

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02348

XXXXXXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable, with a Narrative Reason for Separation of "Convenience of the Government" or "Secretarial Authority" with corresponding Separation and RE-1 Reenlistment Codes.

APPLICANT'S CONTENTIONS

Per counsel, the applicant served in the Air Force from 1980 to 1987, with a reenlistment in 1983. His discharge from service from 1983-1987 was UOTHC. As a result of family issues and mental health complications, he had multiple periods of Absent Without Leave (AWOL). The applicant is currently rated as 100 percent disabled by the Department of Veterans Affairs (DVA) with a diagnosis of depression and anxiety, and Post-Concussion Syndrome due to an injury he suffered during his service. Just as a majority of the service in the Air Force was exemplary, his life after the service has also been exemplary. The applicant has been employed consistently and has no criminal record. In light of what we know now about concussion complications and brain injury, the applicant has suffered long enough with a UOTHC discharge. The applicant served in the Air Force for 7 years and has suffered with a bad discharge for 36 years but was only recently able to access legal assistance; therefore, he respectfully requests this Board waive the time limit in the interest of equity and justice.

The applicant's discharge is an injustice because his service was exemplary until his last nine months of service. He received his last outstanding evaluation six months prior to his UOTHC discharge. The stress of financial and family issues exacerbated his Post-Concussion Syndrome and led to his periods of AWOL. Had financial and mental health services been provided, there is substantial doubt he would have separated from the Air Force or received such a harsh discharge. The applicant has suffered long enough with this discharge, and it is in the interest of equity and good conscience to grant an upgrade based on the mitigating factors.

Early in his enlistment, the applicant was in two motor vehicle accidents (MVA) that resulted in head injuries a mere two months apart. In Dec 80, he was involved in a head-on collision. His right knee was injured, and he needed stitches above his eye. On 2 Feb 81¹, the applicant was involved in another MVA. He was thrown through the windshield. He was admitted to the hospital for three days, suffering from a cervical fracture and fracture of his mandible. In addition to his physical injuries, the applicant suffered the mental trauma of watching his friend, the back seat passenger, die on the street after colliding with a tree when the vehicle split in half. When he returned to work, part of his duties required riding in a truck at night. When the applicant complained to his supervisor about his anxiety regarding riding in the truck, and the speed at which it was driven, he was told to suck it up, it was time to be a man. When his co-workers found out about his complaints, he was strapped to a gurney and left face-down in the

¹ According to AF Form 348, *Line of Duty Determination*, dated 9 Feb 81, the applicant's motor vehicle accident occurred on 7 Feb 81.

dark for an hour and told if he complained again, it would be worse next time. He never complained again.

The Defense and Veterans Brain Injury Center developed the Military Acute Concussion Evaluation (MACE) in 2006. It utilizes the Standard Assessment of Concussion (SAC), which was developed in 1997. The applicant was discharged in 1987. The symptoms he describes after the second accident are consistent with Post-Traumatic Stress Disorder (PTSD) and concussion. The records reflect he suffered from what we now know to be Post-Concussion Syndrome thereafter. A review of the applicant's records by the military before discharge reflect no mental health services were provided. No mitigating factors were considered in relation to his character of discharge.

After discharge, the applicant continued to suffer from headaches, dizziness, and lightheadedness. On 9 Jul 20, a neurologist diagnosed the applicant with Post-Concussion Syndrome from an in-service MVA. He was further diagnosed with Adjustment Disorder, with Mixed Anxiety and Depression. If MACE, SAC, or other standard concussion protocols were in place at the time of his service, the applicant's PTSD, post-concussion depression and anxiety would have been assessed, diagnosed, and treated prior to his discharge. There is little doubt these factors would have been considered in relation to his periods of AWOL and could have possibly prevented some or all of them. At the very least, it would have been considered as a mitigating factor.

The applicant received his first formal reprimand for indebtedness and lost his noncommissioned officer (NCO) status and eligibility to reenlist. His personal stressors triggered physical symptoms. He was ordered to quarters for five days and did not take the necessary paperwork to the squadron leader. Those five days were the applicant's first period of AWOL and culminated in the end of his military career. The applicant was informed he had the choice of accepting an administrative discharge or face court-martial. At first, the applicant agreed to the administrative discharge but felt conflicted. Feeling he would not be given a fair chance to save his military career, he failed to report for work on 2 Feb 87 and returned on 13 Feb 87. The applicant spent 50 days in the brig and accepted his discharge to avoid court-martial. The end of the applicant's military career was unexpectedly sudden and coincided with a storm of personal and financial issues that led to a mental breakdown he was not equipped to handle.

The applicant's childhood was marred by domestic violence. He felt pressure to assist his family financially and to intervene to protect his mother. The applicant was allowed to live at home during his service because his family lived close to the base. Even when he moved out, he still felt responsible to assist his family financially, to the detriment of his own finances. This financial pressure led the applicant to lose his NCO status and led to his first incident of AWOL, all while dealing with an undiagnosed mental health condition. Just as the applicant lacked the tools to recognize his own mental health issues, the Air Force lacked the protocols to diagnose his mental health issues and provide him the mental health services that he needed. The applicant makes no excuses for his mistakes and bears no ill will toward the Air Force.

The applicant is a homeowner with no criminal record. After his discharge, he worked at a jet overhaul facility from Jun 87 until he was laid off in Feb 91. He then relocated, married his wife, and worked as a service manager until 1996. The applicant then worked as a train operator until he retired in 2019. He currently receives service-connected disability compensation from the DVA.

In support of his request for clemency, the applicant provides a personal statement, excerpts from his medical records, a DVA decision and award letter, 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 first class (E-3).

On 7 Feb 81, according to an AF Form 348, *Line of Duty Determination*, dated 9 Feb 81, the applicant was injured in a MVA with a cervical fracture. The AF Form 348 was not completed beyond the recommendation of the medical provider. According to the corresponding Narrative Summary, the applicant was admitted to the hospital on 8 Feb 81 and discharged from the hospital on 11 Feb 81. He was diagnosed with a small avulsion fracture, anterior wedge, fourth cervical vertebra and thoracic spine, left knee, left ankle sprain.

On 19 Sep 86, according to AF Form 2098, *Duty Status Change*, the applicant's duty status changed from Present for Duty to Civil Confinement. The applicant was incarcerated in the Charleston County Jail, Charleston, South Carolina (SC) and charged with writing dishonored checks.

On 22 Sep 86, according to AF Form 2098, the applicant's duty status changed from Civil Confinement to Present for Duty. The applicant was released from the Charleston County Jail, Charleston, SC.

On 11 Dec 86, according to AF Form 2098, the applicant's duty status changed from Present for Duty to AWOL.

On 13 Dec 86, according to AF Form 2098, the applicant's duty status changed from AWOL to Present for Duty.

On 15 Dec 86, according to AF Form 2098, the applicant's duty status changed from Present for Duty to AWOL.

On 20 Dec 86, at 1030 hours, according to AF Form 2098, the applicant's duty status changed from AWOL to Present for Duty. On this same day, at 1345 hours, the applicant's duty status changed from Present for Duty to Pre-Trial Confinement.

On 22 Dec 86, according to AF Form 2098, the applicant's duty status changed from Pre-Trial Confinement to Present for Duty.

On 22 Dec 86, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment, under Article 15, Uniform Code of Military Justice (UCMJ), for:

- Violation of Article 86, UCMJ: In that [the applicant], did, on or about 16 Dec 86, without authority, absent himself from his organization, to wit: XXX Organizational Maintenance Squadron, located at Charleston Air Force Base (AFB), SC, and did remain so absent until on or about 20 Dec 86.

The applicant was reduced to the grade of airman first class (E-3) and restricted to base for a period of 14 days, 22 Dec 86 – 4 Jan 87.

On 26 Jan 87, according to SF 88, *Report of Medical Examination*, the purpose of the examination was "separations", and the applicant was found qualified for worldwide duty and separation.

On 2 Feb 87, according to AF Form 2098, the applicant's duty status changed from Present for Duty to AWOL.

On 13 Feb 87, at 1100 hours, according to AF Form 2098, the applicant's duty status changed from AWOL to Present for Duty. On this same day, at 1220 hours, the applicant's duty status changed from Present for Duty to Pre-Trial Confinement.

On 20 Feb 87, according to DD Form 458, *Charge Sheet*, the applicant was charged with:

- [The applicant], on active duty, did, on or about 2 Feb 87, without authority, absent himself from his unit, to wit: XXX Organizational Maintenance Squadron, located at Charleston AFB, SC, and did remain so absent until 13 Feb 87.

On that same day, the DD Form 458 was received by the summary court-martial convening authority then, on 23 Feb 87, was referred for trial by special court-martial, convened by Special Order XXX, dated 23 Feb 87.

On 10 Mar 87, according to a XXX ABG/JA memorandum, Subject: Request for Medical Records, the Special Court-Martial Convening Authority ordered the applicant to undergo a mental evaluation. On this same day, according to SF 600, *Chronological Record of Medical Care*, "[the applicant's] record reviewed by Mental Health Clinic. Files check and records review indicate no evidence of any mental health services provided."

On 30 Mar 87, according to DD Form 458, the applicant was charged with:

- [The applicant], on active duty, did, on or about 16 Dec 86, without authority, absent himself from his unit, to wit: XXX Organizational Maintenance Squadron, located at Charleston AFB, SC, and did remain so absent until 20 Dec 86.

On that same day, the DD Form 458 was received by the summary court-martial convening authority then was referred for trial by special court-martial, convened by Special Order XXX, dated 23 Feb 87, to be tried with the original charge, dated 20 Feb 87.

According to an applicant memorandum to his commander, dated 30 Mar 87, Subject: Request for Discharge in Lieu of Trial by Court-Martial, he requested discharge from the Air Force according to Air Force Regulation 39-10, *Administrative Separation of Airmen*, Chapter 4, in lieu of trial by court-martial. The applicant acknowledged, if his request is approved, he may be discharged UOTHC, and he is aware of the adverse nature of such a discharge and the possible consequences thereof.

On 21 Apr 87, according to a XXX OMS/CC memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial, the applicant's commander recommended his request for discharge be approved; however, the applicant be furnished a UOTHC discharge.

On 28 Apr 87, according to a XXX ABG/CC memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial, the applicant's group commander recommended his request for discharge be approved and his service characterized as UOTHC.

On 1 May 87, the Staff Judge Advocate found the discharge action legally sufficient.

According to a 21 AF/CC memorandum, dated 1 May 87, the discharge authority approved the applicant's request for discharge in lieu of trial by court-martial and directed he be discharged from the Air Force UOTHC.

On 8 May 7, according to AF Form 2098, the applicant's duty status changed from Pre-Trial Confinement to Present for Duty.

According to DD Form 214, *Certificate of Release or Discharge from Active Duty*, on 8 May 87, the applicant received a UO THC discharge. His Narrative Reason for Separation is "Req for Discharge in Lieu of Trial by Court-Martial", with Separation Code of KFS [In Lieu of Trial by Court-Martial], and Reenlistment Code of 2B [Separated with a general or UO THC discharge]. He was credited with 6 years, 6 months, and 9 days of total active service, with dates of time lost of: 19 Sep 86 – 21 Sep 86, 11 Dec 86 – 12 Dec 86, 15 Dec 86 – 19 Dec 86, 20 Dec 86 – 21 Dec 86, 2 Feb 87 – 12 Feb 87, and 13 Feb 87 – 7 May 87.

On 29 Nov 22, according to a DVA letter, the applicant is receiving service-connected disability compensation with a combined evaluation of 100 percent.

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

POST-SERVICE INFORMATION

On 25 Jun 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; 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 25 Jun 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.

- Abuse of a special position of trust.

- Disregard by a superior of customary superior - subordinate relationships.

- Acts or omissions that endanger the security of the United States.

- Acts or omissions that endanger the health and welfare of other members of the DAF.

- Deliberate acts or omissions that seriously endanger the health and safety of other persons.

- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his records based on his mental health condition.

This advisory is limited to the applicant's mental health condition. The Board may consider receiving an advisory from the medical advisor to address his physical conditions of migraines and Post-Concussion Syndrome, if deemed necessary. A review of the available and submitted records finds the applicant's and his legal counsel's contentions were partially corroborated by his objective military records. There is evidence documented in his military records that he was in two MVAs during his military service and was hospitalized for three days from his second

MVA by sustaining serious injuries to his head and body. He sought treatment for his physical issues after his second MVA, which appeared to be his more serious MVA, but there was no report he developed any neurocognitive issues from any of his MVAs, such as memory problems, speech issues, poor concentration, difficulties making decisions or planning, reduced or poor problem-solving skills, struggles with performing daily tasks, or speaking or behaving in ways that were not socially appropriate. The applicant was examined during service and his neurological examinations were assessed to be normal. He was also reported to have possible anxiety and sleep issues after his MVAs, and these issues did not appear to have impacted his functioning significantly. In fact, the applicant was selected for early promotion/below the zone, received excellent performance evaluations, and was able to reenlist after both of his MVAs. His achievements after his MVAs demonstrated he was functioning well and had no apparent deficits with his functioning from his neurocognitive issues. There are no records he was ever diagnosed with a traumatic brain injury (TBI) or Post-Concussion Syndrome during service and was diagnosed with the latter condition decades after his discharge from the military.

The applicant continued to do well over the next several years after his MVAs and it was not until sometime in 1986 that he began to have problems at work - being AWOL on numerous occasions and several instances of indebtedness. His family and financial problems were consistently reported as his stressors causing work problems. These stressors were exacerbated over time, and he was unable to manage them, causing him to feel anxious and depressed and having migraines and blacking out. Significant stress could cause all of these problems and symptoms. His mental health condition did not initially cause him to be AWOL and did not cause him to be financially irresponsible. It was, to the contrary, his personal and financial stressors which led to his first AWOL, according to his legal counsel. Some explanations that were provided for his AWOL by the applicant included failing to properly inform his leadership that he was placed on quarters by his Primary Care Manager in Dec 86 and running away from his problems pertaining to his discharge in Feb 87. He now explains in his petition he was stressed out with his family, personal, financial, and work problems, and did not learn how to cope with his stressors as the reason for his AWOL in Feb 87. The applicant had a mental breakdown because of the overwhelming stress he was feeling at the time. Although his explanations for his AWOL in Feb 87 were somewhat different, it is accepted he was AWOL because he was unable to tolerate his stress and was in emotional distress at the time. His stressors and emotional distress were not caused by his head trauma or mental health condition related to any of his MVAs but by his family, personal, financial, and occupational problems. The applicant's mental and emotional distress from these problems may have been a contributing factor to his last AWOL, but it does not excuse or mitigate his discharge. He had two other previous AWOLs from 11-12 Dec 86 and 16-20 Dec 86 and no evidence these AWOLs were caused by his mental health condition. Moreover, his commander wrote in his recommendation for discharge memorandum the applicant had violations under UCMJ and alleged offenses he was being charged for and the court-martial charge sheet is unavailable for review. His exact court-martial charges were not detailed in the available records, so it is possible he had other charges in addition to AWOL. He mentioned breaking restrictions in his petition, and this could be a charge, and he also had well-documented financial issues that could also be a charge. The applicant was approved for discharge in lieu of a court-martial so the ambiguity of his court-martial charges makes it difficult to determine whether his mental health condition could actually excuse or mitigate his discharge. His commander did state careful consideration for his mitigating and extenuating circumstances, i.e. emotional, family, financial problems, etc. were considered and concluded his charges were significant signifying his serious offenses that warranted his UOTHC discharge. This psychological advisor concurs with this opinion and finds the available existing evidence and records do not demonstrate his mental health condition sustained from his MVAs and traumatic experiences could excuse, mitigate, or weigh his discharge. There is no error or injustice identified with his discharge from a mental health perspective.

There are no records the applicant received any mental health treatment and no records he had any mental disorder, including PTSD, during service. There is evidence he sustained a head trauma but no evidence he was given a diagnosis of a TBI, Post-Concussion Syndrome, or a similar condition during service. More importantly, as discussed previously, there is no evidence or records that the residual effects of his head injury/trauma had caused him to experience significant behavioral, cognitive, or intellectual changes affecting his overall functioning. It was his personal and financial stressors that caused his emotional and mental distress. There is evidence he was ordered to undergo a mental health evaluation in Mar 87, and the records from the evaluation were not available for review. However, his commander had referenced his mental health functioning in his recommendation for discharge in lieu of trial by court-martial report stating he did not have a mental disease or defect at the time of his misconduct causing him to lack the substantial capacity to either appreciate the wrongfulness of his acts or conform to the law. His commander would not have made this statement on his own because he is not qualified to do so, but this statement would be made based on the findings or results from his mental health evaluation performed by a duly qualified mental health professional. This statement alone provides support that his mental health condition had no impact on or did not cause his misconduct. The applicant contends he had anxiety and nightmares following his second MVA and his legal counsel stated he had PTSD from his traumatic experiences of witnessing his friend die from the accident and from his own experience of being thrown through the windshield. The validity of the applicant's traumatic experiences is not disputed, but there are no records he experienced nightmares or any other PTSD symptoms during service. Again, he had possible anxiety, but this was only one symptom. He was never given a diagnosis or treated for anxiety and no recurring complaints about his anxiety nor its interference with his ability to function. There is no evidence or records he had PTSD or a similar condition during service and he was never diagnosed with PTSD by his post-service providers at the DVA. He did develop anxiety and depressive symptoms over the years from his MVAs and it may take time to develop his symptoms but may also be exacerbated by his post-service stressors according to his DVA treatment records. There is no evidence his head trauma, PTSD, or any other mental health condition developed from any of his MVAs were mitigating factors to his discharge. Lastly, the applicant was given service-connection for depression, anxiety, and Post-Concussion Syndrome. Service-connection does not indicate causation or mitigation of his misconduct or discharge and that it represented his condition had occurred or was somehow related to his military service. As a result of a review of his records, this psychological advisor finds there is insufficient evidence to support his request for an upgrade of his discharge based on his mental health condition.

Liberal consideration is applied to the applicant's petition due to his contention of experiencing head trauma and having a mental health condition during service. It is reminded liberal consideration does not mandate an upgrade per policy guidance. The following are answers 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 contend he was involved in two MVAs during service. He sustained head injuries/trauma and witnessed his friend being killed by the MVAs. They also contend he had anxiety and nightmares following his second MVA and believed his family issues and mental health condition caused his AWOL and discharge.

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

There is evidence from his military records that the applicant was involved in two MVAs during his time in service. The first MVA was in Dec 80, and the second MVA was in Feb 81. There are records from his hospital narrative summary to substantiate he was thrown through the windshield upon impact and was hospitalized for three days for his physical injuries. There are no records to corroborate his traumatic experiences of witnessing his friend's death from the

MVA but his statement for his petition is accepted as evidence. There are records the applicant had complaints of headaches, dizziness, and lightheadedness following his MVAs, but his neurological examinations were found to be normal. There is no evidence or records he was ever given a diagnosis of TBI or Post-Concussion Syndrome during service. The applicant was given a diagnosis of Post-Concussion Syndrome decades after his military service by his post-service provider. There is no evidence the applicant received any regular mental health treatment, but his records did reflect he was ordered to receive a mental health evaluation by request of his Area Defense Counsel in Mar 87. The evaluation report was not available for review, but his commander cited the applicant did not have any mental disease or defect at the time of his misconduct causing him to lack the substantial capacity either to appreciate the wrongness of his acts or to conform to the law. This statement most likely came from his mental health evaluation. There is evidence the applicant did have possible anxiety after his second MVA but no records that he was treated for this symptom or that he received a diagnosis from this symptom. There is no evidence he had or was diagnosed with PTSD developed from any of his MVAs during or after service.

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

There is no evidence the applicant's head trauma, PTSD, or any other mental health condition developed from his MVAs had a direct impact or was a contributing factor to his numerous AWOLs, indebtedness, or any other acts of misconduct leading to his subsequent discharge in lieu of trial by court-martial. His commander did consider his mitigating and extenuating circumstances when considering his service characterization and concluded the charges were indeed significant, signifying the applicant's misconduct or offenses were too serious to outweigh his discharge for a more favorable service characterization. This psychological advisor concurs with this opinion and also finds that although his last AWOL may have been caused by his emotional distress developed from his personal and financial problems, the applicant's mental health condition or emotional distress does not actually excuse or mitigate his discharge because of the serious nature of his misconducts, especially being AWOL at least three times. His stressors were primarily caused by his family and financial problems and not by his MVAs causing him to experience anxiety, depression, migraine headaches, and blacking out. His anxiety, depression, migraine headaches, and blacking out did not cause most of his AWOLs or his financial problems but were the results of these problems. Thus, his mental health condition, head trauma, 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, head trauma, or traumatic experiences do not excuse or mitigate his discharge, his condition or experiences also do 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 25 Jun 24 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all 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 no evidence the applicant was diagnosed with TBI, Post-Concussion Syndrome, or PTSD during service. Further, there was no report he developed any neurocognitive issues from his MVAs. There is no evidence the residual effects of the applicant's head injury/trauma caused him to experience significant behavioral, cognitive, or intellectual changes affecting his overall functioning.

Per applicant's counsel, it was personal and financial stressors which led to his first incident of AWOL, and anxiety regarding loss of his military career due to potential court-martial that led to his AWOL in Feb 87. There is no evidence the applicant's injuries from his MVAs contributed to his misconduct. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

Additionally, 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. The applicant's commander did consider his mitigating and extenuating circumstances when considering his service characterization and concluded the charges were indeed significant, signifying his misconduct or offenses were too serious to outweigh his discharge for a more favorable service characterization. The applicant acknowledged, if his request for discharge in lieu of court-martial was approved, he may be discharged UOTHC, and he was aware of the adverse nature of such a discharge and the possible consequences thereof. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-02348 in Executive Session on 12 Sep 24:

, 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 17 Jul 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 25 Jun 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 29 May 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 25 Jun 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