

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03177

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His character of discharge amended to allow for Department of Veterans Affairs (DVA) healthcare.

APPLICANT'S CONTENTIONS

He is seeking DVA disability healthcare for mental health.

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 29 Mar 00, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the Regular Air Force for a period of four years.

On 28 Apr 00, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section D, paragraph 5.22. The specific reasons for the action were:

- a. Unsatisfactory performance.
- b. Lack of aptitude for military service.

In an undated memorandum, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, Chapter 5, Section D, Entry Level Performance or Conduct, paragraph 5.22.2, with an entry level separation (ELS) and service characterization described as uncharacterized.

On 4 May 00, the applicant received an ELS. His narrative reason for separation is "Entry Level Performance and Conduct" and he was credited with one month and six days of total active service.

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

POST-SERVICE INFORMATION

On 3 Apr 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; 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 Post-Traumatic Stress Disorder (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 Apr 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AFI 36-3208, dated 10 Mar 00, Chapter 1 – *General Procedures*:

1.19. *Separation Without Service Characterization*:

1.19.1. *Entry Level Separation.* Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

1.19.1.1. A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or

1.19.1.2. The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty. The separation authority will forward a recommendation for an honorable characterization to HQ AFMPC/DPMARS2, 550 C Street West, Ste 11, Randolph AFB TX 78150-4713, for review and further processing. Use this characterization if the reason for separation is:

1.19.1.2.1. A change in military status according to Chapter 2; or

1.19.1.2.2. For the convenience of the government according to Chapter 3; or

1.19.1.2.3. For disability according to AFI 36-2902 (formerly AFR 35-4); or

1.19.1.2.4. Directed by the Secretary of the Air Force according to paragraph 1.2.

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.

A review of the available and submitted records finds no evidence or records that the applicant had any mental health conditions, including PTSD, or a similar condition during service. There are no records he was ever diagnosed with PTSD caused by his military service by a duly qualified mental health professional in his lifetime. He submitted no records to corroborate the notion that his mental health condition had caused his discharge. There is no evidence or records the applicant's mental health condition had a direct impact or was a contributing factor to his maladaptive behavioral problems resulting in his ELS/discharge. He clearly had problems adhering to the rules and regulations of the Air Force, was unmotivated to serve, and was unwilling to change his behaviors despite being counseled by his leadership on numerous occasions. The applicant had behavioral problems that were incompatible with military service, but his behavioral problems are not indicative of him having a mental health condition or caused by having a mental health condition. He was discharged for poor performance and lack of aptitude for military service and his military records support these reasons. The applicant was furnished an uncharacterized character of service under ELS because he served less than 180 days of continuous active military service and this characterization is consistent with past regulation of AFI 36-3208, the regulation he was discharged under, and to present regulation of DAFI 36-3211 for military separations. Therefore, there is no error or injustice identified with his discharge from a mental health perspective, and his request for an upgrade of his discharge is not supported due to regulations.

Liberal consideration is applied to the applicant's request. It is reminded liberal consideration does not mandate an upgrade per policy guidance. 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 marked "PTSD" on his application to the Board and provided no clarifying explanation for this condition such as his traumatic experience during service, how it was related to his military service, when the traumatic experience occurred, when he was diagnosed with his condition, and how this condition may excuse or mitigate his discharge.

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

There is no evidence or records that the applicant's mental health condition of PTSD or any other mental health condition had existed or occurred during his military service. There are no records to confirm he was ever diagnosed with PTSD during his lifetime.

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

There is no evidence or records to demonstrate the applicant's mental health condition had a direct impact or was a contributing factor to his poor performance and lack of aptitude for military service resulting in his ELS. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge. The applicant was discharged under ELS for serving less than 180 days of active duty service and was furnished an uncharacterized character of service. This characterization is in accordance with past and present regulations. There is no evidence his discharge was made in error or was unjust or did not follow the requirements of ELS in accordance with AFI 36-3208.

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 20 Aug 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 are no mental health treatment records available or provided by the applicant that support his contention he had a mental health condition, including PTSD, during military service. Further, the applicant's election of "PTSD" on his application to the Board, is neither addressed nor

supported by evidence regarding his Air Force service. Liberal consideration was applied; however, his misconduct could not be excused or mitigated by his mental health condition. The applicant was discharged for poor performance and lack of aptitude for military service and his military records support these reasons. The characterization of the applicant's service was in accordance with AFI 36-3208.

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. 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.

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-2023-03177 in Executive Session on 30 Oct 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 27 Jun 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 3 Apr 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Jun 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Aug 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