



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02036

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His discharge was not handled properly, he was not convicted, and he was not allowed counsel from anyone he knew. He developed Post-Traumatic Stress Disorder (PTSD) due to being held at gun point during Operation DESERT SHIELD/STORM and did not realize until years later this was a PTSD incident he is currently working on. He had a "fairly issue free" career up until the point just prior to discharge.

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 31 Aug 92, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, Chapter 5, paragraph 5-47a, for a pattern of misconduct involving discreditable involvement with military and civilian authorities. The specific reasons for the action were:

- a. On 1 Nov 91, he made a false statement indicating he was of legal drinking age and would take a keg of beer from the shop party to the dorm. However, he took the keg with the intentions of taking the keg to another individual's house, not the dorm. He was stopped at the front gate where it was discovered he was not of legal age.
- b. On 15 Apr 92, he arrived for an appointment wearing an unserviceable uniform in addition to having an earring in his ear.

[REDACTED]
[REDACTED]
c. On 5 Jul 92, he wrote a bad check at the gas station to obtain merchandise, knowing he did not have sufficient funds in his checking account to cover the check upon its presentation to the bank.

d. On 6 Jul 92, he failed to follow technical data in removing a captive air intercept missile (AIM)-9L missile containing 1.4S (a specific type of classification) explosives from a munitions handling trailer.

e. On 8 Jul 92, he reported to work 30 minutes late.

f. On 26 Jul 92, he attempted to steal motor vehicle parts or accessories from J----- Auto.

On 24 Aug 92, the Staff Judge Advocate found the discharge action legally sufficient.

On 31 Aug 92, the discharge authority directed the applicant be discharged for pattern of misconduct involving discreditable involvement with military and civilian authorities, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 3 Sep 92, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern Discreditable Involvement with Military or Civilian Authorities" and he was credited with 2 years, 5 months, and 19 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 25 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 (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 25 Oct 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.

[REDACTED]

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 Air Force Review Boards Agency (AFRBA) Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. The applicant's service treatment records are unavailable for review so there are no records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. The existing records reflected there is no evidence or records he had a mental health condition or disorder such as anxiety, depression, PTSD, attention-deficit/hyperactivity disorder (ADHD), etc. impairing his judgment causing any of his documented misconduct leading to his discharge. He had submitted a few statements at the time of service to explain his behaviors or situation. He explained he was late to work because he blew his tire and had to install a spare tire. A few days later, the spare tire also blew, and he informed his leadership he was forced to and intentionally issued a check knowing he did not have sufficient funds in his checking account because he needed to buy a tire "on the spot" for his vehicle. He intended to transfer money to his checking account the following day to cover the check but was unable to until his lunch hour and by this time, his check had bounced. He was in a dire situation, and this was the reason for his decision to issue an insufficient funds check. He did not discuss having any mental health conditions or issues that caused his behaviors and no evidence his mental health condition impaired his judgment causing his behaviors. He did not provide any explanations for his remaining and numerous misconducts and it appeared some of the remaining misconducts were deliberate such as he was dishonest about his age, had no intentions of taking the beer keg to the dorm but to another individual's house, arrived for an appointment in an unserviceable uniform and wearing an earring, and attempted to steal motor vehicle parts or accessories from an auto shop or store. The explanations he provided for this petition also did not suggest or indicate his behaviors were caused by his mental health condition. He believed his discharge was handled improperly and marked "other mental health" on his application without identifying the type of mental health condition or disorder he had during service or discussing how his mental health condition may excuse or mitigate his discharge. His Department of Veterans Affairs (DVA) treatment records revealed he initiated mental health treatment at the DVA over 30 years after service for complaints of anxiety, depression, sleep problems, hypervigilance, poor concentration, ADHD, and PTSD. He was given diagnoses of anxiety disorder, unspecified, and ADHD with a rule out of PTSD. There were no discussions or reports in his DVA treatment records about how any of these conditions were related to or caused by his military service. There is no evidence he had any of these reported symptoms, conditions, or disorders during service. From his objective military records, there is no evidence or records to support his mental health condition had a direct impact or was a contributing factor to misconduct and subsequent discharge. His personal testimony alone for this petition was not compelling or sufficient enough to demonstrate his mental health condition was a causal or mitigating factor to discharge to support his request. Therefore, the Psychological Advisor finds no error or injustice identified with his 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 in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant marked "other mental health" on his application to the AFBCMR and did not identify the actual mental health condition or disorder he had. He did not discuss how his mental health condition or experience may excuse or mitigate his discharge.

2. Did the condition exist or experience occur during military service? The applicant's service treatment records are not available or submitted by the applicant for review. There are no records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. He began to receive treatment at the DVA about 30 years after discharge and had complaints of anxiety, depression, sleep problems, concentration problems, hypervigilance, ADHD, and PTSD. There is no evidence any of these conditions had existed or occurred during his military service.

3. Does the condition or experience actually excuse or mitigate the discharge? Since there is no evidence or records the applicant had any mental health conditions during service, his mental health condition does not actually excuse or mitigate his discharge. There is no evidence or records his mental health condition had a direct impact or was a contributing factor to his acts of misconduct resulting in his discharge from service.

4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate his discharge, his mental health condition also does not outweigh his 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 27 Feb 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 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 notes the applicant's contention his discharge was poorly handled, and he was not provided counsel; however, the Board finds 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. Furthermore, 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 as the Board finds no evidence the applicant was diagnosed with a mental health disorder during service. Nonetheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience 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.

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-2023-02036 in Executive Session on 17 Jul 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, dated 10 Jul 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration)

AFBCMR Docket Number BC-2023-02036

Guidance), dated 25 Oct 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Jan 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Jan 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.

4/18/2025

AFBCMR Docket Number BC-2023-02036