

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01891

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

Her Separation Code (SPD) changed from "SPD-JET [Trainee Discharge]" to "Psychological/PTSD [Post-Traumatic Stress Disorder]."

### APPLICANT'S CONTENTIONS

It matters to the applicant being able to access certain benefits. This classification really was not done in 1982, and it is a much more accurate representation of what occurred.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman first class (E-3).

On 12 Apr 82, according to ATC Form 582, *Mental Health Evaluation of Active Duty Air Force Personnel*, the applicant was evaluated due to expressing suicidal tendencies and should not be retained in military service as she will not be able to adjust to the demands of the military lifestyle.

On 15 Apr 82, according to an SGHMA/HDC [Human Development Center] memorandum, the applicant was evaluated by a Clinical Social Worker who concurred with the findings annotated on the ATC Form 582, dated 12 Apr 82.

On 22 Apr 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation 39-10, *Administrative Separation of Airmen*, Chapter 3, Section B, paragraph 3-81. The specific reasons for the action were:

a. On 12 Apr 82, [the applicant] received an ATC Form 582, at which time she was evaluated by Mental Health following the indication of suicidal tendencies expressed to her father. The evaluation stated [the applicant] was immature and her problems, most likely, would persist and require psychiatric or administrative action if she were retained in the Air Force.

b. On 15 Apr 82, [the applicant] received an SGHMA/HDC Letter of Notification following an evaluation by the HDC. The evaluation stated that although [the applicant] had expressed suicidal threats to her parents, she did not appear to be at risk at this time. The evaluation further stated it was highly unlikely [the applicant] would adapt to the normal stresses of military life and become a productive member of the Air Force.

On 23 Apr 82, according to a USAF Medical Center/SGHU memorandum, Subject: Physical Clearance for Release from Active Duty Training (AFM 39-10 or AFM 39-12 Administrative Discharges), a review of the applicant's health records revealed no significant interval medical or

surgical history since active duty medical examination. [The applicant] is medically qualified for worldwide duty and administrative discharge.

On 7 May 82, the applicant received an honorable discharge. Her Narrative Reason for Separation is “Marginal Performer Assigned to Initial Training” with a Separation Code of “SPD-JET.” She was credited with 2 months and 21 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 3 Jun 24, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 3 Sep 24 and provided character reference letters; however, she did not provide an FBI report.

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 3 Jun 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

## **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for change to the Separation Code or Narrative Reason for Separation for her discharge.

The applicant is petitioning the Board to change her Separation Code from JET to psychological/PTSD. The applicant check-marked PTSD and Other Mental Health on her application. While the applicant is currently service-connected for a mental health condition, there is insufficient evidence to demonstrate this caused her failure to adapt to the military which led to her Marginal Performer Assigned to Initial Training discharge. While she has a diagnosis of PTSD related to childhood experiences, there is insufficient evidence to demonstrate this was aggravated by her two months in military service. Additionally, despite reporting in a recent mental health encounter (25 Apr 08) that her drill sergeant triggered her memories of childhood abuse, there is no evidence this was a factor in her discharge.

Mental health records indicate the applicant became "very emotional" and felt "pinned in a corner" when she received notification of being assigned to Panama (12 Apr 82). Before this time, there were no indications she had any mental health symptoms. Following this, the applicant was evaluated for suicidality and determined to not be at elevated risk for suicidal behavior. It noted she is dealing with her present situation. The examiner determined the applicant would not adapt to military life ["It is highly unlikely that this student will adapt to the normal stresses of military life and become a productive member" (15 Apr 82)]. The applicant's Letter of Notification, dated 22 Apr 82, indicated she would require medical clearance before separation. The applicant was medically cleared on 23 Apr 82. It showed the applicant was cleared for administrative separation. It noted:

"Review of health records on [applicant] reveals no significant interval medical or surgical history since active-duty medical examination. This airman is medically qualified for Worldwide Duty and Administrative Discharge."

There is insufficient evidence to suggest the applicant's PTSD from childhood had an impact on, or was aggravated by, her military service. She was never diagnosed with any mental health condition while in the military or at discharge. She was initially service-connected in 2003 for anxiety, not PTSD. The Department of Veterans Affairs (DVA), 5 years later in 2008, and 26 years after her military service, diagnosed her with Major Depressive Disorder (MDD) with PTSD. There is no evidence the applicant met the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for PTSD before this time. This Psychological Advisor concludes her "very emotional" symptoms do not mitigate or excuse her discharge of Marginal Performer Assigned to Initial Training or her Separation Code of JET.

There is insufficient evidence the applicant was unfit for duty during her two months in the military. She was promoted to airman first class and was determined to be worldwide qualified. It should be noted the military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (10 USC) only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate her discharge. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?  
The applicant check-marked PTSD and Other Mental Health on her application.

2. Did the condition exist, or experience occur, during military service?  
The applicant was never diagnosed with any mental health condition during her military service. The applicant was not diagnosed with PTSD until 2008, 26 years after her military service.

3. Does the condition or experience excuse or mitigate the discharge?  
There is insufficient evidence to suggest the applicant's PTSD from childhood had an impact on, or was aggravated by, her military service. She was never diagnosed with any mental health condition while in the military or at discharge. The applicant was initially service-connected in 2003 for anxiety, not PTSD. The DVA, 5 years later in 2008, and 26 years after her military service, diagnosed her with MDD with PTSD. There is no evidence the applicant met the DSM criteria for PTSD before this time. This Psychological Advisor concludes her "very emotional" symptoms do not mitigate or excuse her discharge of Marginal Performer Assigned to Initial Training or her Separation Code of JET.

4. Does the condition or experience outweigh the discharge?  
Since the applicant's mental health condition does not excuse or mitigate her discharge, the applicant's condition also does not outweigh the 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 9 Oct 24 for comment (Exhibit F) 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 Title 10, United States Code § 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is insufficient evidence to suggest the applicant's PTSD from childhood had an impact on, or was aggravated by, her military service. She was never diagnosed with any mental health condition while in the military or at discharge. The applicant was diagnosed with MDD with PTSD in 2008, 26 years after her military service. There is no evidence the applicant met the DSM criteria for PTSD before this time. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate her discharge.

Additionally, the DVA is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

Further, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered changing the SPD code based on clemency; however, the current SPD code accurately represents the circumstances of the applicant's discharge and directly corresponds to her Narrative Reason for Separation; consequently, given the evidence presented, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

## 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-01891 in Executive Session on 19 Feb 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, dated 1 May 24.

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 3 Jun 24.  
Exhibit D: Applicant's Response, w/atchs, dated 3 Sep 24.  
Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 29 Aug 24.  
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Oct 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.

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Board Operations Manager, AFBCMR