



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-03843

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable due to misdiagnosed or undiagnosed Post-Traumatic Stress Disorder (PTSD).

### APPLICANT'S CONTENTIONS

After returning from deployment, he had severe sleep issues, and is currently rated 70 percent from the Department of Veterans Affairs (DVA). In support of his request for clemency, the applicant provides a personal statement and a DVA benefits letter.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 15 Aug 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49, for minor disciplinary infractions. The specific reasons for the action were:

a. On 6 Aug 94, he was late for duty and received a Letter of Counseling (LOC) which was placed in his Unfavorable Information File (UIF).

b. On 25 Aug 94, he was late for duty again and received a LOC. His LOC or Record of Individual Counseling reported his supervisor had contacted his medical provider for his problems of being late for the fourth time, who had then referred him to a sleep study and possible workup for epilepsy. The results of the sleep study were not revealed or reported in his existing military records.

c. On 29 Sep 94, he failed to accomplish his duties and was disrespectful to an officer. He received a LOC.

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

d. On 2 May 95, he was 65 minutes late for duty and out of uniform standards. He received a LOC.

e. On 5 May 95, he disobeyed a lawful order by failing to appear for a mandatory staff meeting and received a Letter of Reprimand (LOR).

f. On 8 May 95, he violated a lawful general order by not having rank insignia on his uniform and received a LOR.

g. On 9 May 95, he failed his dormitory room inspection and received a LOC.

h. On 23 May 95, he made several dishonest statements to his First Sergeant concerning his rental lease agreement. He received a LOR.

i. On or about 5 Jun 95, he was derelict in the performance of his duties by failing to wear the proper uniform for squadron detail, and on or about 5 Jun 95, he wrongfully and without authority wore upon his uniform the insignia or grade of airman. He received an Article 15.

j. On 07 Jul 95, he reported for duty wearing white socks with his black low-quarter type shoes, a violation of AFI 36-2903, *Dress and Personal Appearance*. He received a LOR.

k. On 10 Jul 95, he reported late for duty and received a LOR.

l. On 29 Jul 95, he was derelict in the performance of his extra duties as punishment under Article 15 action. He received a LOR.

On 30 Aug 95, the Staff Judge Advocate found the discharge action legally sufficient.

On 31 Aug 95, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 5 Sep 95, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 10 months, and 18 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 12 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

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 12 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.

## AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records, and finds they partially corroborate the applicant's contentions. There is evidence he was deployed, served, on Temporary Duty (TDY), or was working in [Work-Pr...] sometime during the Enlisted Performance Report (EPR) rating period of 20 Oct 93 to 19 Jun 95. Although his military records did not specify exactly when he went to [Work-Pro...] he stated he was approached by a colonel in Dec 94 or early Jan 95 to go to [Work-Prod...] for the humanitarian assignment. He most likely went to [Work-Pro...] shortly after this time frame. He may have witnessed and experienced traumatic events from this TDY as he contended; however, there is no evidence he developed or had PTSD or a similar condition from his TDY experiences during service. His service treatment records are not available or submitted by the applicant for review and the available records find no evidence of any PTSD or symptoms he may have had at the time of service. He contended in his petition he had PTSD symptoms of anger, rage, anxiety, depression, sadness, sensitivity to sounds, feeling guilty, isolation from others, hypervigilance, mistrust of others, and suicidal thoughts. He reported to his provider at the DVA he had PTSD symptoms of feeling depressed sometimes, isolating himself, poor sleep due to having nightmares, having recurrent and intrusive recollections of his traumatic events, becoming distressed when reminded of cues of his trauma, persistently avoiding stimuli that reminded him of his trauma, and would experience hypervigilance and exaggerated startle reaction. Except for sleep problems and possible anger issues, there is no evidence or records he had or experienced the remaining reported PTSD symptoms. He may have had a delayed expression or onset of PTSD and his symptoms may take time to develop causing him to meet the diagnostic criteria for PTSD over 20 years after his traumatic experiences and his military discharge. He also claimed he was misdiagnosed or undiagnosed during service and there is no evidence to support this claim. The applicant stated he believed he had nocturnal seizures and was sent to a base in [Work-Prod...] to do a study. His military records reported a similar situation but not for this condition. His Record of Individual Counselling (RIC) dated 25 Aug 94 reported he was referred to a medical provider because of his frequent tardiness and the medical provider referred him to a sleep study and possible workup for epilepsy. The results of the sleep study or workup were not reported in his records so there is no evidence or records he had an actual sleep condition or disorder during service. There is no evidence or records he was given a diagnosis of sleep disorder, epilepsy, or nocturnal seizures during service. There is no evidence or records these conditions were caused by or related to his traumatic events on TDY or were symptoms of PTSD. The applicant was referred to a sleep study in Aug 94 before he went on TDY to [Work-P...] near or around Dec 94 or early Jan 95.

This timeline of events indicated his sleep problems predated his TDY and therefore, it is not possible his traumatic events from TDY caused him to develop sleep problems as he claimed. His military records do not support his contention. Also using the same timeline, he had misconduct problems before his TDY: he was late for duty on at least two occasions, failed to accomplish his duties, and was disrespectful to an officer. He claimed he had never been late, was never questioned about his lack of focus, and did not complete his work before his TDY. His military records dispute his claims. There is no evidence he had a mental health condition at the time of his pre-TDY misconducts and the applicant also stated he had no problems before his TDY. The majority of his misconduct problems did occur after his TDY and it does not appear that his mental health condition caused most of his behavioral problems. He had made comments or provided explanations for his problems/misconduct at the time of service. He explained he failed his dormitory room inspection because he worked at night, ate in his room after work, and threw the containers in the trash. He did not have time to empty his trash because he was sleeping. He failed to wear the proper uniform because he forgot to check the duty schedule but knew his uniform was the battle dress uniform (BDU) at least two weeks in advance. He claimed he was not on the lease, had paid his roommate for rent, and owed money to his roommate because he had hit a deer with his roommate's car, which was found to be false information. He was late for a meeting and out of uniform because he did not hear the Charge of Quarters (CQ) waking him up and his uniform was dirty, and was late previously because he had issues with his alarm clock and needed to buy a new alarm clock. These explanations do not demonstrate his misconduct or problems were caused by having a mental health condition. He did not address all his misconducts as well, but the benefit of the doubt is given to the applicant that his mental health condition may have caused some of his misconducts, especially being late to work due to his sleep problems. However, a review of the available records finds his mental health condition did not cause, had a direct impact, or was a contributing factor to most (and more serious misconducts) of his misconducts that led to his discharge from service. It is acknowledged the applicant had been given service connection from the DVA for PTSD but the service connection does not indicate causation or mitigation of the discharge. Service connection means the condition was somehow related to his service and not necessarily the cause of his discharge. Thus, the Psychological Advisor finds no error or injustice with his discharge from a mental health perspective. His contention and submitted records were found to be not sufficient or compelling 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 the contention of a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. The following are responses 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 contended he experienced several traumatic events while he was on TDY in [redacted] and developed PTSD from these experiences. He said he was asked by a colonel to go to [redacted] for a humanitarian assignment around the time frame of Dec 94 or early Jan 95. When he returned from his TDY, he began to experience sleep problems, a lack of focus, and was believed to have nocturnal seizures and was referred to a study for the latter condition. He believed these problems caused his discharge. He was unaware of these stressors and mental health issues and claimed he

was misdiagnosed or undiagnosed during service. Since his discharge, he had been diagnosed with PTSD and received service connection by the DVA for PTSD at 70 percent effective 1 Feb 22, 27 years after discharge.

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

There is evidence the applicant was on TDY to [Work-Pr...] sometime during the rating period of 20 Oct 93 to 19 Jun 95. The exact time frame of when he was in [Work-Pr...] was not documented in his available records. There is no evidence he had PTSD or a similar condition during service. There is no evidence he was misdiagnosed or undiagnosed during service as contended. He was diagnosed with PTSD and service-connected for this condition by the DVA over 20 years after service. There are records his leadership was concerned by his repeated tardiness and referred him to a physician/medical provider. The medical provider referred him to a sleep study and for possible workup for epilepsy. The results of the sleep study were not documented in the available records. There was no report or indication his sleep problems were from his traumatic experiences or a symptom of PTSD.

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

According to the timeline of events that was provided by the applicant and from his military records, he had tardiness and misconduct problems prior to his TDY to [Work-Pr...]. The majority of his misconducts did occur after his TDY to [Work-Pr...], but the explanations he provided at the time of service in response to his misconduct and disciplinary actions do not indicate they were caused by his mental health condition. Giving the applicant the benefit of the doubt that his mental health condition developed from his TDY experiences may have occurred despite no records to corroborate this notion, his mental health condition may have caused some of his misconducts but did not cause most of them, or his more serious misconducts. There is no evidence or records that his mental health condition had a direct impact or was a contributing factor to his discharge. Therefore, his mental health condition or traumatic experiences do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition or traumatic experiences do not excuse or mitigate his discharge, his mental health condition also does not outweigh his original 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 9 Jul 24 for comment, along with consolidated clarifying guidance regarding liberal consideration for mental health condition(s) (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 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. There is insufficient evidence to show his mental health condition had a direct impact or was a contributing factor to his discharge. Thus, his mental health condition or traumatic experiences do not excuse or mitigate his discharge. Therefore, the Board recommends against correcting the applicant's record.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## 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-2023-03767 in Executive Session on 30 Oct 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, w/atchs, dated 22 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 12 Apr 24.
- Exhibit D: Advisory AFRBA Psychological Advisor, dated 5 Jul 24.
- Exhibit E: Notification of Advisory, w/atchs, SAF\_MRBC to Applicant, dated 9 Jul 24.

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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.

11/12/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2023-03843**

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