



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02564

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. Her "Uncharacterized" Entry Level Separation (ELS) be upgraded to honorable.
2. Her narrative reason for separation and corresponding separation code be changed to "Discharged During Training" JG7.

APPLICANT'S CONTENTIONS

Her service was honest and faithful, and she was discharged because of mental health difficulties due to her roommate's suicide. She is now service-connected for that event through the Department of Veterans Affairs (DVA) and her DD Form 214, *Certificate of Release or Discharge from Active Duty*, should reflect the nature of her service. Through no fault of her own, she was discharged and was not provided adequate mental health services.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Oct 03, DD Form 214, reflects the applicant received an ELS with an "Uncharacterized" service characterization after serving 1 month and 15 days of active duty. She was discharged, with a narrative reason for separation of "Erroneous Entry (Other)."

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

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

AFBCMR Docket Number BC-2023-02564

Work-Product

Controlled by: SAE/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

(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 14 Dec 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

AFI 36-3208, *Administrative Separation of Airmen*, dated 28 May 03, describes the authorized service characterizations that were applicable at the time of the applicant's separation.

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

Under Other than Honorable Conditions. 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 airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

The 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 her record. She contends she was discharged from service because of mental health difficulties following or related to her roommate's suicide; however, there are no records to substantiate this contention. There are no records confirming she had any mental health condition from this stressful event occurring during her brief time in the Air Force. Her service treatment records are not available for review and the applicant did not submit them to determine whether she had a mental health condition during service. She sought mental health treatment from the DVA almost 20 years after discharge and they were mostly related to her post-service stressors. She did report experiencing trauma from her roommate's suicide and was service-connected by the DVA for this condition. Nevertheless, service connection does not indicate causation or mitigation of her discharge. There is no evidence or records her mental health condition had a direct impact or was a contributing factor to her discharge. The applicant's DD Form 214 states she was discharged from service for "Erroneous Entry" and no other information is available to clarify why her entry into the Air Force was erroneous. Her discharge paperwork is not available for review, which would clarify the circumstances of her erroneous entry discharge. The reason for her discharge of erroneous entry

currently listed on her DD Form 214 is vastly different than the reason she provided in her petition. According to AFI 36-3208, the regulation she was discharged under, the basis for discharge for erroneous enlistment is when errors in the enlistment process occur when the Air Force does not have the true facts or does not take the right action. An airman is subject to discharge from an erroneous enlistment, reenlistment, or extension of enlistment if it would not have occurred had the relevant facts been known by the Air Force and the eligibility criteria of AFI 36-2002, *Enlisted Accessions*, and 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, had been followed; it was not the result of fraudulent conduct on the part of the member; and the defect is unchanged in any material respect. From this definition/criteria, the applicant's mental health condition deriving from her roommate's suicide has no relationship or nexus to her discharge reason for erroneous entry. She was discharged because she entered the service without meeting the accession standards to enter the Air Force and was discharged when disqualifying information was later discovered. Her discharge was related to conditions, problems, or situations that existed prior to her service, and her mental difficulties from her roommate's suicide occurred during her service. The applicant did not address her erroneous enlistment, nor did she discuss details of her actual discharge to her DVA providers. Even if she did address her discharge for erroneous entry, her discharge paperwork or documents revealing the reason for her discharge are still necessary to determine if there is any error or injustice with her discharge. Due to this issue, the presumption of regularity is applied and there is no error or injustice with her discharge to support changing her records as requested. Lastly, her request for an honorable character of service could not be supported because she served less than 180 days of continuous active military service, and her "Uncharacterized" character of service for ELS is in accordance with past and present regulations. There is no error or injustice with her service characterization.

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 contends she was discharged from service because of mental health difficulties following or related to her roommate's suicide for which she had been service-connected by the DVA. She believes her DD Form 214 should reflect the nature of her service and discharge as honorable.

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 is no evidence including from the limited available records her mental health condition from her roommate's suicide had existed or occurred during her military service. She reported to the DVA about 20 years after her service she experienced trauma from this experience.

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

There is no evidence the applicant's mental health condition from her roommate's suicide at BMT had a direct impact or was a contributing factor to her discharge for erroneous entry and in fact, she was not discharged from service for the reasons she provided in this petition. Her discharge paperwork is not available for review to assess the actual reason for her erroneous entry. Her

discharge reason for erroneous entry has no nexus to her mental health condition developed from her roommate's suicide. The reason she provided for her discharge is not supported by the available records. Due to the missing paperwork, the presumption of regularity is applied and there is no evidence of an error or injustice with her discharge. Therefore, her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate her discharge, her condition also does not outweigh her 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 29 Nov 23 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
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. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service and the applicant only served 1 month and 15 days of active service, therefore, the type of separation and character of service are correct as indicated on her DD Form 214. Additionally, 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 applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate her claim a mental health condition from her roommate's suicide at BMT had a direct impact or was a contributing factor to her discharge for erroneous entry. Since her discharge paperwork is not available for review to assess the actual reason for her erroneous entry, the Board applied the presumption of regularity finding no evidence of an error or injustice with her discharge. Therefore, her mental health condition does not excuse or mitigate her discharge. Furthermore, the Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. The DVA, operates under a different set of laws, Title 38, U.S.C., and is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. Therefore, the Board recommends against correcting the applicant's record. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records*

(AFBCMR). The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-02564 in Executive Session on 23 May 24 and 30 May 24:

Work-Product Panel Chair
s, 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 6 Aug 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 14 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Nov 23.
- Exhibit E: Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 14 Dec 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.

6/10/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF