

Work...



Work... Work-Product

## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02093

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

1. His under other than honorable conditions (UOTHC) discharge be upgraded.
2. Compensation for 30 days of lost leave he accrued. (No Board action needed; the applicant was sent a non-viable letter requesting further documentation regarding this request).

### APPLICANT'S CONTENTIONS

He did not cause action/due to living conditions.

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 6 Apr 84, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-49 for drug abuse. The specific reasons for the action were:

- a. On 26 Jan 83, a Letter of Reprimand (LOR) was issued for testing positive for cannabis on 6 Jan 83.
- b. Dated 10 Feb 84, a DD Form 1569, *Incident/Complaint Report*, indicates the applicant was found to have sold, transferred, possessed, and used marijuana and related drug paraphernalia; was found to have contributed to the delinquency of a minor (age 14), smoking marijuana with said minor approximately 15 times; and was found to have used and possessed methamphetamine.

Not included in the reasons for discharge recommendation, the applicant also received nonjudicial punishment (NJP), Article 15 for wrongful use of marijuana on or about 1 Jan

AFBCMR Docket Number BC-2024-02093

Work... Work-Product

Work-Product

Work...

84 and 5 Feb 84 to which he received a reduction in grade to airman first class (E-3), forfeiture of \$300.00 in pay for two months, and 60 days of base restriction. Counseling and a Letter of Admonishment were also issued to the applicant for traffic violations and for leaving his place of work without permission, on 13 Dec 82, 25 Jan 83 and 9 Feb 83.

On 29 May 84, the applicant offered a conditional waiver, waiving his rights to an administrative discharge board, contingent upon receiving no less than an UOTHC discharge.

On 31 May 84, the Acting Staff Judge Advocate recommended the conditional waiver be approved. (Legal sufficiency of the discharge was not indicated).

On 1 Jun 84, the discharge authority accepted the conditional waiver and directed the applicant be discharged for drug abuse, with an UOTHC service characterization. Probation and rehabilitation were considered, but not offered.

On 8 Jun 84, the applicant received an UOTHC. His narrative reason for separation is "Misconduct – Drug Abuse" and he was credited with six years, four months, and four days of total active service.

On 9 Apr 85, a memorandum issued by the manpower and personnel center indicated **Work-Prod...** Air Force Base (AFB) was not properly managing enlisted discharge cases. Specifically, the special court martial authority (SPCMA) had been directing discharges in circumstances where only the general court martial authority (GCMA) was empowered to finalize them. The GCMA was to take appropriate actions to correct these errors.

On 22 Apr 85, the Assistant Staff Judge Advocate found the discharge legally sufficient and recommended the GCMA set aside the erroneous discharge action and replace it with their decision.

On 22 Apr 85, the discharge authority accepted the conditional waiver and directed the applicant be discharged for drug abuse, with an UOTHC service characterization. Probation and rehabilitation were considered, but not offered. Additionally, the previous action of the SPCMA was set aside and replaced by the GCMA action.

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

## **POST-SERVICE INFORMATION**

On 12 Nov 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**

**AFBCMR Docket Number BC-2024-02093**

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 12 Nov 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 finds insufficient evidence to support the applicant's request for an upgrade of his discharge and compensation for lost leave from a mental health perspective. A review of the available records finds no evidence the applicant's mental health condition had a direct impact or was a contributing factor to his numerous acts of drug-related misconduct, resulting in his discharge from service. During his first term of service, he was evaluated at least twice by a psychiatrist on 18 Jan 78 and 26 Apr 78 respectively. He reported during his first mental health evaluation he was feeling anxious after attending a commander's call where they were briefed on the "laws of war" and felt he did not belong in the Air Force. It was also disclosed he had been arrested twice by security police, once in basic training and recently for the suspicion of marijuana use. He was assessed to not have any psychiatric disorders. When he was evaluated by social actions on 8 Feb 78, he again reported having problems being in the military and admitted to using marijuana. He was entered into phase IV of the drug abuse and rehabilitation program

(DAARP) for drug rehab and graduated from the program on 27 Jul 78. During his second mental health evaluation, he again was assessed to not have any psychiatric disorders. He did have some passive-aggressive personality traits, but not to the degree which would warrant a character or behavior disorder diagnosis. There was no report he used marijuana to cope with adjusting to the military or his stressors. Despite expressing the military was not a good fit for him, he remained in the service after finishing drug rehab, was able to complete his service obligation, and received an honorable discharge.

The applicant had a break in service for about two years from 1980 to 1982 and had admitted to security police when he was investigated for his drug-related activities, he used and sold marijuana, including to an undercover police officer during this time. He re-enlisted in the Air Force on 5 Feb 82, and during his second term of service, his marijuana usage increased in frequency, he used crank or crystal methamphetamine, and his drug-related activities escalated to procuring, buying, and transferring marijuana to service members. He also smoked marijuana in the presence of a minor and used marijuana with the minor in his home. He admitted to engaging in all these activities to security police and was discharged from service for these problems. There is no evidence he had a mental health condition, impairing his judgment, which caused him to engage in these numerous acts of misconduct. This is evidenced by his medical evaluation from social actions on 15 Feb 83, resulting in him receiving no mental disorder diagnosis except for an impression of substance abuse for marijuana and by his own report during his separation physical examination on 1 May 84, in which he denied having any mental health issues including frequent trouble sleeping, depression or excessive worry, and nervous trouble of any sort. He was entered into the local rehab program following his evaluation with social actions and successfully completed this program on 23 Jun 83. He was not assessed to have any psychiatric disorders such as anxiety or depression, but he clearly had substance abuse problems. Substance abuse is an unsuited mental health condition for military service. His unsuited substance abuse problems may have caused some of his misconduct leading to his discharge but do not excuse or mitigate his discharge. He had substance abuse problems in his first term of service, so it would be considered a prior service condition (PSC). There is no evidence his military duties or service from his second term of service aggravated his PSC. There is no evidence he used marijuana to cope with his mental health condition. His drug-related behaviors and problems were already exacerbated during his break from service when he used and sold marijuana. Some and possibly most of his misconduct committed in his second term of service were pre-meditated behaviors involving time and effort of planning to carry out the drug activities and transactions. His premeditated behaviors would indicate he was aware and knew what he was doing at the time. His misconduct was serious offenses and illegal activities and are not excused or mitigated by his mental health condition, even if he hypothetically had a mental health condition during service. His misconduct is too egregious.

**LIBERAL CONSIDERATION:** Liberal consideration is applied to the applicant's petition due to his designation of "other mental health" on his petition. It is reminded, liberal consideration does not mandate an upgrade or a change to the records per policy guidance. The following are responses 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 “other mental health” on his application to the AFBCMR and explained why corrections to his records should be made, “DID NOT CAUSE ACTION/DUE TO LIVING CONDITIONS.” He did not identify his mental health condition and how his mental health condition may excuse or mitigate his discharge.

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

The applicant was evaluated twice by a psychiatrist during his first term of service and was assessed to have no psychiatric disorders each time. He did have some passive-aggressive personality traits but not to the degree which would warrant a character or behavior disorder diagnosis. He admitted to using marijuana and received and completed drug rehab also during his first term of service. Since he had a history of marijuana abuse, this is considered a PSC for his second term of service. During his second term of service, he was evaluated by social actions following his positive urinalysis and being under investigation for his drug-related activities. His evaluation yielded no mental disorder diagnosis, but an impression of substance abuse for marijuana was annotated. He was recommended for and completed the local rehab program. He denied during his separation physical examination having any mental health issues including frequent trouble sleeping, depression or excessive worry, nervous trouble of any sort, loss of memory, and periods of unconsciousness.

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

There is no evidence his PSC was aggravated by his second term’s military duties and service. There is also no evidence the applicant had a mental health condition impairing his judgment causing him to engage in his numerous acts of misconduct consisting of using marijuana and crank/crystal methamphetamine, procuring, transferring, and selling marijuana, and smoking marijuana in front of a minor and contributing the delinquency of a minor by smoking marijuana with a minor resulting in his discharge from service. Moreover, some and possibly most of his misconduct was premeditated behaviors, involving time and effort of planning to carry out drug activities and transactions. His premeditated behaviors would indicate he was aware and knew what he was doing at the time. His misconduct was serious offenses and illegal activities and are not excused or mitigated by his mental health condition, even if he hypothetically had a condition during service. His misconduct is too egregious. The applicant had substance abuse problems during service, and this is an unsuiting mental health condition for continued military service. His unsuiting substance abuse problems may have caused some of his misconduct causing his discharge but do not excuse or mitigate his discharge. Thus, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant’s 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.

## APPLICANT’S REVIEW OF AIR FORCE EVALUATION

**AFBCMR Docket Number BC-2024-02093**

The Board sent a copy of the advisory opinion to the applicant on 11 Dec 24 for comment (Exhibit E) 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. There is no evidence the applicant had a mental health condition, impairing his judgment, causing him to engage in numerous drug related offenses. Some of these offenses were premeditated, indicating awareness of what he was doing; requiring time and planning to carry out. These offenses are serious and not excused nor mitigated by a mental health condition, even if hypothetically, the applicant had a condition during service. Additionally, the applicant had an unsuiting substance abuse problem, which may have caused some of the misconduct, but does not excuse or mitigate the discharge. Therefore, his contended mental health condition does not excuse or mitigate his discharge. 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, particularly the lack of an FBI criminal history report, 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 successful post-service transition. The evidence he provides lacks references that demonstrate his character and 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 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 based on fundamental fairness.

## **RECOMMENDATION**

Work...

Work... Work-Product

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-2024-02093 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 4 Jun 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 12 Nov 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor dated 5 Dec 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 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.

4/7/2025

X

Work-Product

Work-Product

Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2024-02093**

Work... Work-Product

Work...