



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01390

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His bad conduct discharge (BCD) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

His BCD should reflect under other than honorable conditions as this request was approved but never corrected. He would also like his discharge to be upgraded to anything honorable for disability purposes due to his numerous service-connected disabilities, both medical and mental health, sustained during honorable service which led to his BCD. His service-connected injuries include, but are not limited to, hypoxia, chronic migraines, chronic back pain, Post-Traumatic Stress Disorder (PTSD), smoke inhalation, borderline personality disorder (BPD), etc.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 26 Aug 99, the convening authority published General Court-Martial Order (GCMO) Number **Wor...** The Order stated the applicant was arraigned under the following:

a. Charge I (Article 80)

Specification, the applicant pled guilty and was found guilty of attempting to steal four automobile tires, value of more than \$100.00, on or about 6 Oct 98, at **Work-Product**

b. Charge II (Article 121)

Specification 1, the applicant pled guilty and was found guilty of stealing stereo equipment, value of more than \$100.00, on or about 6 Oct 98, at **Work-Product** Japan.

Specification 2, the applicant pled guilty and was found guilty of stealing US currency or its equivalent from a bank, value of more than \$100.00, on or about 6 Nov 98, at **Work-Product**

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Specification 3, the applicant pled not guilty (charge was withdrawn after arraignment) of wrongfully appropriating an automobile, value of more than \$100.00, on or about 24 Nov 98, at Work-Product

Specification 4, the applicant pled guilty and was found guilty of stealing US currency or its equivalent from a bank, value of more than \$100.00, on or about 7 and 10 Jan 99, at Work-Product
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c. Charge III (Article 123)

Specification 1, the applicant pled guilty and was found guilty of falsely signing a check to draw upon funds from another account, in the amount of \$5000.00, on or about 30 Oct 98 and 6 Nov 98, at Work-Product

Specification 2, the applicant pled guilty and was found guilty of falsely signing a check to draw upon funds from another account, in the amount of \$5000.00, on or about 30 Oct 98 and 10 Nov 98, at Work-Product

Specification 3, the applicant pled guilty and was found guilty of falsely signing a check to draw upon funds from another account, in the amount of \$5000.00, on or about 6 Nov 98, at Work-Product

Specification 4, the applicant pled guilty and was found guilty of falsely signing a check to draw upon funds from another account, in the amount of \$5000.00, on or about 10 Nov 98, at Work-Product

d. Charge IV (Article 134)

Specification 1, the applicant pled not guilty (charge was withdrawn after arraignment) of wrongfully opening and stealing mail matter before delivery, containing credit card, on or about 13 Nov 97 and 6 Oct 98, at Work-Product

Specification 2, the applicant pled not guilty (charge was withdrawn after arraignment) of wrongfully opening and stealing mail matter before delivery, containing checks, on or about 13 Nov 97 and 6 Oct 98, at Work-Product

Specification 3, the applicant pled not guilty and was found guilty of making a false statement, on or about 16 Nov 98, at Work-Product

e. Additional Charge I (Article 86)

Specification, the applicant pled guilty and was found guilty (except for the words on divers occasions) of leaving his appointed place of duty without authority, between 25 and 26 Mar 99, at Work-Product

f. Additional Charge II (Article 123a)

Specification 1, the applicant pled guilty and was found guilty of uttering five checks with insufficient funds with a total amount of \$5,896.39, on divers occasions between 25 and 27 Mar 99, at Work-Product

Specification 2, the applicant pled guilty and was found guilty of uttering nine checks with insufficient funds with a total amount of \$211.90, on divers occasions between 9 and 10 Mar 99, at Work-Product

g. Additional Charge III (Article 95)

Specification, the applicant pled guilty and was found guilty of escaping from pre-trial confinement on 2 Apr 99, at Work-Product

The applicant was sentenced to confinement for 21 months, forfeiture of all pay and allowances, a reduction in grade to airman basic (E-1), and a BCD.

On 20 Jul 01, the convening authority published GCMO Number Work-Pr... The Order stated the applicant's sentence as promulgated in GCMO Number W. was affirmed with the BCD thereby being executed.

On 24 Jul 01, the applicant received a BCD. His narrative reason for separation is "Court-Martial (Other)" and he was credited with 1 year, 9 months, and 29 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 8 Oct 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

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 8 Oct 24, 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. His service treatment records are not available for review so there are no records he received any mental health evaluation, treatment, or mental disorder diagnosis including PTSD and BPD during his lifetime. The applicant was discharged from service following his conviction at a general court-martial for multiple incidents of theft of property and currency, falsely making signature or forged checks, without authority go from his appointed place of duty, making a false statement, and eloping from pretrial confinement. There is no evidence his mental health condition caused any of these convicted misconducts/offenses. There is also no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of any of his convicted misconducts/offenses. His misconducts were serious offenses, and his behaviors appeared to have been premeditated based on the language used stating he knew the signature was falsely made and he had intent to defraud. Hypothetically if he had a mental health condition, his misconducts would not be excused or mitigated because they were premeditated and intentional indicating he was aware of his actions. From the available records, the Psychological Advisor finds there is no evidence his mental health condition had a direct impact or was a contributing factor to any of his convicted offenses. There is no error or injustice identified with his discharge from a mental health perspective and his request for an upgrade of his discharge based on his mental health condition is not supported.

Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant marked "PTSD" and "OTHER MENTAL HEALTH" on his application to the AFBCMR and contended an upgrade of his discharge should be considered because of his

numerous service-connected disability injuries including PTSD and BPD that led to his BCD. He did not discuss how he developed PTSD or identified his traumatic experiences during service. He also did not submit any treatment records for review.

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

The applicant's service treatment records are not available for review so there are no records he received any mental health evaluation, treatment, or mental disorder diagnosis including PTSD and BPD during service. There are records to substantiate that his condition of PTSD or BPD had existed or occurred during his military service. There is no evidence he experienced any traumatic experiences during service as well.

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

There is no evidence or records that the applicant's mental health condition including PTSD and BPD was a contributing factor or had a direct impact on his general court-martial conviction and BCD. There is no evidence he had a mental health condition or was in emotional distress impairing his judgment at the time of any of his misconducts. His misconducts/offenses were premeditated behaviors and would indicate he was aware of his actions so his misconducts could not be excused even if he had a mental health condition. Therefore, 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.

The AFBCMR Medical Advisor recommends denying the application finding no compelling basis to recommend granting the relief sought in this application. After a review of the available records, the Medical Advisor opines the submitted evidence is insufficient to demonstrate the existence of an error or injustice. The ultimate burden of proof is placed on the applicant to submit evidence to support his request. Based on the submitted non-medical documentation, it appears his discharge processing as well as the narrative reasoning for separation were appropriate and accomplished in accordance with Air Force policy and general court martial proceedings. Further medical review cannot be accomplished with the current submission. Having no medical evidence (medical records) describing any of the self-reported physical conditions makes a complete medical review nearly an impossible task at this time. The applicant may choose to submit new evidence (service and or civilian treatment records) for a reconsideration of his case.

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 Jan 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 concurs with the rationale and recommendation of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no medical evidence to indicate any of his medical conditions caused his misconduct which resulted in a court-martial conviction and BCD. The Board finds his 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. Notwithstanding, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. Even if the applicant had a mental health condition during service, his misconduct was pre-meditated and of an egregious nature and thus is not considered under the intent and guidance of liberal consideration. The applicant did not provide any evidence or records to substantiate his claim a mental health or medical condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. In the interest of justice, the Board considered upgrading the applicant's discharge based on clemency; however, the applicant did not provide any post-service information which would show a successful transition to the civilian sector. Lastly, the Board notes the applicant's contention his BCD should reflect under other than honorable conditions as this request was approved but never corrected. However, the Board finds no evidence the applicant was granted a discharge upgrade in the past nor did the applicant submit evidence of such. Therefore, the Board recommends against correcting the applicant's records.

The applicant retains the right to request reconsideration of this decision, which could be in the form of a FBI criminal history report, a personal statement, character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on clemency.

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-2024-01390 in Executive Session on 19 Feb 25 and 28 Feb 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, dated 3 Apr 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 8 Oct 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Oct 24.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 22 Jan 25.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Jan 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.

3/7/2025

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Board Operations Manager, AFBCMR
Signed by: USAF