

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-00155

XXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXX

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

His official military personnel record be amended to:

- a. Upgrade his discharge characterization from under other than honorable conditions (UOTHC) to general (under honorable conditions) or honorable.
- b. Change Narrative Reason for Separation and Separation Code to reflect Secretarial Authority.

### **APPLICANT'S CONTENTIONS**

Per counsel, the applicant had every intention of serving our country proudly, entering the service full of optimism and eager to fulfill his obligations to the Air Force. While struggling with depression, anxiety, impulsive behavior, and sleep deprivation, he had two Article 15 incidents and an Article 86 incident, all of which were non-violent. The applicant was court-martialed with the Article 86 violation and sentenced to confinement for six months. He was subsequently discharged from the Air Force with an undesirable discharge characterization. His discharge characterization has had a long-lasting and negative effect on his personal and professional life. The applicant has had incredible difficulty securing employment, and he is often homeless and unable to obtain psychiatric care. In 1995, he was diagnosed with paranoid schizophrenia and bipolar depression. His misconduct can be directly attributed to a diminished capability to serve, youthful indiscretion, and untreated mental health conditions. Upgrading his discharge status would rewrite his story and restore a sense of pride that has been missing for most of his adult life.

Counsel provided details regarding the applicant's upbringing and prior-service conduct. Per counsel, the applicant felt like an outcast growing up, and his father often threatened to disown him. Before the age of 10, he ran away from home on five occasions, each time precipitated by feelings of being unwanted and fears of being hurt by his father. He had no criminal record and no trouble with civil or school authorities.

The applicant enlisted in the Air Force at 18 years of age, training as a Security Policeman and Sentry Dog Handler. During his service, his relationship with his wife was strained and caused stress and anxiety. While struggling with his marriage, anxiety, and depression, he violated the Uniform Code of Military Justice (UCMJ). These incidents were non-violent. The first incident related to his laying down while on post. Because of his stress and anxiety, the applicant suffered from insomnia and sleep deprivation. The second Article 15 related to the applicant going Absent Without Leave (AWOL) from 6 Jan 69 – 7 Jan 69. He did not report to work because he took his wife to the hospital struggling with a kidney infection and pain. He went AWOL again on 8 Jan 69 to take care of his pregnant wife. He again went AWOL in Apr 69, taking leave to drive his wife to her parents' home but could not afford the return trip. He did not return to duty and remained AWOL for 31 days. He met a special court-martial on 3 Jun 69 and pled guilty to charges of AWOL. He was sentenced to six months confinement and forfeiture of \$30.00 per month for six months. His confinement ended on 17 Nov 69, and he

went AWOL again on 16 Dec 69. In Feb 70, the applicant was apprehended and was charged with violating Article 86. He requested a discharge from the military.

The applicant was evaluated by an Air Force group psychiatrist who identified he experienced unrelenting amounts of anxiety, poor impulse control, depression, impaired judgment, and other mental health issues. The psychiatrist also identified the applicant's difficulties are indicative of a life-long pattern and he was not capable of returning to duty. The applicant received counseling from several professionals, and according to their progress reports, they considered it doubtful he could return to duty. The applicant was discharged four months later.

After his separation from the Air Force, the applicant struggled to find work, was often unemployed, and periodically homeless throughout his adult life. Tragically, in 1971, his infant daughter passed away. After the loss of his daughter, he and his wife divorced, and the applicant subsequently began experiencing auditory and visual hallucinations of his deceased daughter.

The applicant applied for a discharge upgrade in Oct 82. He was scheduled for an in-person discharge review on 15 Sep 83 but was unable to attend due to illness. His discharge upgrade request was denied.

In Jul 95, the applicant was admitted to a psychiatric hospital with presentation of auditory hallucinations sometimes telling him to harm himself. Through the Dual Diagnosis program, he was diagnosed with paranoid schizophrenia. This diagnosis was confirmed by a Veterans Administration (VA) psychiatrist in May 00. He was later seen by mental health professionals at the **Work...-Product** Mental Health Services where he was diagnosed with schizophrenia and bipolar depression. They presented to the VA that the applicant had depressed mood, anxiety, weekly panic attacks, near-continuous panic attacks, chronic sleep impairment, mild memory loss, impaired judgment, impaired abstract thinking, disturbances of motivation, difficulty in establishing and maintaining work, persistent delusions, and disorientation in time and place. The psychiatrist noted the applicant suffered from total occupational and social impairment; had no job, no home, and no friends; and suffers from suicidal preoccupations.

The applicant currently receives social security and does not work due to his age and has relied on public health resources to receive medical treatment. Despite his difficulties, the applicant sporadically worked as a dog trainer, using the skills learned in the Air Force, and has volunteered at community food kitchens and community clean-ups. He also has donated to Feed the Children and St. Jude Children's Hospital. Today, he spends his time with his three children, five grandchildren, and five great-grandchildren, and trying to stay healthy.

Since the applicant's separation from the Air Force, the military's views concerning rehabilitation and second chances have changed significantly. Counsel presented excerpts from the Under Secretary of Defense for Personnel and Readiness memorandum, Subject: *Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations*, dated 25 Jul 18, (known as the Wilkie Memo), and the Under Secretary of Defense for Personnel and Readiness memorandum, Subject: *Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment*, dated 25 Aug 17, (known as the Kurta Memo) in support of this contention.

Regarding the criteria detailed in the Wilkie Memo, counsel contended the applicant's post-discharge conduct supports an upgrade. The applicant candidly stated he accepted full responsibility for his past behavior and regretted not having better control. Additionally, counsel noted the applicant's misconduct mainly involved non-violent AWOL offenses, and his misconduct can also be attributed to youthful indiscretion as the applicant was 20 years old at the

time of these incidents. Further, the applicant's misconduct was directly attributable to, and mitigated by, his mental health conditions. Although not diagnosed with paranoid schizophrenia and bipolar disorder until years after his discharge, it is clear from his service-related medical records that he displayed and struggled with serious mental health conditions during his service.

According to the Kurta Memo, liberal consideration must be given to the applicant's diagnosed mental health in deciding whether to upgrade his discharge. Counsel provided responses to the four questions outlined in the Kurta Memo, stating the applicant did have a condition that may excuse or mitigate the discharge; it was not known for certain whether the applicant suffered from paranoid schizophrenia or bipolar depression during his service; liberal consideration recognized mental health conditions inherently affect behavior and choices in ways that cause a veteran to think and behave differently than might otherwise be expected; and the applicant's mental health conditions were a significant factor in his misconduct.

Finally, fifty years have passed since the applicant's non-violent misconduct for which he was discharged. He was only 20 years old at the time of his last misconduct and the discharge characterization has stigmatized and punished him for a lifetime. Since his diagnosis in 1995, the applicant has been managing his conditions with public health resources.

In support of his request for liberal consideration and/or clemency, the applicant provides a personal declaration, excerpts from his military record, excerpts of supporting statutes and regulations, an article from Georgetown University Law Center, *Kicked Out, Kicked Again: The Discharge Review Board's Illiberal Application of Liberal Consideration for Veterans with Post-Traumatic Stress Disorder*, 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 basic (E-1).

On 10 Jan 69, according to a XXX SPS/CC memorandum, Subject: *Disciplinary Punishment*, the applicant was issued nonjudicial punishment under Article 15, UCMJ for:

a. On or about 6 Jan 69, without authority, absented himself from his organization, to wit: [Redacted] Security Police Squadron (XXX SPS), located at [Redacted] (AFB), [Redacted], and did remain so absent until on or about 7 Jan 69, in violation of Article 86, UCMJ.

b. On or about 8 Jan 69, without authority, absented himself from his organization, to wit: [Redacted] located at [Redacted], and did remain so absent until on or about 9 Jan 69, in violation of Article 86, UCMJ.

The applicant was reduced to the grade of airman basic (E-1) and ordered into correctional custody for 30 days.

On 4 Apr 69, according to AF Form 1098, *Personnel Action Request*, the applicant's duty status was changed from Leave to AWOL.

On 4 May 69, according to AF Form 1098, the applicant's duty status was changed from AWOL to Dropped from Rolls.

On 5 May 69, according to AF Form 1098, the applicant's duty status was changed from Civ[ilian] Control to Mil[itary] Control.

On 6 May 69, according to AF Form 1098, the applicant's duty status was changed from Mil[itary] Control to Present for Duty.

According to Special Court-Martial Order XXX, dated 3 Jun 69, the applicant was arraigned and tried for:

Charge: Violation of the UCMJ, Article 86

Specification: [The applicant] on or about 4 Apr 69, without authority, absented himself from his organization, to wit: XXX SPS, located at [REDACTED] *Work-Product*, and did remain so absent until on or about 5 May 69. Plea [to the specification and charge]: Guilty; Findings [of the specification and charge] Guilty.

The applicant was sentenced to be confined at hard labor for six months and to forfeit \$30.00 per month for six months. The sentence was adjudged on 2 Jun 69.

On 17 Nov 69, according to AF Form 1098, the applicant's duty status was changed from Confinement to Present for Duty.

On 16 Dec 69, according to AF Form 1098c, *Extract of Personnel Action Request*, the applicant's duty status was changed from Present for Duty to AWOL.

On 16 Jan 70, according to AF Form 1098, the applicant's duty status was changed from AWOL to Dropped from Rolls.

On 5 Feb 70, according to AF Form 1098, the applicant's duty status was changed from Dropped from Rolls to Military Control.

On 9 Feb 70, according to an applicant memorandum to RTG [Retraining Group], Subject: *Request for Discharge for the Good of the Service*, he requested discharge under Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, paragraph 2-78, for the good of the service.

On 11 Feb 70, the applicant's commander recommended the applicant be discharged from the Air Force, for the good of the service. The specific reasons for the action were:

- a. [Applicant] was AWOL from 16 Dec 69 to 15 Jan 70; Dropped from Rolls from 16 Jan 70 to 5 Feb 70
- b. [Applicant] is not considered a good rehabilitation risk, and it is deemed best that the airman be eliminated from the service.

On 12 Mar 70, the discharge authority directed the applicant be discharged under the provisions of AFM 39-12, Chapter 2, Section F, and furnished a DD Form 258 AF, *Undesirable Discharge Certificate*.

On 13 Mar 70, the applicant received a UOTHC discharge. His Reason and Authority is "AFM 39-12, Chapter 2, Section F, 1st Ind, CBPO-SA, 12 Mar 70 to Ltr RTGCR, 11 Feb 70; SDN 246" and he was credited with 4 months, and 9 days of total active service, with Non-Pay Periods/Time Lost for the following periods: 6 Jan 69, 8 Jan 69, 4 Apr 69 – 3 May 69, 4 May 69, 2 Jun 69 – 17 Nov 69, 16 Dec 69 – 12 Mar 70.

On 28 Oct 82, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 15 Sep 83, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

## **POST-SERVICE INFORMATION**

On 20 Feb 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); 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 20 Feb 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 an upgrade to his discharge. Additionally, there is insufficient evidence to suggest the applicant's misconduct was the result of any mental health condition he had during his service or at discharge. His military record shows his commander found no reasonable grounds to believe the applicant was, at the time of his misconduct, mentally defective, deranged, or abnormal. The applicant was medically cleared for separation. He was twice determined to be fit for military service. A *Report of Medical Examination* completed near discharge found no psychiatric concerns.

While the applicant later developed schizophrenia, there is no evidence he was experiencing symptoms related to this condition during his time in the military or at discharge. A psychiatric evaluation completed while he was in confinement noted there was no evidence of delusions, loosening of association, hallucinations, or depersonalization. The evaluation further noted the applicant's pattern of running away (AWOL) was present since 10 years of age. It does not appear his net time in service (four months, and nine days) aggravated or exacerbated his symptoms. It appears from the psychiatrist's report the applicant continued a lifelong pattern of avoiding his difficulties by fleeing. This appears to be the result of acting out behavior, rather than a product of any mental health condition.

His available records indicate he was not diagnosed with schizophrenia until 1995, about 25 years after his military service. The onset of his current symptoms, in which he was diagnosed

with schizophrenia, began in Feb 94. It is noted he had a previous instance of hearing voices (the crying of his six-week-old baby after her death) in 1971, one year after his military discharge. His post-service mental health encounters note he began using cocaine, alcohol, and marijuana in 1971 and has had a problem with all three since that time. He was diagnosed with cocaine dependence and unspecified drug dependence in 1996. A mental health encounter notes he has occasional hallucinations that are due to his cocaine usage.

As mentioned above, there is insufficient evidence to suggest the applicant's misconduct was the result of any mental health condition the applicant had during his service or at discharge. Evidence of this psychological advisor's conclusion is supported by a document from the **Work-Prod...** Mental Health Service, from where the applicant's counsel solicited answers to issues related to this case (20 Dec 22). The treating psychiatrist, in her reply (16 Jan 23) noted:

- [The applicant] apparently had symptoms consistent with paranoid schizophrenia since 1995.

- Were [the applicant's] repeated episodes of going AWOL from the military related to his mental illness?

- As evident from the military psychiatrist's reports, he has a long history of impulsive behaviors, acting without regard for potential consequences, as well as anxiety and depression.

- A difficult family environment was no doubt a major factor contributing to his behaviors.

- However, the military psychiatrist's records clearly indicate he did not suffer from a psychotic illness during his time in the service.

- His psychotic symptoms had an onset decades after his discharge from the service. The psychiatrist concluded it is difficult to understand how his current diagnosis of schizophrenia could be related to his behaviors while in the military.

While the applicant was diagnosed with an emotionally unstable personality, his mental health condition does not mitigate his misconduct. His misconduct of going AWOL on three occasions and wrongfully lying down on his post are not related to his mental health condition. There is ample evidence to demonstrate it was not his mental health condition that caused his discharge. His discharge was caused by his acting out behavior, which existed before he entered military service (existed prior to service). His pattern of solving his problems by fleeing continued during his service in the military.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. 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 was diagnosed with an emotionally unstable personality while in service.

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

There is ample evidence to suggest his personality disorder existed prior to entering the military and was formed during his childhood years. While counsel suggests he may have had paranoid schizophrenia or bipolar depression during his military service, there is no evidence of this in his record, including prodromal symptoms. He was not diagnosed with schizophrenia until 1995, 25 years after military service. In the intervening years since his discharge (1970), he has had a

problem with cocaine, marijuana, and alcohol. His hallucinations are described as due to his substance abuse and dependence.

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

While the applicant was diagnosed with an emotionally unstable personality, his mental health condition does not mitigate his misconduct. His misconduct of going AWOL on three occasions and wrongfully lying down on his post are not related to his mental health condition. There is ample evidence to demonstrate it was not his mental health condition that caused his discharge. His discharge was caused by his acting out behavior, which existed before he entered military service (existed prior to service). His pattern of solving his problems by fleeing continued during his service in the military.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the 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 20 Feb 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 insufficient evidence to suggest the applicant's misconduct was the result of any mental health condition the applicant had during his service or at discharge, and he was medically cleared for separation. His discharge was caused by his acting out behavior, which existed before he entered military service (existed prior to service). His pattern of solving his problems by fleeing continued during his service in the military. Further, the applicant was not diagnosed with schizophrenia until 1995, approximately 25 years post-service.

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. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. 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-2024-00155 in Executive Session on 18 Jun 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 24 Mar 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 20 Feb 24.  
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Feb 24.  
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 20 Feb 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

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Board Operations Manager, AFBCMR