

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00134

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to:

- a. Upgrade his general (under honorable conditions) discharge to an honorable discharge.
- b. Restore his rank (**additional request submitted in the applicant's response to the advisory opinion**).
- c. Change his reenlistment code (**additional request submitted in the applicant's response to the advisory opinion**).

APPLICANT'S CONTENTIONS

According to the applicant's counsel, he served in an arduous, high-tension environment at Royal Air Force (RAF) Bentwaters, where he experienced intense hostility between American forces and British pacifists, particularly for airmen living off-base, questionable flightline overuse of hazardous materials, and on-base feeding with ground meat infected with Bovine Spongiform Encephalopathy, the cause of Mad Cow disease in humans.

Later, this proven superb worker suffered two life-changing head/body injuries, an unprovoked assault by a local criminal and, eight months later, a devastating car crash. Both were in the line of duty, and neither were the applicant's fault. He developed symptoms similar to Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) and his solid performance tanked. The applicant was a different man. There is no question the applicant's prior performance was impressive and suddenly the quality of his work nose-dived. The applicant cites successful training, excellent prior Air Force records, and initial top-notch performance at RAF Bentwaters. His performance had been exemplary; only after the two assaults did the chain of command begin to fault him. Counsel provided a detailed account of the applicant's service, which included multiple applicant statements supporting his service history as well as historical/political references to the time period in England. According to counsel, the applicant had to live off-base, in a poor city where petty crime was common. He had at least two tires slashed because of his required car base sticker. Counsel contended airmen were forbidden to fight back and ordered to avoid confrontation at all costs.

The applicant points to the failure of his Air Force leadership to provide him medical attention after his two severe injuries. After the applicant's work deteriorated, no one asked what had gone wrong. Nothing triggered a thorough medical review prior to his early separation. The applicant's current disabling medical situation triggered by his experience in England is confirmed by several medical professionals.

Counsel further contended the applicant was served contaminated beef on base, exposing him to Mad Cow disease, and he is banned for life from giving blood or organs as a result of this exposure. To this day, the applicant worries a cruel death may come at the hands of this dreaded disease. Mad Cow disease is only diagnosed by autopsy. Additionally, per counsel, the applicant experienced stress, endless bouts of bronchitis, infections, and a severe rash all over his body,

likely aggravated by the freezing cold weather, combined with strong chemicals used to clean the aircraft. He was constantly exposed to toxic benzene, trichlorethylene, freon, uranium dust, and various isotopes required for the A-10 gun and engine bearings. Physically, the applicant was consistently covered in hives. He suffered from infected dermatitis, which bled frequently, as noted in his medical records. The applicant's service record also confirms he was treated with Atarax. This strong depressive drug had troubling side effects such as drowsiness and inattention, which may have reduced the applicant's productivity.

Atop these concerns, the applicant sustained two serious head injuries between Apr 83 and Nov 83. Today, these injuries would be considered immediately life threatening. Sadly, the applicant's unforgiving supervisors somehow dismissed everything that happened to him as simply a defective attitude. According to counsel, the applicant was struck by a filled one-quart milk bottle, in a downward motion, and was dragged feet-first down concrete stairs. Counsel provided a detailed account of the assault. No one in his chain of command sent him to the Air Force clinic. To the contrary, the applicant was written up for being late. In the months that followed, the applicant began to suffer serious daily migraine headaches. His prior excellent performance tanked. The applicant's leadership remained clueless that something might be wrong, and the applicant received no assistance or counseling. The applicant reported to sick call; however, CAT or MRI machines were not available at the base. Instead, the applicant was prescribed aspirin, ice, and darkness.

Later, in Nov 83, the applicant sustained a serious blow to his head on the steering wheel and broke his arm in a head-on collision which completely destroyed his car. Counsel provided a detailed account of the accident and injuries. The applicant's second debilitating incident went virtually ignored by his Air Force superiors. Despite his arm being in a cast for eight weeks, the applicant was never given lighter duty or time off. He was in the cast for the remainder of his term, driving his car and working with his right hand restrained in a cast.

The applicant's ailments went deeper. He now began to have friction with his chain of command. He was late because he could only afford to rent ancient, barely running jalopies to get to work; they frequently broke down, making him late. The applicant's requests to move into the on-base dormitory were rejected again and again. The applicant insists his two severe head injuries likely created emotional and physical problems triggering his sudden second-rate performance. Physically, the applicant returned to work right after each of the assaults. He was heavily bandaged, and his arm was in a cast. The applicant was concussed and had a serious scalp wound. Emotionally, the applicant's condition indicated pronounced stress. He was unable to sleep, endured bad headaches, and was extremely edgy. Peers confirm the applicant became a changed man after the two severe assaults. Consistent with after-effects of concussion, the applicant suddenly lost his former restraint and discipline. His doctor later confirmed the applicant suffers from PTSD as a result. The applicant's declining work is confirmed by hugely plummeting evaluations, mediocre career development test results, and counseling for lack of attention. Counsel provided detailed examples of these incidents. The applicant's superiors made no effort to find out what was happening with him. The applicant maintains his two Article 15s for tardiness were directly related to his injuries. Counsel provided a detailed account of the nonjudicial punishment (NJP) actions. However, no genuine rehabilitation was attempted. The applicant's squadron never offered assistance.

Counsel further contended the applicant was treated far more harshly than others. Counsel provided a statement and comments from two other airmen in support of this contention, asserting they are particularly disturbing in light of Department of Defense Instruction 1332.14, *Enlisted Administrative Separations*, which mandates counseling and rehabilitation, together with an opportunity for the recipient to overcome those deficiencies. Such counseling/rehabilitation is a prerequisite to separation. The applicant begged for one last chance, but probation/rehabilitation was denied.

Counsel provided details regarding the applicant's post-service life. The applicant sought counseling with the Department of Veterans Affairs (DVA) in 1984 for what occurred in England but became disenchanted. He earned his bachelor's degree in 1990 with a concentration in marketing and finance. The applicant later did extensive post-graduate work in advanced engineering. While attending classes, the applicant worked with the DVA and his college art department photographing and producing multi-presentations used by both agencies. As a good citizen, the applicant pursued a career working with water purification. He has designed and supervised the production of clean water manufacturing facilities throughout the world. The applicant notes his water treatment systems produce pure water for drugs manufactured in both the United States and Mexico, and he offers free consulting to activists regarding water safety and environmental protection.

Counsel provided a detailed analysis of why the applicant failed, highlighting the injuries sustained in the assault and car collision. Counsel then presented detailed information regarding the applicant's contention that he was seriously handicapped by concussion/TBI and PTSD, to include excerpts from, and reference to, medical journals and articles. Counsel concluded his contentions with reference to the chronology of events and reiterated the lack of support received by the applicant.

In support of his request for a discharge upgrade, the applicant provides a performance/injury timeline, excerpts from his medical records, two Airman Performance Reports (APR) (1982/1983), a copy of his resume, letters of support, supporting photographs, court documents, journal articles regarding head injuries, PTSD, and TBI, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 May 83, according to AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, the applicant was issued NJP under Article 15, Uniform Code of Military Justice (UCMJ) for:

- Violation of Article 86:

- [the applicant] did, at RAF Bentwaters, Suffolk, England, on or about 4 May 83, 9 May 83, and 10 May 83, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: **Attorney-Client**.

The applicant was ordered to forfeit \$150.00 of his pay.

On 1 Dec 83, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Article 86:

- [the applicant] did, at RAF Bentwaters, Suffolk, England, on or about 22 Nov 83, without authority, failed to go at the time prescribed to his appointed place of duty, to wit: **Attorney-Client**, **Attor...**.

The applicant was reduced to the grade of airman (E-2) and ordered to forfeit \$150.00 of his pay.

On 7 Feb 84, the applicant received a general (under honorable conditions) discharge in the grade of airman (E-2). His narrative reason for separation is "Misconduct – Pattern Discreditable

Involvement with Military or Civil Authorities” and his reenlistment code is “2B” [Separated with a general or under other than honorable conditions discharge]. The applicant was credited with 2 years, 5 months, and 12 days of total active service.

On 2 Feb 86, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

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

POST-SERVICE INFORMATION

On 23 Feb 84, 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 C). The applicant replied on 25 May 84 and provided an FBI report. According to the report, the applicant was arrested on 25 Apr 86 for DUI [Driving Under the Influence], Alcohol/Drugs. The applicant provided a copy of his post-service resume with his original application.

The applicant’s complete response is at Exhibit D.

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 Feb 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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge based on his mental health condition, TBI, or traumatic experiences.

This Psychological Advisor has reviewed the available and submitted records and finds the applicant's and his legal counsel's contentions compelling and plausible; however, insufficient evidence has been presented to support his request. The applicant's full service treatment records are not available or submitted for review and there are no clear records to confirm he sustained a TBI from being physically attacked/assaulted and from a car crash or that he developed PTSD from these experiences during service. There is evidence submitted via a court document, dated 10 Apr 83, stating the applicant was assaulted and incurred bodily harm but the extent of his bodily harm was not specified. A letter from an individual from Suffolk County Council, dated 27 Feb 18, attested to witnessing the applicant's assault that occurred on 10 Apr 83. His separation physical examination on 18 Jan 84 reported the applicant's right forearm and hand were in a cast, which could imply this injury was from a car crash. Contrary to these records, psychological examinations, and evaluations from three psychologists for DVA compensation purposes occurring in 2019 and 2022 all stated either the applicant does not have a diagnosis of TBI or there was no suggestive evidence of a TBI as a neurological impairment. The applicant did receive brief outpatient psychotherapy/mental health treatment services starting a couple of months or within one year after his military discharge, and there was no report or evidence he had a TBI. In fact, it was reported the applicant's memory was intact or he had no identified cognitive problems. His reported presenting problems at the time were with his military discharge, his discord with his parents, and relationship stress with his girlfriend who resided in England. There was no discussion of any head trauma/TBIs or any traumatic experiences. Also, during this iteration of

treatment, the applicant received a physical examination on 14 Jun 84. His neurologic and psychiatric examinations were all within normal limits and there was no report or evidence of any TBI or head injuries. His post-service medical providers, primary care physician, and neurologist did not quite confirm the applicant had a TBI and their reports were based on his self-reports. His primary care physician also cautioned the information obtained was based on the applicant's self-reports and there were no medical records available for review or to substantiate his reports. His contention and application to the AFDRB in 1986 also found no reports or contentions of any head injuries/TBIs or PTSD. Since the applicant contended he sustained a TBI, and there is some evidence to suggest he may have had this condition, it is accepted he had sustained a TBI or two during service to give the applicant the benefit of the doubt. It is also accepted the applicant's two Article 15s for failure to go could be caused by his TBI.

There is no evidence the applicant had PTSD during service. The applicant was not diagnosed with PTSD until 2022, which is about 38 years after his discharge from the military. Prior to his psychological evaluation in 2022 when he was given this diagnosis, two psychologists in 2019 both independently found the applicant did not meet the diagnostic criteria for PTSD. It is also noted the reports of his traumatic experiences from these three evaluations also differ and are inconsistent with one another. The evaluating psychologist in 2022 specified the applicant had a "delayed expression" of PTSD indicating he had a delayed onset of PTSD. Delayed onset for PTSD is not an uncommon occurrence as it may take time or years for symptoms to develop and become clear to meet the diagnostic criteria for PTSD. It appeared the applicant met the diagnostic criteria for PTSD in 2022 at the time of that evaluation. During this evaluation in 2022, he reported having intrusive memories, thoughts, feelings, etc., of the traumatic events, avoidance issues, depressed mood, hypervigilance, flashbacks, exaggerated startled responses, sleep disturbances and nightmares, poor concentration, and anger and irritability problems to name a few symptoms. There is no evidence the applicant experienced any of these symptoms during service. His post-service treatment records almost immediately after his discharge in 1984 also found no reports of these symptoms or any PTSD symptoms. He was not given a diagnosis of PTSD but an Adjustment Reaction of Adolescence or Adjustment Disorder due to his difficulties adjusting from the military to civilian life and his situational stressors of family and relationship problems. Since there is no evidence the applicant had PTSD during service, there is no evidence his condition of PTSD had a direct impact on his functioning and discharge from service.

There is evidence the applicant experienced a decline in duty performance after his TBI or reported traumatic experiences as his Article 15s were given to him for misconduct occurring after his first physical assault in Apr 83. Nevertheless, the applicant was in the service for a little over a year and it can be difficult to definitively declare it was his TBI that caused the decline in performance. His APR for the rating period of 11 Nov 82 to 10 Nov 83 reported the applicant had interpersonal difficulties with his peers and supervisors and had problems with his social and domestic affairs. The applicant's endorsers or raters found him to be a capable and intelligent airman. There was no report of any TBI or mental health condition that caused any of these issues. His On-the-Job training records revealed the applicant had problems completing and turning in his career development course (CDC) assignment as early as Dec 82, which pre-dated his first TBI. He was already having occupational problems prior to his TBI. When given the opportunity to re-test, given extra time to study, and provided with additional instructions, he was able to pass his CDC exams. About two months after the applicant's first TBI, it was reported on 6 Jun 82¹ he had passed his re-test with a 90 percent. The applicant would not be able to achieve this high score after a supposed serious head trauma. This does not indicate he had a severe or serious TBI or PTSD or had significant neurological or cognitive impairment that would impair his overall functioning.

¹ Typographical error. Applicant's passing re-test occurred on 6 Jun 83.

Although it is possible the applicant had sustained head injuries or TBIs and, later (after service), developed PTSD from his traumatic experiences, this Psychological Advisor cannot confidently find a nexus between his TBI and/or mental health condition and his discharge from service. This is because the applicant's official discharge paperwork is missing from his military personnel records and the applicant and his legal counsel did not submit his discharge paperwork for review. His objective military records revealed the applicant received at least two Article 15s during service for failing to go on numerous occasions. His commander also reported he received a Letter of Counseling for failure to go and was counseled on his duty performance. These counselings were not included in his military records. It is possible the applicant had other misconduct problems in addition to these issues and it is possible he had misconduct problems prior to his TBIs. Without the vital record of his discharge paperwork, it could not be determined there is an error or injustice with his discharge, that his TBIs or mental health condition were contributing factors to his discharge, or that his TBIs or mental health condition could excuse or mitigate his discharge. Presumption of regularity is applied, and there is no error or injustice identified with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his contention of sustaining two TBIs and developing PTSD from his traumatic experiences occurring during his time in service. It is reminded liberal consideration does not mandate an upgrade. 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 and his legal counsel contended he sustained two TBIs during service from being physically assaulted with a glass milk bottle in Apr 83 and from a car crash occurring in Nov 83. They claimed he developed PTSD from these incidents. They reported from these traumatic experiences, the applicant had sleep problems, headaches, drowsiness, and inattention problems which caused a decline in performance and led to his subsequent discharge.
2. Did the condition exist, or experience occur, during military service?
The applicant's full service treatment records are not available or submitted for review so there is no clear evidence he was given a diagnosis of TBI or PTSD during service. There is evidence from a court document dated 10 Apr 83 the applicant was assaulted and sustained bodily harm that was not specified. A witness statement attested to the applicant sustaining a TBI from being physically assaulted and requiring medical treatment. The applicant's separation physical examination performed on 18 Jan 84 reported his right forearm and hand were in a cast indicating these injuries may be caused by a car crash. There is no evidence to substantiate the applicant had migraine headaches, sleep problems, or inattention problems during service, but given the applicant the benefit of the doubt, there is some evidence his TBI and traumatic experiences had existed and occurred during his military service. There is no evidence the applicant had PTSD during service. He was diagnosed with PTSD about 38 years after discharge and after two previous evaluations had determined he did not meet the diagnostic criteria for PTSD. The evaluating psychologist specified the applicant's PTSD was a delayed expression or he had a delayed onset of PTSD; so, it appeared he developed PTSD decades after his traumatic experiences.
3. Does the condition or experience excuse or mitigate the discharge?
There is evidence the applicant had performance issues such as failing his CDC exams and having interpersonal difficulties with his peers and leadership prior to his TBIs or traumatic experiences. There is evidence the applicant had a decline in his performance and had misconduct problems occurring after his traumatic experiences. The applicant's official discharge paperwork is not available for review so it could not be determined definitively that his condition of TBI or PTSD from his traumatic experiences may have caused, excused, or mitigated his misconduct and discharge. Presumption of regularity is applied and therefore, his mental health condition, TBI, 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 including PTSD or TBI or traumatic experiences do not excuse or mitigate his discharge, the applicant's mental health condition or TBI or traumatic experiences also do 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 23 Feb 24 for comment (Exhibit F), and the applicant replied on 25 May 24. Throughout his response, the applicant reiterates his contentions from his original application. Additionally, he contended the Psychological Advisor misread the date formats and reached an erroneous conclusion and recommendation to the Board due to the differences between the European date format and the standard used in the United States. The date and the month are reversed in these formats. This has not been considered by the Psychological Advisor and resulted in seven months of errors in the timeline causing an erred recommendation to the Board. The applicant asked the Board to reject the advisement of the Psychological Advisor and concur with the DVA board adjudication that PTSD and Major Depressive Disorder (MDD) were present, observed, and reported in 1983, was untreated and present to date, and evidenced at that time. The applicant reiterated a detailed summary of his injury timeline and DVA decision.

The DVA established a nexus for PTSD/MDD from 1983 with multiple head injuries, and untreated injuries, all noted by members of the applicant's unit, and determined it is likely these caused his performance decline and subsequent discharge. Per the applicant, the Psychological Advisor submitted conclusions to the Board without direct examination of the applicant, which is in direct violation of the Goldwater Rule, which also prohibits long-distance analysis of an absent patient. The American Psychiatric Association (APA) reaffirmed and strengthened the Goldwater Rule in Mar 17, stating it applies not only to a diagnosis but also to "an opinion about the affect, behavior, speech, or other presentation of an individual that draws on the skills, training, expertise, and/or knowledge inherent in the practice of psychiatry."

The applicant provided the following responses to the four questions outlined in the Kurta Memorandum in support of his request for liberal consideration:

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

The DVA has determined based on the evidence submitted the applicant suffered from both PTSD and MDD as early as 1983. In addition to the conclusions by the DVA, the applicant has submitted additional evidence he sustained two TBIs during service from being physically assaulted with a glass milk bottle in Apr 83 and from a car crash occurring in Nov 83. Evidence was presented confirming the dates, court dates, and medical treatment from multiple witnesses. "We have presented evidence from multiple sources that the applicant suffered both multiple TBIs in 1983 and suffers PTSD from these events. On page 11 of the Psychological Advisor's report, they agree: "there is evidence that the applicant experienced a decline in duty performance after his TBI(s). "

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

The DVA board confirmed a nexus exists and the condition existed/exists. The applicant's archived service records were checked out from the National Archives and are reported in possession of the Secretary of the Air Force, ATTN: MRBR (Board for Correction of Military Records). We have over the past decade waited for their return. The events and evidence presented in this request occurred in 1983 before means for a TBI or PTSD diagnosis could occur as these were not codified until decades later, post 2000. The applicant's brief presented evidence verifying both the assault and the resulting head injury. In addition, evidence was presented confirming a head on motor vehicle collision, destruction of the car, and related injuries. The Board's

Psychological Advisor states, "there is some evidence his TBI, and traumatic experiences had existed and occurred during his military service," which fully supports our request. The DVA concluded a nexus exists to the events of 1983.

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

Yes. Multiple head injuries, specifically TBIs, damage exponentially. The second TBI does not do twice the damage, it does ten times the damage. The Psychological Advisor states, "There is evidence he had a decline in performance and had misconduct problems after his traumatic experiences." Additionally, "the applicant's official discharge paperwork is not available for review so it could not be determined definitively that his condition of TBI or PTSD from his traumatic experiences may have caused, excused, or mitigated his misconduct and discharge." However, as we have previously stated, these documents were checked out and in the possession of the Secretary of the Air Force. We ask the Board to consider these records were removed and are in the possession of the Secretary of the Air Force. The applicant had near perfect performance prior to arriving at the unit, and an empirical, measurable, meteoric decline occurred after multiple TBIs. Presumption of irregularity is applied and therefore, the applicant's mental health condition, multiple TBIs altered his mental state which in turn contributed to the loss of ability, causing discharge. A nexus exists between the injuries and the performance decline.

4. Does the condition or experience outweigh the discharge?

The applicant's mental health condition and the presence of multiple TBIs compounded with other conditions (PTSD) contributed significantly to the events leading up to discharge. The presence of multiple TBIs and PTSD mitigates his discharge. Multiple mental health conditions as supported by evidence, inclusive of multiple TBIs and PTSD, should have been treated. Today, if these same injuries occurred in 2024, they would be treated. These terrible experiences and conditions conclusively outweigh the discharge. The experience outweighs the discharge.

In addition, the applicant contended he shows extreme depression, sadness, remorse, and regret over these events and has suffered both PTSD and MDD resulting from these events. The events did not involve drugs or alcohol and fall under the guidelines for liberal consideration as PTSD, MDD, and youthful indiscretion are involved. The applicant is aging, has raised a family, and has several serious health issues as he moves toward retirement. The applicant again presented his contentions from his original application in support.

Further, the applicant expressed concern the Psychological Advisor presented a recommendation which neglected to consider the material outlined in "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding Equity, Injustice, or Clemency Determinations" pages 1,2,3, and 4, and instead concentrated on a restatement of service records in what appears to be commentary based on records at hand without consideration to the guidance issued to the Board or evidence in the brief submitted. The applicant cites several sections of this guidance in support. The Psychological Advisor also states the full discharge paperwork was not presented. The records are in the possession of the Secretary of the Air Force. All documents in the applicant's possession were supplied. The applicant continues with reiterations of his contentions provided in his original application.

Finally, the applicant goes on to a page-by-page review of the advisory opinion, reciting portions, providing comments where he concurs with the content, and again presenting contentions from his original application to support his disagreement with other portions of the advisory opinion. Specifically, the applicant disputes the advisory opinion regarding his condition as being self-reported as he contended he provided documentation of the assault and vehicle accident. The applicant also disagreed with the reference to the consultations and psychological reviews done by QTC, a contractor for DVA, as he contended they are the result of an intent to deny PTSD. The applicant also asked the Board to disregard the reference to his application to the AFDRB, dated 2 Feb 86, as TBI and PTSD were not codified until mid-2000. Further, he objects to the

Psychological Advisor summarizing information contained in his historical records as it omits significant facts.

The applicant concluded by requesting the Board reject the recommendation of the Psychological Advisor and approve his request to upgrade his discharge to honorable, restore his rank, and change his reenlistment code as he has earned relief after carrying the stigma for over 40 years.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. 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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While there is evidence his TBI and traumatic experiences occurred during his military service, there is no medical documentation or other evidence the applicant was given a diagnosis of TBI or PTSD during service. The applicant's separation examination makes no mention of TBI or PTSD and reflects the applicant was qualified for world-wide duty at discharge. The applicant was diagnosed with PTSD approximately 38 years after discharge and after two previous evaluations determined he did not meet the diagnostic criteria for PTSD. Further, there is no evidence to substantiate the applicant had migraine headaches, sleep or inattention problems during service. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

Additionally, the applicant was reduced in grade as a result of NJP, which was within the commander's discretion. He was afforded due process, and the action was found legally sufficient.

Furthermore, under the presumption of regularity, it is assumed the responsible officials carried out the applicant's discharge in accordance with the provisions of the prescribing directives and the applicant was afforded all of his due process rights. The applicant's resulting reenlistment code corresponds with his current service characterization. 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. 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-2023-00134 in Executive Session on 19 Mar 25:

, Panel Chair
, 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 30 Dec 22.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 23 Feb 24.
Exhibit D: FBI Report, dated, 15 May 23.
Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Feb 24.
Exhibit F: Notification of Advisory, SAF/MRBC to Counsel, dated 23 Feb 24.
Exhibit G: Applicant's Response, w/atchs, dated 25 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.

X

Board Operations Manager, AFBCMR