



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01571

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under honorable conditions (general) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

His psychotropic prescriptions and post-traumatic stress disorder (PTSD) are service connected through the Department of Veterans Affairs (DVA) and are the direct cause of his mental breakdown, lapses in memory, and lapses in judgement. Ever since his attack while in service, an event downplayed by local police and his superiors, he has experienced PTSD symptoms affecting his behavior. He has felt alone, unprotected, targeted, and severely paranoid. He believes his situation at that time meets the DVA's definition of insanity. Shortly after his departure from the military he had his first, and not the last, complete mental breakdown resulting in seeking professional psychiatric help.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 12 Mar 07, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD 36-32, *Military Retirements and Separations*, paragraph 5.51 for Misconduct: Civilian Conviction. The specific reason for the action was on 5 Mar 07, the applicant was convicted of assault, battery, and destruction of property. It is noted a punitive discharge for these or similar offenses would be authorized under the guidance within the Manual for Courts-Martial.

On 20 Mar 07, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for falsifying probation documents and completing an erroneous Permanent Change of Station (PCS) travel voucher. He received a reduction to the grade of airman first class (E-3) with a new date of rank of 20 Mar 07.

On 30 Apr 07, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant to be discharged with a general discharge. On the same day the

AFBCMR Docket Number BC-2024-01571

Work-Product

Work-Product

convening authority directed the applicant be discharged with a general discharge without the opportunity for probation and rehabilitation.

On 3 May 07, the applicant received a general discharge. His narrative reason for separation is "Misconduct" and he was credited with 4 years, 9 months and 18 days 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 3 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

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 3 Oct 24, the Board staff provided the applicant a copy of the clarifying 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds no error or injustice 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.

While the applicant was service-connected for PTSD 16 years after his military discharge, there is insufficient evidence to suggest he had PTSD during his service or at discharge. The applicant was seen by mental health providers between 12 May and 5 Jul 05. The applicant reported a PTSD stressor event that occurred on 25 Jan 05 prior to his mental health treatment. Approximately four months after this event he was only diagnosed with a partner relational problem. He was not diagnosed with PTSD. Additionally, his provider noted his symptoms were resolving as he was managing his divorce. He was again seen for mental health treatment in 2007, two years after his stressor event, and was again only diagnosed with a partner relational problem. He was not diagnosed with PTSD. The applicant was diagnosed with PTSD in 2024, 17 years after his discharge, indicating his symptoms worsened after his discharge from the military. Therefore, the psychological advisor concludes his mental health condition is not a mitigating factor for his misconduct.

Even if the applicant had PTSD during his military service, his mental health diagnosis would not be a mitigating factor for his misconduct. Assault, battery, destruction of property, falsifying probation documents, completing an erroneous PCS travel voucher, and stealing are not part of the sequelae of symptoms associated with PTSD (or a partner relational problem). Additionally, the falsification of documents with intent to deceive and stealing is a willful, conscious act that has no nexus with his mental health conditions. On his application, the applicant implies his psychotropic medications are service-connected. Medications are not service-connected. Additionally, there is no evidence the applicant was on any psychotropic medications while he was in the military. His electronic medical record does not list any psychotropic medications from 10 Feb 03 through 17 Oct 24. The applicant submitted a summary of treatment (22 Jul 24) that lists psychotropic medications he had been prescribed, but there is no indication he was taking these when he was in the military (2002-2007).

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate the 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. 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 based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant checked PTSD and Other Mental Health on his application. He also reported that he has service-connected PTSD.
2. Did the condition exist, or experience occur during military service?
While the applicant was service-connected for PTSD 16 years after his military discharge, there is insufficient evidence to suggest he had PTSD during his service or at discharge. The applicant was seen by mental health providers between 12 May and 5 Jul 05. The applicant reported a PTSD stressor event that occurred on 25 Jan 05 prior to his mental health treatment. Approximately four months after this event he was only diagnosed with a partner relational problem. He was not diagnosed with PTSD. Additionally, his provider noted his symptoms were resolving as he was managing his divorce. He was again seen for mental health treatment in 2007, two years after his stressor event, and was again only diagnosed with a partner relational problem. He was not diagnosed with PTSD. The applicant was diagnosed with PTSD in 2024, 17 years after his discharge, indicating his symptoms worsened after his discharge from the military. Therefore, the Psychological Advisor concludes his mental health condition is not a mitigating factor for his misconduct.
3. Does the condition or experience excuse or mitigate the discharge?
Even if the applicant had PTSD during his military service, his mental health diagnosis would not be a mitigating factor for his misconduct. Assault, battery, destruction of property, falsifying probation documents, completing an erroneous PCS travel voucher, and stealing are not part of the sequelae of symptoms associated with PTSD (or a partner relational problem). Additionally, the falsification of documents with intent to deceive and stealing is a willful, conscious act that has no nexus with his mental health conditions.

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 D.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 Oct 24 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency 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 limitations 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 injustice. 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 applicant was diagnosed with PTSD in 2024, 17 years after his discharge, indicating that his symptoms worsened after his discharge from the military. Therefore, the psychological advisor concludes that his mental health condition is not a mitigating factor for his misconduct. Even if the applicant had PTSD during his military service, his mental health diagnosis would not be a mitigating factor for his misconduct. Assault, battery, destruction of property, falsifying probation documents, completing an erroneous PCS travel voucher, and stealing are not part of the sequelae of symptoms associated with PTSD (or a partner relational problem). Additionally, the falsification of documents with intent to deceive and stealing is a willful, conscious act that has no nexus with his mental health conditions. The Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, the evidence he provides lacks references that demonstrate his character, post-service rehabilitation, or service to the community. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. However, the Board finds no basis for granting the applicant's request based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown that 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00481 in Executive Session on 19 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, w/atchs, dated 26 Apr 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 3 Oct 24.

Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 17 Oct 24.

Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 17 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.

3/6/2025

Work-Product