his anxiety/hyperventilation was in response to or related to his dissatisfaction with his job/work. His satisfaction was reported to have improved when he was moved to another duty, administrative work, and this would again support the notion that his attitude or satisfaction was in reaction to the type of job/work he was performing. As mentioned previously, the applicant was command-referred to a psychiatric/mental health evaluation on 5 Mar 68 for his lackadaisical attitude and poor performance at his job. The results found that although he was immature, his immature traits were not sufficient to warrant a diagnosis of immature personality disorder. He was not given any mental disorder diagnosis from this evaluation and was not recommended for administrative separation action for any potential unsuiting mental health condition or medical discharge for any potentially unfitting mental health condition. There were no mental health symptoms such as anxiety, depression, sleep problems, etc. that were reported during this evaluation that may have caused his poor attitudes and behaviors. After this evaluation, the applicant continued to make complaints of anxiety/hyperventilation to his primary care manager (PCM) and was subsequently hospitalized for about three days. This time his records identified his problem, or emotional distress, was caused by a breakup with his girlfriend. He was given a diagnosis of adult situational reaction for the problem/distress by his psychiatrist. This issue, distress, or symptom appeared to have been abated as the applicant was reported to have no problems since his hospital discharge during his last mental health appointment or encounter with his psychiatrist on 17 Jul 68. A couple of months later, he received a separation physical examination and denied having any mental health condition or symptoms including anxiety/nervous trouble of any sort, depression or excessive worry, sleep problems, etc. His PCM confirmed his psychiatric clinical evaluation was normal and he was cleared for separation.

He contended he had separation anxiety from being away from home and chose to act out in inappropriate ways. Although it is possible this may have occurred, there is no actual evidence to corroborate his contention. There is no evidence he had separation anxiety, was homesick, and/or had family/anxious attachment issues during service causing his negative attitudes and behaviors. There is also no evidence his acts of misconduct, apathetic attitudes, and poor behaviors and performances that were described by his leadership were caused by his mental health condition. He did have anxiety, which was manifested as hyperventilation during service, but it was reported as in reaction to his dissatisfaction with his job and the termination of a relationship with a girlfriend. There is no evidence his anxiety or hyperventilation caused his repeated acts of misconduct and poor behaviors. Furthermore, he had poor attitude/behaviors and poor performance prior to the development of his anxiety/hyperventilation. Letters/statements from his leadership, dated 19 Oct 67, reported it was discovered he had obtained part-time employment at the Officer's Club without permission on 16 Oct 67 and was found sleeping while on post on 18 Oct 67. Other behavioral problems he had documented in these letters/statements without dates were being disinterested in his training, falling behind on his studies, and having poor dress appearances. He had been informed these behaviors could lead to disciplinary action and unfavorable/bad discharge. All of these problems had predated his first encounter with his psychiatrist on 20 Oct 67. He did not make complaints or meet with a provider for his job

dissatisfaction or problems until he was informed of the consequences of his behaviors. Despite receiving counseling sessions and disciplinary actions, his reported responses to these events were met with resentful attitudes and a lack of concern of his own volition. In fact, his rater stated in his first Airman Performance Report that the applicant wanted to get out of the service and “*would get it one way or the other.*” This indicated his repeated poor behaviors may have been purposeful, and he was aware of his actions. These behaviors are not mental health symptoms or derived from a mental health condition. There are differences between general poor behaviors and conduct and behaviors that are derived from a mental health condition. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of any of his misconduct. His medical provider from his first ER visit assessed he had no thought disorder, depression, or suicidal tendency, and his psychiatrist assessed he had no neurosis or psychosis. He was not given any mental disorder diagnosis, except an adult situational reaction for a different personal stressor, during service. There is no evidence his condition of adult situational reaction affected his attitude, behavior, or performance at work and this condition occurred well after the onset of his work problems. The applicant’s lack of interest in his work and poor attitudes/behaviors made him unsuitable and incompatible for continued military service, and he was discharged according to regulations. There were repeated reports that he was immature during service and he made this contention to the Discharge Review Board as well. It is acknowledged the applicant was 20 years old when he was separated from the Air Force. There were/are several service members that were/are the same age or near the same age as he when he was in the service, and they were able to adhere to rules, regulations, and procedures. His contention that he was immature is not compelling to support his request. Therefore, this psychological advisor finds no error or injustice with his discharge from a mental health perspective and there is insufficient evidence to support his request for an upgrade of his discharge based on his mental health condition.

Liberal consideration is applied to the applicant’s request due to his contention of a mental health condition. The following are answers 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 contends he had separation anxiety from being away from home and chose to act out in inappropriate ways.

2. Did the condition exist or experience occur during military service?  
There is no evidence the applicant had separation anxiety, was homesick or had family/anxious attachment problems during service. There is evidence he developed anxiety/hyperventilation in response to his work dissatisfaction and from a breakup with a girlfriend. He was evaluated by an ER physician and the physician reported there was no evidence or suggestion he had a thought disorder, depression, or suicidal tendency. He was assessed by his psychiatrist for a commander-referred psychiatric/mental health evaluation and he was assessed to be immature but did not meet the diagnostic criteria for immature personality disorder. The psychiatrist state there was no evidence he had neurosis or psychosis. He was not given any mental disorder diagnosis from this evaluation. He was given a diagnosis of adult situational reaction by his psychiatrist after his hospital discharge for his relationship stressor and this condition appeared to have been resolved because his psychiatrist reported during their last documented encounter he had no problems since his discharge and the applicant also denied having any mental health symptoms or condition including anxiety/nervous trouble of any sort, depression or excessive worry, sleep issues, etc. on his separation physical examination with his PCM.

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

There is no evidence the applicant's reasons for discharge of apathetic attitude, negative behaviors, and poor work performance were caused by his mental health condition. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of any of his documented misconduct. As stated previously, his records reflected he began to report or had anxiety/hyperventilation from the consequences, disciplinary action, of his behaviors. There is no evidence he had any mental health condition including anxiety that predated his conduct. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit C.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 2 Nov 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 Psychological Advisor and determines insufficient evidence has been presented to demonstrate a nexus between the applicant's mental health condition and the reason for his discharge. The applicant contends due to his separation anxiety, he acted out inappropriately, however, the Board determines there is no evidence he had any mental health condition or was in emotional distress impairing his judgment at the time of his documented misconduct. Further, the Board determines 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. Therefore, the Board finds since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh the original discharge. 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-2023-01991 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, dated 15 Jun 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Oct 23.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 2 Nov 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 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.

5/10/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF