



**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00236

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His "Not Applicable" Entry Level Separation (ELS) be upgraded to medical or honorable.
2. The narrative reason of "Entry Level Performance and Conduct" and the associated separation (SPD) code of "JGA" be changed.

APPLICANT'S CONTENTIONS

He is requesting a medical/honorable discharge as determined by the Department of Veterans Affairs (DVA) investigation and the determination he suffered a service-connected 50 percent disability, which directly led to his discharge from basic military training (BMT). This issue was clearly explained by his area defense counsel (ADC) in a letter in response to the discharge recommendation.

He was discharged from the Air Force with an inaccurate characterization, describing his conduct as "unsatisfactory" without regard to his mental health condition of adjustment disorder, severe, with anxious mood, syncopal episodes, and psychological factors affecting physical condition, which was the sole reason for the discharge recommendations made by the clinical psychologist on 13 and 14 Aug 85. The DVA has already determined he has suffered a 50 percent service-connected disability due to the mental health condition which developed during his stressful time attending BMT. The DVA also declared in his service status letters he received an "honorable discharge", hence the correction request.

Additionally, he had satisfactory performance for every week of his entire BMT service, except for the last week, even though his performance was constant from week to week, and the same as all prior weeks with the only difference being his discharge was now immanent. One can only conclude he must have received the unsatisfactory evaluation from his last week as a form of retaliation and punishment.

In support of his request for a discharge upgrade, the applicant provides DVA claim documentation and in-service medical and personnel documents.

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The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 19 Aug 85, 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 5-22 for unsatisfactory entry level performance or conduct. The reasons for the action were his lack of aptitude for military service, failure to adapt to the military environment, his failure to make satisfactory progress in a required training program, a reluctance to make the effort necessary to meet Air Force standards of conduct and duty performance, and his lack of self-discipline.

More specifically, on 15 Aug 85, the [REDACTED] TC Form 105a, *Basic Training Record*, indicated the applicant was recommended for discharge due to his emotional and psychological instability, repeated inattention to detail, and lack of self-discipline. He had one unsatisfactory week due to a failure to show motivation, acceptance of responsibility, and the inability to meet mandatory training standards. He also received three form 341, *Excellence/Discrepancy Reports*, due to his failure to follow instructions. He was unable to cope with the environment of BMT. He fainted on four occasions but there were no physical abnormalities related to the problem. The most recent episode required cardiopulmonary resuscitation (CPR) and transfer to the medical center. He was then referred to the Mental Hygiene Clinic (MHC), who recommended immediate removal from training. Clinical interviews and tests indicated a severe adjustment disorder with anxious mood. He did not appear motivated to remain in the Air Force and was pre-occupied over physical symptoms. Prospects for recovery were non-existent, and continued training would have led to further physical and psychological decompensation.

On 20 Aug 85, the Staff Judge Advocate found the discharge action legally sufficient.

On an unknown date, the discharge authority directed the applicant be discharged for unsatisfactory entry level performance or conduct, with an ELS.

On 6 Sep 85, the applicant received an ELS. His narrative reason for separation is "Entry Level Performance and Conduct" and he was credited with 1 month and 14 days of total active service.

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

POST-SERVICE INFORMATION

On 19 Apr 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History

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Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 20 Apr 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided certificates, character statements, and other documents in support of his request.

The applicant's complete response is at Exhibit D.

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

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

Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, dated 14 Oct 94, describes the authorized service characterizations that were applicable at the time of the applicant's separation.

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:

- 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
- 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.

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.

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application finding no error or injustice with the discharge process. Airmen are in entry level status during the first 180 days of continuous active military service. The DoD 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 E.

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his records. A review of the applicant's available records finds his contentions are not supported by his objective military records. There is evidence the applicant

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had difficulties adjusting to the military and BMT. He was unable to tolerate the stressors and demands of BMT and this had caused him to faint on numerous occasions, have anxiety, and unsatisfactory performance. All these issues were the reasons for his discharge as documented in his letter of notification. Contrary to his claim, his mental health condition was considered and was a contributing factor to his discharge. His commander had documented this fact with an entry into his basic training record on 15 Aug 85, stating he was being recommended for discharge under the provisions of AFR 39-10, paragraph 5-22b (1-5) due to his emotional and psychological instability, repeated inattention to detail, and lack of self-discipline preclude his acquisition of required BMT rudiments. This identified regulation was the same regulation listed in his letter of notification. The applicant's poor work performance in conjunction with his mental health condition was classified under the category of "Entry Level Performance and Conduct" per this regulation. Therefore, there is no error or injustice identified with this reason for discharge.

The applicant was diagnosed with adjustment disorder, severe, with anxious mood and psychological factors affecting physical condition during service. While this condition had caused his discharge, it does not excuse or mitigate his discharge. This is an unsuiting condition for military service and meets the criteria for an administrative separation, which he had appropriately received. The applicant is also requesting a medical discharge/disability. There is no evidence he had any unfitting mental health conditions during service which met the criteria for a referral to the Medical Evaluation Board (MEB) for a possible medical discharge. Unsuiting and unfitting conditions are different and the condition he had during service resulting in his discharge was unsuiting and not unfitting. Thus, his request for a medical discharge for his mental health condition is not supported.

For awareness, since the applicant has received service connection for his mental health condition: The military's Integrated Disability Evaluation System (IDES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. Receiving service connection from the DVA for a mental health condition also does not indicate mitigation of the discharge. Service connection merely suggests the condition was somehow related to his military service but does not excuse or mitigate the original discharge. The applicant's emotional and behavioral reactions to stress had existed prior to his military service.

The letter from the director of dispensary services, who was a medical provider, reported he had a long history of reacting to stress with psychophysiology problems such as fainting, headaches,

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insomnia, and depression. The director did not find any medical etiology for his symptoms. His prior service condition of anxiety and depression was exacerbated, but not permanently aggravated by his military service. There is no evidence his military service permanently aggravated his prior service condition beyond the natural progression of the disease or illness. There is no evidence he continued to have these same problems after service, necessitating him to receive continued mental health treatment. It appeared once his situational stressor of the military was removed, his mental health condition/symptoms had resolved. This impression supports his adjustment disorder diagnosis was valid and appropriate to his functioning and clinical presentation at the time of service.

The applicant was furnished with a "Not Applicable" (uncharacterized) character of service under ELS because he served less than 180 days of continuous active-duty service. His service characterization is in accordance with past regulations of AFR 39-10 (the regulation he was discharged under) and to current regulation of DAFI 36-3211, *Military Separations*. His character of service is consistent to policy and regulation and there is no error or injustice identified with his character of service. His request for an honorable discharge is not supported.

LIBERAL CONSIDERATION: Liberal consideration is not applied to the applicant's request for a medical discharge because the updated clarifying guidance, Vazirani Memorandum, published on 4 Apr 24, clearly states liberal consideration does not apply to fitness determination requests, which include medical discharge, disability, or retirement. The updated clarifying guidance did instruct a bifurcate review should be performed when a mental health condition potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change in the narrative reason is appropriate. However, liberal consideration is not required to be applied to the applicant's request because there is no evidence his prior condition was aggravated by his military service (Kurta Memorandum #15). Should the Board choose to apply liberal consideration to the applicant's request for an upgrade of his discharge, the following are responses to the four questions from the Kurta Memorandum from the available records for review. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

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

The applicant contended he was discharged from the Air Force with an inaccurate characterization and blamed his conduct as "Unsatisfactory" without regard to his mental health condition. The DVA had determined he suffered from 50 percent service-connected disability due to his mental health condition which developed during his stressful time attending BMT. The DVA also declared his service was "honorable" which would support his request for a correction to his discharge.

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

The applicant was diagnosed with adjustment disorder, severe, with anxious mood and psychological factors affecting physical condition due to his difficulties adapting to the military and causing him to feel anxious and depressed during service.

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

[REDACTED]

The applicant had an unsuiting mental health condition identified as adjustment disorder, severe, with anxious mood and psychological factors affecting physical condition. There is no error or injustice identified with his diagnosis. His unsuiting mental health condition caused his administrative separation but did 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 mental health condition also does not outweigh his original discharge. He was discharged under ELS and furnished with a "Not Applicable" or Uncharacterized character of service. This characterization is in accordance with past and present regulations. There is no error or injustice identified with his character of service or discharge from service, so an upgrade of his service characterization is not supported.

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 10 Oct 24 for comment (Exhibit G) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 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 and recommendations of the AFRBA Psychological Advisor and AFPC/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. While there is evidence the applicant had been diagnosed with adjustment disorder, severe, with anxious mood and psychological factors affecting physical condition, this is an unsuiting mental health condition for military service. These unsuiting conditions caused the discharge, but it does not excuse or mitigate the discharge. Furthermore, receiving service connection from the DVA does not indicate causation or mitigation of his discharge, but merely suggests the condition(s) were somehow related to his military service. The DVA under Title 38, U.S.C., is empowered to offer compensation for any mental health or medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. Additionally, in accordance with AFR 39-10, airmen are given an ELS with uncharacterized service when they fail

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to complete a minimum of 180 days of continuous active military service when notified of the discharge action. The applicant enlisted on 23 Jul 85 and was notified of their commander's intent to discharge on 19 Aug 85, marking the initiation of the discharge action, which was within the 180-day timeline. It appears the applicant was separated for behavioral issues however, the applicant was not given a service characterization due to the length of time he served; therefore, applying fundamental fairness under the Wilkie Memo is not warranted. As an ELS, characterization as honorable is justified when unusual circumstances of personal conduct and performance of military duty occur which is not the case with this applicant. Therefore, the Board recommends against correcting the applicant's records.

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-2024-00236 in Executive Session on 19 Mar 25:

[REDACTED], Panel Chair
[REDACTED], Panel Member
[REDACTED], Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 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 19 Apr 24.
- Exhibit D: Applicant's Response, FBI Report w/atchs, dated 20 Apr 24.
- Exhibit E: Advisory Opinion, AFPC/DP2SSR, dated 7 May 24.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, 2 Oct 24
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Oct 24

[REDACTED]

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.

4/4/2025

X [REDACTED]

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Board Operations Manager, AFBCMR
Signed by: USAF

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