

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03457

XXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His uncharacterized entry level separation (ELS) be upgraded to honorable.

APPLICANT'S CONTENTIONS

He has Parkinson's disease, Type II diabetes, and severe nephropathy. He is requesting an honorable discharge so he can have it in his obituary and on his headstone. He was a stellar airman with no disciplinary action prior to receiving a Dear John letter from his fiancé back at that time. This consumed him and his mental and emotional health were traumatized. He received the letter three to five days prior to an exam. At the exam, he just froze and was not able to concentrate on the exam due to a broken heart. This is the reason he was separated after serving 189 days.

In support of his request for clemency, the applicant provided a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

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 13 Apr 88, 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 six years.

On 30 Sep 88, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraphs 5-22b(3) and (6). The specific reasons for the action were:

- Under paragraph 5-22b(3):

a. On or about 17 Jun 88, [the applicant] was entered into a training program in course number **Work-Product**, Weather Observation Specialist.

b. Between about 20-23 Jun 88, [the applicant] did fail to successfully complete 5 out of 15 course progress checks and the course written measurement **Work-Prod...**

c. On or about 14 Jul 88, [the applicant] did fail to complete successfully course progress check 106C.

d. On or about 31 Aug 88, [the applicant] did fail to complete successfully a course written measurement number **Work-Product**.

e. On or about 19 Sep 88, [the applicant] did fail to complete successfully a course homework assignment.

f. On or about 19 Sep 88, [the applicant] did fail to complete successfully a course retest on the PMSV performance test and also the Airways performance test.

g. On or about 22 Sep 88, [the applicant] was eliminated from Course Number C **Work-Product**, Weather Specialist for Prejudicial Conduct.

- Under paragraph 5-22b(6):

a. On or about 16 Jun 88, [the applicant] did, without authority, fail to go at the time prescribed to his appointed place of duty, namely **Work-Product**, the STAs office.

b. On or about 26 Jun 88, [the applicant] did violate a lawful general regulation, namely AFR 35-10, *Dress and Personal Appearance of Air Force Personnel*, by failing to maintain his uniform within the Air Force standards of dress and appearance.

c. On or about 12 Aug 88, [the applicant] did, without authority, fail to go at the time prescribed to his appointed place of duty, namely **Work-Product**, Breezeway.

d. On or about 15 Aug 88, [the applicant] did negligently fail to maintain his dormitory room to acceptable Air Force standards during an inspection.

On 18 Oct 88, the discharge authority directed the applicant be discharged for unsatisfactory entry level performance.

On 19 Oct 88, the applicant received an uncharacterized ELS. His narrative reason for separation is "Entry Level Performance" and he was credited with six months and seven days of total active service.

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

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

AFR 39-10, date 1 Apr 88:

1-19. Separation Without Service Characterization:

a. *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. A separation action initiated while the airman is in entry level status will be described as an entry level separation unless:

(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

(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, Randolph AFB, TX 78150-6001, for review and further processing. This characterization is authorized if the reason for separation is:

- (a) A change in military status according to chapter 2; or
- (b) For the convenience of the government according to chapter 3; or
- (c) For disability according to AFR 35-4; or
- (d) 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.

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

AFPC/DP2SSR recommends denying the application. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

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 29 Mar 24 for comment (Exhibit E) but has received no response.

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.

This psychological advisor has reviewed the available records and finds the applicant clearly had academic problems due to his personal and relationship problems during service. There are records to substantiate his contention he did have problems focusing due to his fiancé terminating their relationship; however, he had problems being in relationships with women in general and not just with his former fiancé. He was noted by his instructors to be focusing his attention on a classmate and not his studies. He informed his commander he spent the weekend before his final test fixating on how to link up with his girlfriend once she gets to Japan and was

torn between graduating from the course or intentionally remaining at Chanute via being washed back to continue a relationship with another student. It was his relationship problems and prioritizing his relationships with women over his studies that caused him to fail his exams and courses. These problems are not caused by having a mental health condition such as anxiety, depression, or trauma but are more likely than not caused by characterological traits and behaviors. The applicant had academic problems prior to service by having to disenroll from a seminary school due to his inability to maintain good academic standing and keep up with other responsibilities, similar to his reasons for separation from the Air Force. He contends his mental and emotional health were traumatized and he had a broken heart from his fiancé breaking up with him that caused his problems. It is comprehensible he would have this reaction, but his reaction is not a genuine mental health condition. The trauma of his heartbreak is not the same as the traumatic experience of directly experiencing or witnessing a life-threatening event that would meet the diagnostic criteria for PTSD. Having relationship problems is not a mental health condition or disorder. There are no records the applicant was ever diagnosed with any mental disorder including PTSD, especially during service. There is also no evidence or records he had PTSD, a similar condition, or symptoms of this condition during service. In addition to the applicant's academic problems, he had misconduct problems as well, such as failing to go to his appointed place of duty on two occasions, failing to maintain his uniform within Air Force standards of dress and appearance, and failing to maintain his dormitory room that caused his discharge. There is no evidence these misconduct problems were caused by his mental health condition. Overall, there is no evidence his mental health condition had caused, impacted, or was a mitigating factor to his discharge. There is no error or injustice with this discharge from a mental health perspective.

The applicant is requesting an upgrade to honorable. He was discharged under ELS and was furnished with an uncharacterized character of service because he was notified of discharge action within serving less than 180 days of continuous active military service. This is in accordance with AFR 39-10, the regulation he was discharged under, and DAFI 36-3211, the current regulation for military separations. Therefore, there is no error or injustice identified with his character of service so his request for an upgrade to honorable could not be supported.

Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. 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 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" and "Other Mental Health" on his application to the Board and contends his mental and emotional health were traumatized by his fiancé terminating their relationship causing him to not concentrate on his exams.

2. Did the condition exist, or experience occur, during military service?
There is no evidence or records the applicant had any mental health conditions, including PTSD, during service. There are records corroborating his report his fiancé terminated their relationship which caused him to lose focus and not perform well on his exam during service. However, there are also reports he had relationship problems with other women causing him to not focus on his exams and causing his problems. The applicant had similar academic problems before service as well. Having relationship problems is not a mental health condition or disorder.

3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence or records supporting the notion that the applicant had developed a mental health condition such as anxiety, depression, PTSD, etc. from the heartbreak of the termination of his relationship with his fiancé. There is no evidence his mental health condition had caused, impaired, or affected his performance and acts of misconduct resulting in his discharge from

service. Thus, his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition or experience does not excuse or mitigate his discharge, his condition or experience also does not outweigh his original discharge.

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 25 Jun 24 for comment (Exhibit G) 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 the rationale and recommendation of AFPC/DP2SSR 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 characterization of the applicant's service was in accordance with AFR 39-10.

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.

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-2023-03457 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/atch, dated 4 Oct 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, AFPC/DP2SSR, dated 23 May 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Mar 24.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Jun 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, 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.

X

Board Operations Manager, AFBCMR