



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01908

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He recently became service connected through the Department of Veterans Affairs (DVA) for anxiety and depression which started while he was in the Air Force but went undiagnosed. He believes he was discharged for a pattern of minor disciplinary actions due to his undiagnosed mental health condition(s) at the time of discharge. He was diagnosed in 2014 but finally received his service connection on 1 Dec 23. He did not know about the DVA when he was discharged in 1991. It was not communicated to him during out processing. He finally learned of the DVA in late 2013. He did not seek medical attention due to the fact he did not understand what the symptoms were for these conditions. After he saw a mental health provider in 2014, he realized what they were.

In support of his request for a discharge upgrade, the applicant provides a DVA decision and post-service medical documents.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Feb 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation 39-10, *Administrative Separation of Airmen*, paragraph 5-46 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 27 Mar 90, a Letter of Counseling (LOC) was issued for issuing a pass to a person listed on the revocation list, because he failed to check the base revocation list on 25 Mar 90.

AFBCMR Docket Number BC-2024-01908

- b. On 27 Mar 90, a memorandum was written, indicating he was counselled on the standards of AFR 35-10, *Dress and Personal Appearance of Air Force Personnel*, and was told he must meet those standards.
- c. On 15 Apr 90, a Letter of Reprimand (LOR) was issued for being unprofessional in the performance of his duties as an elite gate guard on 14 Apr 90.
- d. On 3 May 90, an LOR was issued for failing to show for scheduled training on time on 24 Apr 90.
- e. On 4 May 90, an LOR was issued for using profanity toward a non-commissioned officer (NCO) after she requested he correct a very blatant AFR 35-10 discrepancy noted on his uniform. Further, he did not correct the discrepancy, and the C flight shift commander had to tell him again to correct the problem on 2 May 90.
- f. On 29 May 90 a memorandum for record was issued after he was verbally counselled for recklessly operating a government vehicle, nearly causing an accident at gate two. Additionally, he showed up for duty in a wrinkled uniform which looked like it had been slept in on 29 May 90.
- g. On 11 Jun 90 an Army Air Force Exchange Service (AAFES) Form 7200-75(M), *Dishonored Check Notification*, indicates he wrote an insufficient funds check to the base exchange for \$47.71 on 22 May 90.
- h. On 27 Jul 90, a dishonored check notification indicates he wrote an insufficient funds check to the base exchange for the amount of \$14.15 on 14 Jul 90.
- i. On 30 Jul 90, an AAFES Form 7200-75(M) indicates he wrote insufficient fund checks to the base exchange for the amount of \$10.00 and \$15.00 on 16 and 17 Jul 90.
- j. On 13 Dec 90 an LOR was issued for being reprimanded for numerous instances of violating AFR 35-10 by placing his hand in his uniform pockets at the gate while admitting vehicles on 13 Dec 90.
- k. On 25 Jan 91 an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for dereliction in the performance of his duties in which he negligently failed to follow proper entry procedures as outline in 90 Security Police Squadron (SPS) Operating Instruction (OI) 125-30. He received a reduction to the grade of airman (E-2) suspended, forfeiture of \$100.00 in pay, and six days of extra duty.

l. On an unknown date, an LOR was issued for sleeping at his post at the gate while on guard duty during THREATCON Bravo on 25 Jan 91.

m. On 13 Feb 91, an AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant's suspended NJP, Article 15 was vacated for failing to report to his appointed place of duty at the time prescribed on 1 Feb 91. The applicant's punishment of a reduction to the grade of airman (E-2) was executed.

On 28 Feb 91, the Staff Judge Advocate found the discharge action legally sufficient.

On 5 Mar 91, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 6 Mar 91, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Minor Disciplinary Infractions" and he was credited with 1 year, 6 months, and 27 days of total active service.

On 6 Sep 91, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 5 Feb 92, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. The board noted the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review, the board was not able to identify any, concluding the discharge should not be changed.

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

POST-SERVICE INFORMATION

On 29 May 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 3 Jun 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant's complete response is at Exhibit D.

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 29 May 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for an upgrade of his discharge based on a psychological perspective. The applicant is petitioning the Board to change the characterization of his service from general (under honorable conditions) to honorable due to undiagnosed mental health issues at the time of his discharge. The applicant marked "other mental health" on his application.

There is insufficient evidence to suggest the applicant had any diagnosable mental health condition during his military service or at the time of discharge. The applicant denied any mental health treatment during his service. The applicant denied any mental health symptoms during his report of medical history which was conducted for his separation two weeks before separation. The examiner completing the report concluded he did not have any mental health symptoms.

The applicant appears to be inconsistent in his reporting of his mental health symptoms. On a mental health encounter dated 14 Oct 15, he denied a past history of depression prior to being diagnosed with diabetes mellitus, two to three years ago. This indicates his depressive symptoms began in 2012 or 2013, which is 21 to 22 years after his discharge. The applicant later reported on 19 Sep 17 and in some subsequent encounters, his mental health symptoms began during his military service. He then reported he had mental health symptoms in childhood on 11 May 23.

The Psychological Advisor concludes the applicant did not meet the criteria for any mental health disorder during his time in the military or at discharge. While he may have had some depression or anxiety symptoms, these did not meet the criteria for any diagnosable mental health disorder. Documents submitted by the applicant from internal medicine, dated 27 Feb 19 and 12 Mar 19 clearly outline an increase in depressive and anxiety symptoms following his discharge from the military. Further, this provider did not diagnose the applicant with any mental health condition.

It should be noted, 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. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran. The DVA originally service-connected the applicant for tinnitus at 10 percent in Sep 17. The applicant was not service-connected for a mental health condition until 30 Jan 23, which is 32 years after his military service.

Therefore, as there is insufficient evidence the applicant had any mental health condition while he was in service or at discharge, there are no mitigating factors for his misconduct from a psychological perspective. Even if the applicant had met the criteria for anxiety or major depressive disorder during service, the substantive degree of his misconduct would not be mitigated or excused, as they are not part of the sequela of symptoms associated with these mental health diagnoses. Sleeping at his post; failure to follow proper entry procedures; being reprimanded for placing his hands in his pockets on numerous occasions; writing insufficient funded checks on multiple occasions; showing up for duty in a wrinkled uniform; recklessly operating a government vehicle and nearly causing an accident; using profanity toward an NCO; not fixing a discrepancy on his uniform; and issuing a pass to a person on the revocation list have no nexus with his post-service diagnosed mental health condition. After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition which would mitigate his misconduct.

LIBERAL CONSIDERATION: 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 contends he had undiagnosed mental health issues at the time of his discharge. The applicant marked "other mental health" on his application.

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

There is insufficient evidence to suggest the applicant had any diagnosable mental health condition during his military service or at discharge. The applicant denied any mental health treatment during his service. The applicant denied any mental health symptoms during his report of medical history, which was conducted for his separation two weeks before separation. The examiner completing the report concluded he did not have any mental health symptoms. The applicant was service-connected for mental health on 30 Jan 23, 32 years after his military service.

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

The Psychological Advisor concludes the applicant did not meet the criteria for any mental health disorder during his time in the military or at the time of discharge. While he may have had some depression or anxiety symptoms, these did not meet the criteria for any diagnosable mental health disorder. Therefore, as there is insufficient evidence the applicant had any mental health condition while he was in service or at discharge, there are no mitigating factors for his misconduct from a psychological perspective. Even if the applicant had met the criteria for anxiety or major

depressive disorder during service, the substantive degree of his misconduct would not be mitigated or excused as they are not part of the sequela of symptoms associated with these mental health diagnoses. Sleeping at his post; failure to follow proper entry procedures; being reprimanded for placing his hands in his pockets on numerous occasions; writing insufficient funded checks on multiple occasions; showing up for duty in a wrinkled uniform; recklessly operating a government vehicle and nearly causing an accident; using profanity toward an NCO; not fixing a discrepancy on his uniform; and issuing a pass to a person on the revocation list have no nexus with his post-service diagnosed mental health condition.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate the discharge, the applicant's condition also does not outweigh the original discharge.

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 10 Dec 24 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. 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 finds a preponderance of the evidence does not substantiate the applicant's contentions. 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 acknowledges the applicant may have had depression or anxiety symptoms, however these symptoms did not meet the criteria for a diagnosis of a mental health condition. Furthermore, the applicant denied treatment during service and reported no mental health symptoms during his separation exam. Therefore, his contended mental health condition does not excuse or mitigate his discharge. Additionally, the applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. 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 applicant did not provide sufficient evidence to show he has made a

Work...

Work...

Work-Product

successful post-service transition. The evidence he provides lacks references that demonstrate his character, remorse for his actions, or service to the community. 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 personal statement, character statements, and/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 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.

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-2024-01908 in Executive Session on 16 Apr 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 23 May 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 29 May 24.

Exhibit D: FBI Report, dated, 3 Jun 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Dec 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Dec 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.

4/29/2025

X

Work-Product

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-01908

Work...

Work-Product

Work...