



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00510

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

He was not supported by the Air Force regarding an (alleged) adulterous relationship between his wife and his direct supervisor while on active duty. His solution was to "fabricate" misconduct that would cause him to be discharged from the Air Force.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 24 Feb 84, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-26-1 for unsatisfactory performance. The specific reasons for the action were:

- a. On 7 May 82, a judgment was rendered by the Municipal Court for the County of Work-Product, State of Work-Product for failure to discharge a legal obligation in the amount of \$205.00.
- b. On 18 Nov 83, he received a Letter of Counseling (LOC) or Record of Individual Counseling (RIC) for continued failure to discharge the legal obligation above.
- c. On 2 Dec 83, he received a LOC for insufficient attention to his duties and constant complaining causing disruptions within his duty section. He had a personality problem with the Chief of Materiel but was not comfortable talking it over with the Chief. It was also reported he felt his personal problems had greatly affected his attitude and this issue was discussed with his leadership.

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- d. On 27 Dec 83, he received a LOC for continued failure to discharge his legal obligation owed above.
- e. On 13 Jan 84, he received a Letter of Evaluation for attitude problems, substandard dress and appearance, and failure to complete training within specified time limits.
- f. On 25 Jan 84, he received a LOC for inappropriate and disruptive behavior in his duty section.
- g. On 10 Feb 84, he was given a Letter of Reprimand (LOR) for deteriorated duty performance, disruption to his duty section through innuendoes and derogatory remarks directed towards supervisors and co-workers, and failure to comply with dress and appearance standards as evidenced by dirty and wrinkled uniforms.
- h. On 17 Feb 84, he was given another LOR for continued deterioration of performance, failure to obey a direct and lawful order of a commissioned officer, failure to comply with dress and appearance standards, and being absent from his duty without proper authority.
- i. On 17 Feb 84, he was given an Article 15 for dereliction of duty in that he willfully failed to identify and correct work conditions, as it was his duty to do so.

On 3 Mar 84, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 Mar 84, the discharge authority directed the applicant be discharged for unsatisfactory performance, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 15 Mar 84, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “unsatisfactory performance” and he was credited with 1 year, 5 months, and 24 days of total active service.

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

POST-SERVICE INFORMATION

On 12 Jul 23, 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. The applicant replied on 14 Sep 23 and provided an FBI report. According to the report, the applicant was arrested on 5 Aug 85 for possession of narcotic controlled substance.

The applicant’s complete response is at Exhibit D and E.

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 Jul 23, 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 insufficient evidence to support the applicant's request for the desired changes to his record. A review of the available records finds the applicant's contentions were partially corroborated by his military records. He submitted a statement in response to his discharge action at the time of service reporting in the past three months or prior to Dec 83, he was unable to concentrate on his work because of his marital problems and/or his wife's extramarital relationship with his supervisor. This report corroborates his contention. There are records reflecting his performance deteriorated due to his marital problems and most of his misconducts did occur during the time he had marital problems; however, he also has several misconduct infractions of not paying his owed debt that was accumulated before he entered the military. The stressors from his marital problems could not have caused his pre-existing problems of not paying his debts. The applicant contended he was unable to bear his hostile work environment and plotted with a technical sergeant for him to be discharged to escape this environment. While it may be comprehensible, the reason for wanting to get discharged is because of his marital problems and hostile work environment, his reasoning and behaviors are not excused. His marital stressors did not develop into a mental health condition and not all stressors are mental health conditions. There is no evidence he had a mental health condition during service and this was evidenced by no records confirming he received any mental health treatment, evaluation, or mental disorder diagnosis during service (and also after service from his marital problems), his Primary Care Manager (PCM) had determined his psychiatric clinical evaluation was normal during his separation physical examination, and he also denied during his separation physical examination he did not experience or have any mental health issues or symptoms including depression or anxiety. There is no evidence or records he had a bona fide mental health condition such as anxiety, depression, psychosis, etc. that impaired his judgment causing his pattern of willful misconduct and his subsequent discharge from service. He had conduct issues and this was not a mental health condition. The applicant admitted his behaviors were purposeful so he knew what he was doing at the time because he wanted to get discharged, which he eventually achieved as planned. His behaviors were premeditated and thus, his behaviors and misconduct could not have been caused, excused, or mitigated by his mental health condition. Not only were his behaviors intentional as he admitted, but his behaviors were disruptive to his unit/squadron and contrary to good order and discipline, caused a loss of many man hours, and his leadership had attempted to help repair his behaviors via numerous counseling but was not

amenable to these efforts. His intentional behaviors were inappropriate and unacceptable. He claimed his leadership refused to do anything about his wife's extramarital relationship with his supervisor and there is no evidence to support this allegation. His RIC dated 2 Dec 82 reported he had discussed his personal problems with his leadership and he would talk to legal and the chaplain for assistance. The results of these meetings were not included in his records but nevertheless, it appeared he may have received some kind of advice or consultation about his situation. The Psychological Advisor has reviewed the available records and the applicant's contentions and finds his contentions are not compelling or sufficient to support his request and there is no evidence his mental health condition had a direct impact or was a contributing factor to his discharge. Again, he had marital problems, which caused him emotional distress, but his problems did not cause him to develop a mental health condition. His discharge reason for unsatisfactory performance was not caused by his mental health condition. His inability to tolerate his marital stressor led him to devise a plan to get discharged because he was unable to tolerate his hostile environment, but his premeditated behaviors do not excuse, mitigate, or outweigh his discharge (Kurta Memorandum #19). Therefore, there is no error or injustice with the applicant's discharge from a mental health perspective.

Liberal consideration is applied to the applicant's request due to marking "Other Mental Health" on his application to the AFBCMR. 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 his wife had an affair with his immediate supervisor and his leadership refused to do anything about the situation. As a result, he and another technical sergeant semi-fabricated or plotted for him to get discharged from service to remedy his hostile work environment. He provided several examples of his intentional acts or misconduct in order to get discharged from service in his statement.
2. Did the condition exist or experience occur during military service?
There is evidence of the applicant having personal problems and marital problems from his wife's extra-marital affair in his military records via an RIC dated 2 Dec 83 and his statement in response to his discharge action. There is no evidence or records his marital problems had developed into or caused him to develop a mental health condition. There is no evidence or records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. During his separation physical examination, his PCM assessed his psychiatric condition as normal and he denied having any mental health issues including anxiety, depression, sleep problems, memory problems, etc. also during his separation physical examination. There is no evidence or records he had a bona fide mental health condition during service.
3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition caused by his marital problems had impaired his judgment leading to his purposeful acts of misconduct in order to get discharged from service. His purposeful behaviors were premeditated and were not caused by his mental health condition. There is no evidence his mental health condition had a direct impact or was a

contributing factor to his discharge for unsatisfactory performance. As a result, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his mental health condition also does not outweigh his original discharge, especially since his behaviors were admittedly premeditated.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Mar 24 for comment (Exhibit G), and the applicant replied on 25 Mar 24. In his response, the applicant addresses some of his perceived inaccuracies, and acknowledges he did not really suffer a mental health condition.

The applicant's complete response is at Exhibit H.

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 regarding liberal consideration. There is no evidence the applicant's mental health condition caused by his marital problems had impaired his judgment leading to his purposeful acts of misconduct in order to get discharged from service. His purposeful behaviors were premeditated and were not caused by his mental health condition. There is no evidence his mental health condition had a direct impact or was a contributing factor to his discharge for unsatisfactory performance. As a result, his mental health condition does not excuse or mitigate his discharge. The applicant has not provided sufficient evidence to support clemency. Therefore, the Board recommends against correcting the applicant's records.

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-2023-00510 in Executive Session on 18 Jun 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, dated 2 Feb 23.
- 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 12 Jul 23.
- Exhibit D: Applicant’s Response, dated 1 Aug 23.
- Exhibit E: Applicant's Response (Letter and FBI Report) dated 31 Aug 23.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor_19 Feb 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Mar 24.
- Exhibit H: Applicant’s Response, dated 25 Mar 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.

7/30/2024

X

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Board Operations Manager, AFBCMR
Signed by: USAF