



*Work-Product*

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER: BC-2023-03767**

*Work-Product*

**COUNSEL: NONE**

**HEARING REQUESTED: NO**

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**APPLICANT'S REQUEST**

His bad conduct discharge (BCD) be upgraded.

**APPLICANT'S CONTENTIONS**

Incidents that occurred while in Germany contributed to his ultimately being discharged with a BCD.

In support of his request, the applicant provides a personal statement and information about an aircraft accident.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 17 Jul 86, the convening authority published Special Court-Martial Order Number 11. The Order stated the applicant pled guilty to one charge and one specification of wrongful use of marijuana (Article 112a). He also pled guilty to a second charge, and three specifications of dishonorably failing to pay an individual, failure to maintain sufficient funds for check payment, and failure to maintain sufficient funds for check payment (Article 134). The applicant was sentenced to confinement for two months, forfeiture of pay for two months, reduction to the grade of airman basic, and discharge from the service with a BCD.

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

**POST-SERVICE INFORMATION**

**AFBCMR Docket Number BC-2023-03767**

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On 2 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 (FBI); however, he has not replied.

### **APPLICABLE AUTHORITY/GUIDANCE**

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the UCMJ (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 (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 Apr 24, 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.

**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 has reviewed the available records and finds the applicant's contentions plausible. There is evidence he was stationed at Zweibrucken Air Base, Germany, and he was performing duties as an Apprentice Aircraft Maintenance Specialist at the time of the mid-

air collision occurring on 8 Jan 86. Thus, he may have witnessed the catastrophic traumatic events as reported. The applicant stated he coped with these traumatic experiences with alcohol and drugs and is it comprehensible that may do so because coping with trauma with substances is not unusual. The applicant reported to his provider at the Department of Veterans Affairs (DVA) he began having alcohol issues in 1978 (he reported 1979 in his petition to the AFBCMR) when he was in the National Guard/Army. Either way, his alcohol issues would be considered a prior service condition as they had predated his time in the Air Force. However, since he witnessed a traumatic event during his time on duty with the regular Air Force and based on his statement his alcohol and drug use had increased in frequency and severity since the collision, this would demonstrate his prior service condition was aggravated by his military service with the regular Air Force. The applicant was convicted at special court-martial for marijuana use and being financially irresponsible. One of his offenses/specifications of issuing checks with insufficient funds had occurred in Sep 85 and Nov 85 respectively, and these offenses had occurred before the mid-air collision incident. His trauma from the collision could not have caused these acts of misconduct due to the timeline of events. Nevertheless, most of his convicted offenses had occurred after the mid-air collision incident and it would be reasonable to assume that he had a noticeable behavioral change of reckless and destructive behaviors following the incident. The applicant did not discuss the mid-air collision incident and its effects on him in his clemency statement at the time of service. He did address this issue in his petition explaining that he never discussed the traumatic experiences but rather blacked them out with alcohol and drugs; he had substance dependency problems for over 30 years as a result of his trauma. Avoidance is a symptom of trauma or post-traumatic stress. The applicant was never diagnosed with PTSD or any other trauma or other stressor-related disorders during or after service, but he was diagnosed with anxiety and depression from his traumatic experiences. Despite no official trauma or stressor-related diagnosis, the applicant was able to articulate his trauma symptoms and behaviors to his provider at the DVA and in his petition. Thus, the Psychological Advisor opines the applicant provided compelling testimony and evidence to support this request, and his request for an upgrade of his BCD is supported based on liberal consideration.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition and traumatic experiences. The following are answers to the four questions from the Kurta Memorandum from the available records for review. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant contends he witnessed the traumatic events of a mid-air collision and its aftermath while stationed at Zweibrucken Air Base, Germany in Jan 86 which caused him to cope with alcohol and drugs causing his financial problems and leading to his BCD.
2. Did the condition exist or experience occur during military service?  
There is evidence that the applicant was stationed at Zweibrucken Air Base, Germany, and he was performing duties as an Apprentice Aircraft Maintenance Specialist at the time of the mid-air collision occurring on 8 Jan 86. Thus, he may have witnessed the catastrophic traumatic events as reported. One of his convicted offenses at special court-martial was marijuana use, which occurred in Feb 86, one month after the incident. It is possible that he coped with his trauma with drugs as

contended. He was never diagnosed with PTSD, but he was diagnosed with anxiety and depression developed from his traumatic experiences by his post-service providers.

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

The applicant's testimony and submitted evidence were found to be plausible and compelling and were somewhat corroborated by his military records. There is evidence the trauma he experienced during service led him to use drugs to cope with his mental health condition and engage in misconduct of financial irresponsibility. Therefore, his mental health condition developed from his traumatic experiences would excuse and mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition caused by his traumatic experiences excuses or mitigates his discharge, his condition and experiences also would outweigh his original discharge to support his request for an upgrade of his 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 19 Aug 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 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends granting the applicant's request to upgrade his characterization of service to general and change his separation code to JFF with the corresponding narrative reason for separation of Secretarial Authority based on liberal consideration. The Board concurs with the Psychological Advisor, most of the applicant's convicted offenses occurred after the mid-air collision incident and it would be reasonable to assume he had a noticeable behavioral change of reckless and destructive behaviors following the incident. Despite no official trauma or stressor related diagnosis, the applicant was able to articulate his trauma symptoms and behaviors to his provider at the DVA and in his petition. Therefore, the Board recommends the applicant's records be corrected as indicated below.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 14 May 87, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

**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-2023-03767 in Executive Session on 30 Oct 24:

- Work-Product**, Panel Chair
- Work-Product**, Panel Member
- Work-Product**, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: DD Form 149, w/atchs, dated 14 Nov 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF MRBC, w/atchs (FBI Bulletin with Fundamental Fairness), dated 2 Apr 24.
- Exhibit D: Advisory AFRBA Psychological Advisor, dated 30 Apr 24.
- Exhibit E: Notification of Advisory, w/atchs, SAF MRBC to Applicant, dated 19 Aug 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.

12/10/2024

X **Work-Product**

**Work-Product**  
 Board Operations Manager, AFBCMR  
 Signed by: USAF