



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00486

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His falsified airman performance report (APR) be removed from his record.
3. His grade of sergeant (E-4) be restored.

APPLICANT'S CONTENTIONS

He was wrongly and falsely accused while serving on a remote assignment and living in base quarters at a Navy installation. He received bias legal counsel from a Naval representative.

He has spent his entire life working for the United States government. He had hoped to make a career out of the Air Force.

He marked post-traumatic stress disorder (PTSD), harassment and reprisal/whistleblower on his application and crossed out sexual assault.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 17 Jun 83, the applicant received an Article 15 for being drunk and disorderly, violating a lawful order by playing his stereo too loudly in his quarters at 0219 hours and orally communicating indecent, insulting and obscene language to a female on 30 May 83 on the Naval station. He was reduced to the grade of airman first class (E-3) with new date of rank (DOR) of 17 Jun 83 and ordered to forfeit \$250.00 pay per month for two months. The execution of the punishment for forfeiture in excess of \$50.00 per month for two months was suspended until 13 Dec 83, at which time it would be remitted without further action.

On 20 Jul 83, the applicant received an Article 15. On 12 Jul 83, he was absent from his unit, without authority, and remained absent until 15 Jul 83. He was reduced to the grade of airman (E-2) with DOR of 20 Jul 83 and ordered to forfeit \$75.00.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF_MRBC.Workflow@us.af.mil

His airman performance report (APR) for the reporting period 6 May 83 to 24 Jul 83, with an overall rating of “6,” includes comment, “His adherence to Air Force standards during non-duty hours required immediate improvement.” However, the APR is not a referral report.

On 25 Jul 83, the applicant’s commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 12 Aug 82, he was drunk and disorderly on station, as evidenced by his Article 15.
- b. On 12 Oct 82, he failed to go to his appointed place of duty, as evidenced by a letter of reprimand (LOR) dated 12 Oct 82.
- c. On 31 Dec 82, he was disorderly on station, as evidenced by a LOR dated 31 Dec 82.
- d. On 17 Jun 83, he was drunk and disorderly in quarters, failed to obey a lawful order and orally communicated certain indecent, insulting and obscene language, as evidenced by his Article 15.
- e. About 12 to 14 Jul 83, he was absent from his unit, without authority, as evidenced by his Article 15.
- f. He was verbally counseled for his involvement in 11 separate incidents from 14 Feb 82 to 7 May 83.

On 26 Jul 83, the applicant acknowledged the discharge recommendation. He indicated legal counsel was made available to him. He waived his option to consult counsel and waived his right to submit statements in his own behalf.

On 29 Jul 83, the Staff Judge Advocate found the discharge action legally sufficient.

On 1 Aug 83, the discharge authority directed the applicant be discharged with a general (under honorable conditions) service characterization.

On 11 Aug 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct-Pattern of Minor Disciplinary Infractions,” corresponding separation code is “JKN” and Reenlistment (RE) Code is “2B” for Separated with a general or under other than honorable conditions discharge. He was credited with 4 years, 8 months, and 12 days of total active service.

For more information, see the excerpt of the applicant’s records at Exhibit B and the advisory opinions at Exhibits D, E and F.

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 22 Feb 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C). On 26 Sep 24, the Board staff provided the applicant an updated copy of the liberal consideration guidance.

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

AFPC/DPMSPP recommends denial for restoration of his grade of E-4. The applicant was demoted to the grade of E-3 on 17 Jun 83 for Article 15 and demoted to the grade of E-2 on 20 Jul 83 for Article 15. There was no documentation verifying the applicant was recommended or considered for restoration of his grade of E-4.

The complete advisory opinion is at Exhibit D.

AFPC/DP3SP recommends denial for removal of his APR for the period of 6 May 83 to 24 Jul 83. The applicant has not provided compelling evidence to substantiate the contested report was unjust or inaccurate. The applicant also did not provide any information from his rating chain who had direct firsthand observation and could validate the applicant's claims. An evaluation is considered to represent the rating chain's best judgment at the time it was rendered. Once a report is accepted for file, only strong evidence to the contrary warrant correction or removal from an individual's record. The applicant did not prove the report was not rendered in good faith by all evaluators based on knowledge available at the time. The applicant received several adverse documentation actions prior to his separation and evaluators are obligated to consider such incidents, their significance and the frequency with which they occurred in assessing performance and potential. The rater documented areas of improvement in the APR in accordance with AFR 39-62, *Officer and Enlisted Evaluations Systems*, dated 15 Mar 80.

The application was not submitted in a timely manner. The report has been a matter of record for over 40 years. He has waited 40 years to file the appeal and offered no justification for the extensive delay. The applicant's unreasonable delay has greatly complicated the Air Force's ability to determine factual merits of the applicant's position. AFPC/DP3SP recommends the applicant's request be denied based on timeliness alone.

The complete advisory opinion is at Exhibit E.

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge. The applicant's service treatment records (STR) and his post service treatment records include no evidence of any mental health condition, that he experienced harassment or reprisal. There is no evidence he had any mental health condition or experience that would mitigate his discharge for pattern of misconduct. A review of his records finds no error or injustice with his discharge.

The applicant's STR includes no in service mental health encounters. A review of his post service treatment records show he has a Department of Veterans Affairs (DVA) service connected disability rating of 10 percent for Tinnitus. He does not have any service connection for mental health treatment post service. The applicant has over 150 medical encounters from 15 Mar 13 to 24 Jun 24. However, none of the encounters were for mental health reasons. He was also never diagnosed with any mental health condition and he did not submit any medical or psychiatric documentation from other sources.

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:

1. Did the applicant have a condition or experience that may excuse or mitigate the discharge? There is no evidence the applicant had a mental health diagnosis during his military service. There is insufficient evidence he experienced any harassment or reprisal during his military service.

2. Did the condition exist or experience occur during military service. There is no evidence the applicant has a mental health diagnosis post-service.
3. Does the condition or experience excuse or mitigate the discharge? While the applicant check marked mental health conditions and experiences on his application, there is no evidence in his service record or available medical record he has any mental health condition, experienced harassment or any reprisal. Therefore, there is no evidence he had any mental health condition or experience that would mitigate his discharge for a pattern of misconduct.
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 F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 1 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 10 U.S.C. § 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 AFPC/DPMSP, AFPC/DP3SP and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board is unable to verify the applicant was recommended for restoration of his grade of E-4. Based on the incidents of misconduct verified in his records, the Board is unable to verify an error injustice to his rank. The applicant has also not provided compelling evidence to substantiate the contested APR was unjust or inaccurate. The applicant did not provide any factual firsthand observations and concrete information from his rating chain to validate his claims. Based on lack of corroborating evidence and the presumed legitimacy of the evaluator's overall documentation on the contested APR, the Board recommends the APR not be removed. Further, 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. The Board also finds the applicant has provided insufficient post-service evidence to grant relief on the basis of clemency. Therefore, the Board recommends against correcting the applicant's records.
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-2024-00486 in Executive Session on 16 Oct 24:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 10 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 22 Feb 24.
- Exhibit D: Advisory Opinion, AFPC/DPMSPP, w/atchs, dated 1 May 24.
- Exhibit E: Advisory Opinion, AFPC/DP3SP, dated 9 May 24.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Jun 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Jul 24.
- Exhibit H: Letter, SAF/MRBC, w/atchs (Updated Liberal Consideration Guidance), dated 22 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.

11/12/2024

X

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Board Operations Manager, AFBCMR

Signed by: USAF

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