



Work...

Work...

Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2024-01924

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded.

APPLICANT'S CONTENTIONS

He had real bad anger issues due to childhood trauma. He is now a regular speaker at various alcoholics anonymous (AA) and teaches an anger management class on Wednesdays.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 13 Jul 89, the convening authority published Special Court-Martial Order Work-Product. The Order stated the applicant pled and was found guilty of two charges and three specifications. He stole a diamond ring of value of about \$2000.00 (amended after arraignment to \$1000.00) on or about 21 Feb 89 (Article 121). He assaulted another airman by striking him with his fist (amended after arraignment to attempting to seize another with his hands) on or about 3 Mar 89, and he assaulted another airman by striking him with his fist on or about 3 Mar 89 (Article 128). The applicant was sentenced to confinement for three months, forfeiture of \$300.00 pay for three months, reduction to the grade of airman basic, and discharged from service with a BCD.

On 16 Feb 90, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial (other than desertion)" and he was credited with one year, nine months, and eight 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

AFBCMR Docket Number BC-2024-01924

Work...

Work-Product

Work...

Work-Product

On 19 Jul 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 19 Jul 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.

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 finds insufficient evidence to support the applicant's request for the desired change to his records based on his mental health condition. A review of the applicant's objective military records finds there is no evidence or records he had any mental health conditions during service. He contended he had anger issues due to childhood trauma, but this is a prior service condition and experience and there is no evidence his military service had aggravated his prior service condition. While his pre-existing anger issues from his past trauma may have caused him to assault two airmen, it does not excuse or mitigate these misconducts. These are serious offenses for which he was convicted at a special court-martial resulting in his BCD, and it is unacceptable and inappropriate for a service member to assault another service

member or any other individual. These serious behaviors could not be ignored or disregarded even by his mental health condition. For his other misconduct of stealing a diamond ring from a fellow airman, there is no evidence or records he had a mental health condition or was in emotional distress impairing his judgment at the time of his misconduct. The Psychological Advisor finds his contention is not compelling or sufficient to support his request. The Psychological Advisor also finds there is no identifiable error or injustice with his discharge from a mental health perspective.

LIBERAL CONSIDERATION: Liberal consideration is not required to be applied to his petition because there is no evidence his pre-existing condition and experience of anger issues from his childhood trauma were aggravated by his military service per Kurta Memorandum #15. If the Board chooses to apply liberal consideration to his petition, the following are responses to the four questions from the Kurta Memorandum from the available records for review. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contended he had anger issues stemming from his childhood trauma. He is now a regular speaker at various Alcoholics Anonymous meetings and teaches anger management classes on Wednesdays. He did not submit any evidence or records to support his claim or request.

2. Did the condition exist or experience occur during military service? There are no records that the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during service. His anger issues stemming from his childhood trauma were his prior service condition and experience. His childhood trauma did not exist or occur during his military service. There is evidence he possibly had anger issues during service because he did physically assault two service members, but his anger issues were caused by his childhood trauma and not his military service.

3. Does the condition or experience actually excuse or mitigate the discharge? There is no evidence that the applicant's mental health condition and experience were aggravated by his military service. While his pre-existing anger issues from his past childhood trauma may have caused him to assault two airmen, it does not excuse or mitigate these misconducts. These misconducts are serious offenses for which he was convicted at a special court-martial, and it is unacceptable and inappropriate for a service member to assault another service member or any other individual. For his other misconduct of stealing a diamond ring from a fellow airman, there is no evidence or records that he had a mental health condition or was in emotional distress impairing his judgment at the time of his misconduct. Therefore, his mental health condition or experience does not excuse or mitigate his discharge.

☒ Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition or experience does not excuse or mitigate his discharge, his mental health condition or experience also does not outweigh his 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 20 Nov 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 finds no evidence that the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. 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. While his anger issues stemming from childhood trauma may explain the assault on two airmen, it does not excuse or mitigate these serious offenses. Furthermore, there is no evidence this mental health condition was aggravated by military service. Additionally, there is no evidence or records he had a mental health condition or was in emotional distress, impairing his judgement when he stole a diamond ring from another airman. 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, given the evidence presented, particularly, the lack of an FBI criminal history check, the Board finds no basis for an upgrade based on clemency. 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 criminal history background check, 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.

☒ 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 Mar 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 24 Apr 2~~W~~
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 19 Jul 2~~S~~
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 11 Sep 2~~W~~
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 20 Nov 2~~W~~

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph ~~W~~12.9.

4/7/2025

X Work-Product
Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-01924