



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03499

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. The narrative reason for separation of "misconduct" be removed.

APPLICANT'S CONTENTIONS

He was written up and discharged for coming to work late every day. He lived in a dorm off base and had to take the bus to get to and from work. After 9/11, buses stopped running because of schedule delays, as all vehicles were checked for bombs. He requested to move on base to get to work on time and was told there was nothing available. He had to rent a car to get to work because he was involved in a car accident, totaling his car. He suffered from post-traumatic stress disorder (PTSD) and depression from this event. He had severe driving anxiety, stress, panic attacks, and nightmares, which were undiagnosed. When he requested to speak to someone, he was told to suck it up, and stop being a baby. He had no way to get to work on time and received no help, only write ups. He was suicidal at this point due to the physical and mental pain with no support. He was told he was not a bad person but was not fit for the military. He has been dealing with chronic mental health issues since the car accident, but did not realize it. He thought the mental health issues would go away over time, but they only got worse. He was recently approved for Department of Veterans Affairs (DVA) health care in Apr 23. He never knew he was eligible after all of these years. When the mental illness symptoms started affecting his wife and children, he sought out help, not knowing what to expect. He was diagnosed with chronic PTSD and depression and is currently going through the trauma and recovery program.

In support of his request for a discharge upgrade, the applicant provides his DVA medical records and a mental health opinion.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

AFBCMR Docket Number BC-2023-03499

The applicant is a former Air Force airman (E-2).

On 10 Dec 01, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 20 Nov 00, a Letter of Reprimand (LOR) was issued for being involved in an altercation with several other security forces members at a downtown drinking establishment on or about 17 Nov 00.
- b. On 20 Feb 01, a Record of Individual Counseling (RIC) was issued for failure to go at the time prescribed to his appointed place of duty on or about 25 Jan 01.
- c. On 5 Mar 01, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for stealing a shirt of value of about \$22.00, the property of the Base Exchange (BX). The applicant received a reduction to the grade of airman (E-2), forfeiture of \$111.00 of pay, 15 days extra duty, and a reprimand.
- d. On 21 May 01, an LOR was issued for writing two worthless checks, totaling \$375.00, between on or about 1 Jan 01 and on or about 21 May 01.
- e. On 2 Nov 01, a Letter of Counseling (LOC) was issued for failure to go at the time prescribed to his appointed place of duty, on or about 2 Nov 01.
- f. On 21 Nov 01, an LOR was issued for failure to pay a just debt on divers occasions, between on or about 28 Sep 01 and on or about 21 Nov 01.

On 26 Dec 01, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 11 Jan 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with three years, five months, and six days of total active service.

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

POST-SERVICE INFORMATION

On 23 Apr 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative,

the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit D). The applicant replied on 22 May 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement detailing his time in service, the incidents which resulted in his discharge, and his life post-service.

The applicant's complete response is at Exhibit F.

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 23 Apr 24, the Board staff provided the applicant with 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 recommends denying the application, finding insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition. The applicant's claimed mental health conditions of PTSD and depression from a car accident appear to have occurred after his misconduct. At the time of the advisory, the applicant's basis for separation was not in his military file but could be surmised by his statement on his application and his military record, as repeatedly being late for work and stealing. While PTSD or depression can potentially excuse or mitigate lateness to work, in the applicant's case, his misconduct occurred before the incident the applicant claims caused his PTSD and depression. Additionally, the applicant's reason for his lateness was due to taking the bus causing him to be late, not any mental health symptoms or condition. His theft of items from the base exchange also occurred before the event which the applicant claims caused his PTSD and depression. Additionally, stealing is not part of the sequelae of symptoms associated with PTSD or depression and is therefore not a mitigating factor for his misconduct. For the above reasons, the Psychological Advisor concludes the applicant's mental health conditions are not mitigating factors for his misconduct of stealing and being late to work on multiple occasions. After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition which would mitigate his misconduct.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. It is reminded, liberal consideration does not mandate

an upgrade or a change to the records. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant stated he was involved in a car accident totaling his car on 28 Sep 01 and suffered PTSD and depression from this event.

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

The applicant has no record of any mental health treatment or diagnosis while he was in the military or at discharge. The applicant was diagnosed with PTSD and persistent depressive disorder approximately 21 years after his military service. The applicant's DVA record does not have a service connection for any mental health disorders, but the applicant submitted a nexus letter from a psychologist.

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

While PTSD or depression can potentially excuse or mitigate lateness to work, in the applicant's case, his misconduct occurred before the incident in which the applicant claims caused his PTSD and depression. Additionally, the applicant's reason for his lateness was due to taking the bus causing him to be late, not any mental health symptoms or condition. His theft of items from the Base Exchange also occurred before the event the applicant claims caused his PTSD and depression. Additionally, stealing is not part of the sequelae of symptoms associated with PTSD or depression and is therefore not a mitigating factor for his misconduct. For the above reasons, the Psychological Advisor concludes the applicant's mental health conditions are not mitigating factors for his misconduct.

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 also does not outweigh the 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 23 Apr 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. Section 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 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 had no mental health treatment or diagnosis during service. He was diagnosed with PTSD and persistent depressive disorder, approximately 21 years post-service and his record does not currently show service connection for any mental health disorders. Additionally, the applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, the applicant did not provide sufficient evidence to show he has made a successful post-service transition. The evidence he provides lacks references that demonstrate his character and service to the community. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, and/or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request 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

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Work... Work-Product

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-2023-03499 in Executive Session on 18 Jun 25:

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, w/atchs, dated 22 Oct 23.

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

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 17 Apr 24.

Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 23 Apr 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Apr 24

Exhibit F: FBI Report, w/atchs, dated 22 May 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.

6/26/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2023-03499

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