



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:**DOCKET NUMBER:** BC-2024-00849

Work-Product

COUNSEL: NONE**HEARING REQUESTED:** NO

APPLICANT'S REQUEST

1. His under other than honorable conditions (UOTHC) discharge be upgraded to honorable.
2. His forfeiture of pay be reimbursed.
3. He receive an applicable disability rating (medical separation).

APPLICANT'S CONTENTIONS

He was diagnosed with Bipolar II Disorder and he was diagnosed and treated for a mental health disorder while he was in the service. He would not have received the same discharge if the Kurta memorandum guidelines had existed at the time of his service. During his court-martial trial, a sanity board determined his condition disqualified him from service. Prior to his trial, he had no disciplinary problems.

In support of his request for a discharge upgrade, the applicant provides a personal statement, medical documentation, and a letter from his defense counsel at the time of his court-martial trial.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force second lieutenant (O-1).

On 13 Mar 95, SF 93, *Report of Medical History*, the applicant indicated he was treated for depression on Jan through Feb 92.

On 25 Jun 95, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged from the Army in the grade of specialist (E-4) after serving 1

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Controlled by: SAF/MRB

Work-Product Categories: Work-Product

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

year, 7 months, and 29 days of active duty. He was discharged, with a narrative reason for separation of “Secretarial Authority.”

On 16 Dec 96, the convening authority published General Court-Martial Order (GCMO) number [Work...]. The Order stated the applicant pled guilty and was found guilty of one charge and one specification stealing a computer of a value more than \$100.00 between on or about 1 Mar 96 to 1 Apr 96 (Article 121). The applicant was sentenced to confinement for seven months, forfeiture of all pay and allowances (waiver of automatic forfeitures in pay of \$1,400.00 per month for the maximum six-month period was approved), and dismissal from the service.

On 31 Aug 98, the convening authority published GCMO number [Work...]. The Order stated the sentence as promulgated in GCMO number [W...] was affirmed and the dismissal was to be executed with a substitution of an UOTHC discharge. It was noted \$1,400.00 of pay per month of the required forfeiture of total pay and allowances was waived for a period of six months from 21 Nov 96 with an involuntary allotment created for the benefit of his dependents. It was further noted any forfeitures collected as a result of Article 57(a)(1) between 21 Nov 96 and 15 Dec 96 would be restored.

On 21 Sep 98, the applicant received an UOTHC discharge. His narrative reason for separation is “Court Martial (Other)” and he was credited with two years, 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 Exhibits D and E.

POST-SERVICE INFORMATION

On 3 Apr 25, 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

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ); for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record; and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions

requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department determination regarding whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 3 Apr 25, the 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

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. There is no evidence the applicant had or was diagnosed with Bipolar II Disorder during his military service. The evidence he submitted from the reported he was diagnosed with Major Depressive Disorder (MDD), which is a different mental health condition and is not a Bipolar II Disorder. An individual with MDD may develop Bipolar II Disorder later on because depression or depressive episodes are one of the major symptoms of Bipolar II Disorder; however, not everyone who has MDD develops Bipolar II Disorder. He was treated and diagnosed with Bipolar II Disorder years and decades after he was discharged from the Air Force and a condition like bipolar disorder may take time to develop. This was most likely his clinical presentation, and it appeared he developed bipolar disorder later in his life based on the available limited records. Again, there is no evidence or records he had Bipolar II Disorder nor did he experience a hypomanic episode, a required symptom criteria of Bipolar II Disorder, at the time of service.

He did have depression or MDD during service, but this condition had existed prior to his service (EPTS). This is evidenced by the Report of Medical History documenting when he was transitioning from the Army to the Air Force, he reported he had and was treated with hospitalization for depression from Jan to Feb 92 before he entered the Army and by the memorandum from the Circuit Defense Counsel reporting he was not qualified for entry into the Air Force because he had a long history of mental health problems. There is no evidence his military service with the Air Force aggravated or permanently aggravated his EPTS mental health condition of depression or MDD. The memorandum by the Circuit Defense Counsel also mentioned he attempted suicide by hanging himself while he was in confinement but made no mention of his mental health condition at the time of his misconduct/convicted offense of stealing a computer. Confinement, which was part of his punishment for his court-martial conviction, was a distressing experience for him and may exacerbate but not aggravate his pre-existing depression causing him to attempt suicide. There is no evidence he was in a depressive or hypomanic episode impairing his judgment at the time he made the decision to wrongfully appropriate or steal a

computer resulting in his court-martial conviction and discharge. There is also no evidence he had any cognitive or intellectual impairments at the time of his misconduct that would suggest he did not know the difference between right from wrong and to adhere to the right and refrain from the wrong. Hypothetically if he had a mental health condition at the time of his misconduct, his mental health condition would not excuse or mitigate his behavior because having a mental health condition does not exempt him from assuming responsibility for his behaviors, especially a behavior that violates the law. He made a poor decision of his own volition and no evidence his poor decision and judgment were caused by having a mental health condition. Therefore, the Psychological Advisor finds no error or injustice with his discharge from service from a mental health perspective. His contention and submitted evidence are determined to not be sufficient or compelling to support his request for an upgrade of his discharge based on his mental health condition.

The applicant is also requesting the return of forfeited funds; however, this request is out of the scope of this advisor and should be addressed by a legal or personnel subject matter expert. For his request for an applicable disability rating, it is possible his mental health condition of MDD was unfitting because the memorandum from the Circuit Defense Counsel reported he was not worldwide qualified because of his mental health problems. However, because the applicant was convicted at a general court-martial, he is not eligible to receive a medical discharge and disability rating from the Air Force per AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation* and DoDI 1332.18, *Disability Evaluation System*. Moreover, if he was not court-martialed and was able to be processed through the Medical Evaluation Board (MEB) or the Disability Evaluation System (DES), he would not receive a disability rating because his mental health condition EPTS and was not aggravated by his military service with the Air Force. Again, since there is no error or injustice with his discharge, his request for a medical discharge or disability rating is not supported.

The applicant believes if the Kurta Memorandum had existed at the time of his service, he would not have received the same discharge. His contention is not supported by this policy. The Kurta Memorandum or liberal consideration applies to discharge upgrades for service members who had been discharged and not to members who were currently serving or undergoing the discharge process. Moreover, his mental health condition most likely was already being considered during his court martial proceeding and by the discharge authority because he had completed a sanity board evaluation and his legal counsel had requested clemency based on his mental health condition before he was discharged from service. There is no error or injustice with his character of service that was selected for him by the discharge authority as they have the discretion to decide his character of service from the totality of his service and the severity of his misconduct. He is requesting this policy be applied to his request for an upgrade of his discharge, but the Psychological Advisor opines liberal consideration is not required to be applied to his request because his pre-existing/EPTS mental health condition was not aggravated by his military service per Kurta Memorandum #15. Should the Board elect to apply liberal consideration to his petition as requested because of his contention of having a mental health condition, below are answers to the four questions from the Kurta Memorandum from the available records for review. It is reminded, liberal consideration does not mandate an upgrade or a change to the record per policy

guidance. Liberal consideration is not applied to his request for a disability rating because the updated liberal consideration guidance, Vazirani Memorandum released in Apr 24, does not apply to fitness determinations.

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 and contended he has been diagnosed with Bipolar II Disorder and his mental health issues were diagnosed and discovered while he was in the service. He stated there is substantial doubt he would have received the same discharge if the Kurta Memorandum had existed at the time.

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

The applicant’s entire service treatment records are unavailable for review. There is no evidence or records his Bipolar II Disorder had existed or occurred during his military service. He did submit a memorandum from his Circuit Defense Counsel reporting he had a long history of mental health problems, the sanity board concluded he was not worldwide qualified and was not qualified for entry into the Air Force because of his mental health condition, and he was diagnosed with MDD. MDD is a different mental health condition than Bipolar II Disorder. His depression was reported by the applicant to have EPTS as annotated on his *Report of Medical History*. There was no report of Bipolar II Disorder documented on this form or in any of his military records. He was diagnosed and treated for Bipolar II Disorder years and decades after his discharge from service. It appeared he developed Bipolar II Disorder later in his life.

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

There is no evidence the applicant’s EPTS mental health condition of depression or MDD was aggravated by his military service. There is no evidence or records his mental health condition including depression, MDD, or Bipolar II Disorder was a contributing factor or had a direct impact on his general court martial conviction and discharge for stealing a computer. There is no evidence he was depressed, had a depressive episode, or had a hypomanic episode impairing his judgment at the time of his misconduct. There is no evidence he did not know the difference between right and wrong at the time of his misconduct. The memorandum from his Circuit Defense Counsel discussed his mental health condition during confinement but made no mention of his mental health condition at the time of his misconduct. Hypothetically if he had a mental health condition at the time of his misconduct, experiencing a mental health condition does not exempt him from assuming responsibility for his misconduct, especially one that involved breaking the law. For these reasons, his mental health condition does 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.

The complete advisory opinion is at Exhibit D.

AF/JAJI recommends denying the applicant’s request for a discharge upgrade from a legal perspective. In accordance with 10 U.S.C. Section 1552(f), because the applicant’s request for a

discharge upgrade pertains to records resulting from a court-martial conviction and sentence, the AFBCMR can only take two types of action: (1) correction of a record to reflect an action taken by reviewing authorities under the Uniform Code of Military Justice (UCMJ). e.g. convening authority clemency or appellate corrections; or (2) action on the sentence of a court-martial for purposes of clemency. Unique to this case, there is potential for error in the action taken after the order of a reviewing authority of his court-martial (by the appellate court). Therefore, the AFBCMR may consider using both its authorities in this case.

The Board may determine clemency is warranted or appropriate in the applicant's case; or there is a basis for relief under the equity, injustice, or clemency considerations pursuant to the Wilkie Memorandum, or the guidance for liberal consideration of mental health issues pursuant to the Kurta Memorandum. Nevertheless, the Board should consider important factors to the contrary. First, the Psychological Advisor determined there was insufficient evidence to support the applicant's request based on his mental health condition. Second, in accordance with paragraph 19 of the attachment to the Kurta Memorandum, premediated misconduct is not generally excused by mental health conditions. The applicant's offenses involved premeditated misconduct, specifically the offense of stealing.

With respect to the applicant's request for restoration of forfeitures of pay, there is insufficient information to determine whether the order of the U.S. Court of Criminal Appeals for the Armed Forces (CAAF) and the subsequent implementing court-martial order dated 31 Aug 98 was implemented appropriately. Specifically, the applicant should have received pay from 21 Nov 96 through 15 Dec 96. Since the records are insufficient to determine whether the applicant received a restoration of pay for this discrete time period, AF/JAJI recommends the AFBCMR request an advisory opinion from finance to determine whether such pay was received. If such restoration was not received, there would be a legal error and the AFBCMR could correct the applicant's pay record to reflect the action taken by CAAF to ensure the applicant receives the appropriate pay.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 May 25 for comment (Exhibit F) 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. 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 finds no evidence the sentence of the military court was improper or it exceeded the limitations set forth in the UCMJ or was unduly harsh or disproportionate to the offenses committed. Furthermore, the Board concurs with the rationale and recommendations of the AFRBA Psychological Advisor and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions as the Board finds no evidence the applicant was ever diagnosed with Bipolar II Disorder while in the service and it was not until decades later, he received this diagnosis. He was diagnosed with MDD while in the service; however, this mental health disorder was found to have EPTS. Therefore, the Board finds he did not qualify for a medical separation based on a mental health disorder. For the applicant's awareness, the Kurta Memorandum was issued as guidance to apply liberal consideration when making discharge upgrade determinations after a member has been separated and does not apply to a member's fitness determination. The 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memo, states boards should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised; therefore, the Board finds the applicant's request for a medical separation to be considered under liberal consideration is not warranted. Nonetheless, liberal consideration was applied to the applicant's request for a discharge upgrade due to his mental health contention; however, the Board finds no evidence his mental health condition caused his misconduct, stealing a computer, therefore, his condition does not excuse, mitigate, or outweigh his discharge. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Lastly, the Board notes the recommendation from AF/JAJI to obtain an advisory to determine if there was an error with the applicant's pay. However, under the presumption of regularity, the Board assumed responsible officials carried out the actions indicated on the GCMOs regarding the applicant's pay and the applicant was afforded all of his due process rights. Per Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, applicants have the burden of proof for providing evidence in support of their claim. If the applicant provides pay statements showing the court directions regarding his pay were not carried out, the Board will reconsider his case. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency based on fundamental fairness.

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.

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CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-00849 in Executive Session on 11 Jul 25:

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 30 Dec 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 3 Apr 25.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 1 Apr 25.

Exhibit E: Advisory Opinion, AF/JAJI, dated 19 May 25.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 May 25.

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.

7/20/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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