



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01490

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His pay grade be corrected.
3. His narrative reason for discharge be changed to "Service-Connected Medical Discharge."
4. Completion of his Air Force training courses be updated on his DD Form 214, *Certificate of Release or Discharge from Active Duty* (This will be administratively corrected-no Board action needed.)

APPLICANT'S CONTENTIONS

Prior to the events which led to his discharge, he was a model airman. During the fifth week of basic military training (BMT), he was physically assaulted by another airman while out in the field during Warrior Week. He had to protect himself against this airman and others, so he fought back. Because of this altercation, he was given a Letter of Reprimand (LOR) for dueling. He was sent back to training for two weeks even though it was a matter of self-defense and others corroborated his account. After 11 Sep 01, he had a string of very minor disciplinary infractions such as being late to physical training and failing a few room inspections in one week. He played a role in failing his room inspections, but he was unfairly targeted and discriminated against. It did not make sense for the Air Force to put all the money and effort into training him and discharge him for room inspection failures. After 9/11, everyone was emotionally high-strung and psychologically affected which may have led to his leadership responding emotionally and discharging him erroneously. Most of the claims he was discharged for were not documented.

After his discharge, he became a student at a college in Work-Product. He obtained a good job helping to coordinate medical evacuations in hostile war zones where he was able to use his leadership skills he developed in the military. He is currently employed as a project manager for a global health and security company directly supporting operations undertaken by the military.

He was denied fundamental rights in his separation process in the form of a mental health evaluation for PTSD and treatment following a terrorist attack and a personal physical assault

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during service and therefore, his discharge was improper and inequitable. As a result of some of his military experiences, he is receiving disability benefits from the Department of Veterans Affairs (DVA) for service-connected disabilities and was diagnosed with anxiety disorder based on the fact he was in fear of direct hostile military action.

In support of his request for a discharge upgrade, the applicant provides a personal statement, documents from his time in the service, post-service medical documentation, numerous post service certificates of achievement and other work-related achievements, college transcripts, and two character reference letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 6 Nov 01, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for disciplinary reasons. The specific reasons for the action were:

- a. On 20 Aug 01, a Letter of Counseling (LOC) was issued for being disrespectful and insubordinate towards a student leader.
- b. On 21 Aug 01, a Letter of Reprimand (LOR) was issued for being disrespectful towards another student.
- c. On 29 Aug 01, a LOC was issued for failing his third room inspection.
- d. On 26 Sep 01, a LOC was issued for failure to go.
- e. On 1 Oct 01, a LOR was issued for failing to report for change of quarters (CQ) duty. On this same date, the applicant was also issued a LOR for failing to be accountable at a required time and an Unfavorable Information File (UIF) was established.
- f. On 2 Oct 01, a LOR was issued for not being present for accountability.
- g. On 4 Oct 01, a LOR was issued for providing a false official statement in regards to a previous LOR. On this same day, another LOR was issued for failing his fourth room inspection.

On 8 Nov 01, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On 13 Nov 01, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 16 Nov 01, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with seven months of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit D.

POST-SERVICE INFORMATION

On 8 Oct 24, the Board sent the applicant a request for additional post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied. This letter informed the applicant a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant provided post-service information with his original application, he did not include an FBI background check or other criminal history data.

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 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)(l) 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 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.

Per AFI 36-2502, Airmen Promotion Program, dated 20 Aug 01, paragraph 2.1.1, an airman basic (AB) is eligible for promotion at six-months, time in grade (TIG) for promotion to airman. An airman is eligible for promotion to airman first class at 10 months. Per paragraph 2.1.2, individuals initially enlisting for a period of six years are promoted from airman basic or airman to airman first class upon completion of either technical training or 20 weeks of technical training (start date of the 20-week period is the date of BMT completion), whichever occurs first. The date of rank (DOR) for airman first class is then adjusted to the date of BMT completion without back pay and allowances. Per paragraph 2.1.3, the immediate commander must recommend the promotion in writing before the airman assumes the grade.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request.

The applicant's contentions are plausible but are not fully supported by his objective military records. His paperwork is not available or submitted by the applicant for review so the detailed reasons for his discharge for misconduct are not known at this time. He submitted two LORs for dueling/being in a physical altercation with another airman and for failing his fourth room inspection and reported in one of his personal statements he received disciplinary action for being late to physical training and had received numerous counseling sessions for his failing his room inspections. It appeared from his Disability Questionnaire/Compensation and Pension (DBQ/C&P) examination report he had other misconduct infractions in addition to these reported misconduct infractions that caused his discharge. It was cited he had a total of three LOCs and six LORs. All these disciplinary actions were not in his military records for review, and it is possible had other types of misconduct problems not described in his personal statements. Based on the applicant's contentions and statements, his mental health condition did not cause any of his misconduct but was the result of his misconduct. He reported he was in a physical altercation with

another airman because he was defending himself, which was consistent with his report to his leadership as documented in his LOR. He admitted he played a role in failing his room inspections but believed his repeated counseling sessions or reprimands for this recurring issue were due to his leadership wanting to discharge him. He did explain why he was late to physical training but no evidence this was caused by having a mental health condition. He believed his discharge action was also caused by being targeted by his leadership and undue influence by the airman who he had engaged in a physical altercation.

The reasons the applicant provided did not indicate or suggest his physical altercation, failing his room inspections numerous times, and being late to physical training were caused by his mental health condition including adjustment disorder, anxiety, depression, or PTSD. There is no evidence he had any of these conditions or symptoms during service. His service treatment records are also not available for review so there are no records he received any mental health evaluation, treatment, or mental disorder diagnosis during service. There is no evidence he was in emotional distress or had a mental health condition impairing his judgment causing any of his misconducts that led to his subsequent discharge at the time of service. The applicant was diagnosed with unspecified anxiety disorder and PTSD over 20 years after his discharge from service. Symptoms he reported after his discharge included having sleep difficulties, nightmares, avoidance of stimuli associated with the traumatic events, hypervigilance, avoidance, intrusive memories, guilt, detachment, anhedonia, sadness, feeling detached from others, persistent, distorted cognitions about the cause or consequences of the traumatic events, exaggerated startled responses, suspiciousness, depressed mood, and anxiety. There is no evidence or records he had any of these symptoms during service. From his personal statements again, these symptoms were in response to the stressors surrounding his discharge and the results of his discharge. The applicant did report being affected by the events of 9/11, but there is no evidence his misconduct after 9/11 was caused by his mental health condition. His DBQ/C&P exam reported the dates of his disciplinary actions, and he had at least three misconduct infractions before 9/11. These pre-existing misconducts could not be caused by his emotional distress from 9/11. It is acknowledged the applicant had been service-connected by the DVA for unspecified anxiety disorder. However, receiving service connection for a mental health condition does not determine or conclude that his mental health condition had caused or was a mitigating factor to his discharge. Service connection merely establishes the mental health condition was somehow related to his service and not necessarily the cause of his discharge.

Returning to the most important issue at hand is the absence of his discharge paperwork. Since the vital record of his discharge paperwork is not available, the presumption of regularity is applied and there is no error or injustice with his discharge from service from a mental health perspective. The burden of proof is placed on the applicant to submit the necessary records to support his contention and request. There is no evidence his mental health condition had a direct impact or was a contributing factor to his discharge.

Liberal consideration is applied to the applicant's petition due to his contention of having a mental health condition. It is reminded 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 contended his discharge was unjust, inequitable, and improper because he was targeted and discriminated against by a fellow airman and his leadership. He was protecting himself against an airman when he engaged in a physical altercation with this airman and believed this airman had undue influence over his discharge. He reported the events of 9/11 were stressful to him and this event also affected his leadership believing they were emotionally high-strung and psychologically affected, which may have led to his leadership responding emotionally and discharging him erroneously. He claimed he was denied fundamental rights in his separation process in the form of a mental health evaluation for PTSD and treatment following a terrorist attack and a personal physical assault during service. The stressors of his discharge from the Air Force, being antagonized/physically assaulted by an airman, and the events of 9/11 caused him to be diagnosed with adjustment disorder, unspecified anxiety disorder, and PTSD years after his discharge from the Air Force.

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. There are no records he received any mental health evaluation, treatment, or mental disorder diagnosis including adjustment disorder, unspecified anxiety disorder, or PTSD during service. There is no evidence or records that any of these mental health conditions had existed or occurred during his military service. He was diagnosed with these conditions years after his discharge from the Air Force caused by stressors surrounding his discharge and the events of 9/11.

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

The applicant's discharge paperwork and service treatment records are not available for review. There is no evidence or records his mental health condition including adjustment disorder, anxiety, or PTSD developed from the stressors of his discharge, being antagonized and physically assaulted by a fellow airman, and the events of 9/11 had a direct impact or was a contributing factor to his discharge. Thus, 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 condition also does not outweigh his original discharge.

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 16 Oct 24 for comment (Exhibit E), and the applicant replied on this same day. In his response, the applicant contends the Air Force failed to acknowledge his completed training on his DD Form 214. This is just one example of being targeted. He was both physically assaulted and was on a large base during a terrorist attack which had an effect on his attention to detail. The advisory opinion is strictly on the side of the Air Force with minimal to no evidence to refute what he is saying. His evidence of the various memos he submitted should be considered. Sufficient evidence alone can be his statements which

outline his mental health issues. His discharge paperwork is not available because the Air Force did not keep these records. It is the Air Force's responsibility to keep these records, not his. Additionally, the Air Force does not have most of his service treatment records. He has his processing examination and medical records showing he was treated for a sinus related issue. He was not aware, at the time, mental health services were available to him as airmen were discouraged from seeking help for any medical problems for fear of being discharged. Most of what he told the doctor on his medical exit examination was not documented due to the rush to discharge him. As for the altercation, he was assaulted and to stop the assault, he had to defend himself. This happened during BMT and was not the reason for his discharge. Liberal consideration should be applied to his case. It has been 20 plus years, and he has outlined several instances within his case related to his mental health and its effects which led to his discharge. The Air Force trained him, made him an element leader and gave him a security clearance; it makes no sense, he was all of the sudden, written up for things he never failed at before following the events of 9/11. The fact that he was assaulted but there are no medical records to show he was treated for the assault was because he was not treated for the physical or psychological effects of that event. He was pushed to move on. After 9/11 he was very fearful and still has a profound effect on the way he deals with stressful events, even to this day.

The applicant's complete response is at Exhibit F.

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 the applicant's claim he was targeted and discriminated unfounded. Other than his own assertion, the Board finds no evidence to substantiate this contention. 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. Under the presumption of regularity, it is assumed responsible officials carried out these tasks in accordance with the provisions of the prescribing directives and the applicant was afforded all of his due process rights. Furthermore, the Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds no evidence to suggest the applicant had any mental health condition during service. Except for the applicant's own admission, there were no medical documents submitted to support his contention. Per 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. Even if the applicant had a mental health condition during service, the mere existence of a mental health

diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The Board finds no evidence the applicant's military duties were degraded due to his mental health conditions. A Service member shall be considered unfit when the evidence establishes the member, due to physical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in a member's separation. The military's Disability Evaluation System (DES) established to maintain a fit and vital fighting force, can by law, under Title 10, 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 or near the time of separation and not based on post-service progression of disease or injury. The DVA 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; however, DVA rating decisions are not annotated on separation documents. Nevertheless, liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition, alleged assault, or the events of 9/11 had a direct impact on his behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. Additionally, the applicant requests his pay grade be corrected but does not provide an explanation as to what his grade should be corrected to or why this action should be taken. Notwithstanding, the Board did consider this request; however, finds no reason to change his pay grade finding no error or injustice. Even though the applicant achieved the required TIG and completion of technical training for promotion to airman first class; the applicant only served seven months on active duty before he was separated, and the Board assumes the presumption of regularity in that the applicant was being processed for discharge due to misconduct and was therefore not recommended for promotion by his commander as required. Lastly, 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 a criminal history report, finds no basis to do so. 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 additional post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization based on fundamental fairness.

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

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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-2024-01490 in Executive Session on 15 Jan 25:

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Panel Chair

, Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 19 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 15 Oct 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Oct 24.

Exhibit F: Applicant's Response, dated 16 Oct 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.

1/22/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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