

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-00232

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, Block 28, *Narrative Reason for Separation*, be amended.

### APPLICANT'S CONTENTIONS

Upon the applicant's arrival at technical school, a fellow airman offered him a calling card number so he could call home. After a couple of weeks when they were able to leave the dormitory, he purchased his own calling card and reimbursed the airman for the calls made on the card that was lent to him. In the midst of pharmacy exams, he was informed the calling card was stolen unbeknownst to him. The applicant cooperated with the investigation as well as others who were scammed by the airman, the airman who stole the card was identified, and the applicant also produced receipts for calls he made not knowing the card did not belong to the airman.

The fact that the applicant received a separation for "Misconduct – Other Serious Offenses" is an injustice. He did not break any laws. His mistake was trusting a fellow airman. To be forced out of the Air Force and have derogatory comments on his DD Form 214 has had a negative impact on his life, mental health, and employment opportunities.

In support of his request for clemency, the applicant provides copies of character statements.

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 Feb 92, 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*, paragraph 5-49c. The specific reasons for the action were:

- On or about 1 Nov 91 through on or about 30 Dec 91, [the applicant] violated Article 134, Uniform Code of Military Justice, with intent to defraud, making long distance telephone calls without authority and charging said telephone calls to an account number of [individual], then knowing that the calls were made without authority, and by means thereof [the applicant] wrongfully obtained services from AT&T, of a value of \$60.68. As a result, [the applicant] received Article 15 punishment on 31 Jan 92.

On 19 Feb 92, the Staff Judge Advocate found the discharge action legally sufficient.

On 21 Feb 92, the discharge authority directed the applicant be discharged under the provisions of AFR 39-10, paragraph 5-49c, with an Entry Level Separation (ELS). Probation and rehabilitation were considered, but not offered.

On 25 Feb 92, the applicant received an ELS. His narrative reason for separation is “Misconduct – Other Serious Offenses” and he was credited with 5 months and 16 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 9 Jul 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 9 Jul 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

### **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 5 Apr 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 the desired change to his records from a mental health perspective.

A review of the available records finds there is no evidence or records the applicant's mental health condition had a direct impact or was a contributing factor to his misconduct and subsequent discharge for this reason. His service treatment records are not available or submitted by the applicant for review, but the existing records find no documentation of any mental health conditions or issues he had during service. There are no records the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during service, and in fact, there are no records confirming he was ever diagnosed with a mental health condition by a duly qualified mental health professional during his lifetime. From the applicant's contention, it appeared his mental health concerns were developed from his discharge and the negative impact of his ELS and/or uncharacterized character of service on his life and employment opportunities. There is no evidence he had any mental health condition before his misconduct or discharge. The applicant did not clarify the actual mental health condition he had during service, when he was diagnosed with a mental health condition, and how his mental health condition had caused or could excuse or mitigate his discharge. He had consistently contended during service and in his current petition that he did not know the calling card was stolen, believed the calling card belonged to a fellow airman, and he would not have used the calling card if he knew it had been stolen. The applicant said his mistake was trusting a fellow airman. Based on his explanation, the applicant's mental health condition did not cause his misconduct or influence his decision to use a stolen calling card. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of his misconduct. The applicant was furnished with an uncharacterized character of service under ELS because he served less than 180 days of continuous active military service. This

characterization is consistent with past regulations of AFR 39-10, the regulation he was discharged under, and the present regulation of Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*. The applicant claimed his discharge was an injustice, and this Psychological Advisor finds no error or injustice with his discharge from a mental health perspective.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition or "Other 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 from the information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant marked "Other Mental Health" on his application to the Board and contended, "To be forced out of the USAF and have derogatory comments on my DD214 has had a negative impact on my life, mental health, & employment opportunities." He did not clarify his "Other Mental Health" condition and did not discuss how his mental health condition may excuse or mitigate his discharge.

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

The applicant's service treatment records are not available or submitted by the applicant for review. The existing available records find no evidence or records he had received any mental health evaluations, treatment, or mental disorder diagnosis during service. There is no evidence he had any mental health conditions during service.

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

The applicant had consistently contended during service and in his current petition to the Board that he did not know the calling card was stolen, believed the calling card belonged to a fellow airman, and he would not have used the calling card if he knew it had been stolen. He made a mistake in trusting another airman. Based on the applicant's explanation, his mental health condition did not cause his misconduct or influence his decision to use a stolen calling card. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of his misconduct. Therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his condition 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 9 Jul 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 the victim of an injustice. While the Board finds no error in the original discharge process, liberal consideration was applied and the Board recommends relief based on fundamental fairness in accordance with the Wilkie Memorandum. In particular, the Board found the narrative reason for separation to be unduly harsh given the applicant's age, the circumstances surrounding the applicant's misconduct and his reimbursement for services received, and the supporting character references. Therefore, the Board recommends the applicant's records be corrected as indicated below.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 25 Feb 92, he was discharged with a narrative reason for separation of Secretarial Authority and a separation code of JFF.

## 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-2024-00232 in Executive Session on 18 Dec 24:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 12 Jan 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 9 Jul 24.
- Exhibit D: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Apr 24.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Jul 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jul 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