



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02443

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 is requesting relief in order to unlock the ability to utilize Post 9/11 GI Bill benefits. His career direction has driven him to seek collegiate education to advance in his occupation. His general (under honorable conditions) discharge has significantly hindered his professional advancement and development and still does today. He carries the stigma of being in between honorable and dishonorable. It has impacted his mental health, leading to self-doubt. After his first Article 15 in 2007, his peers treated him differently, singling him out and isolating him. Becoming a father, being a newly married join spouse couple and moving to a new base added stress. Signs of jealousy from his colleagues arose, but he did not think it would affect his career. He dealt with subtle racism and toxic management during his time in service. His supervisors lacked guidance. The second Article 15 for missing a movement, which was due to family commitments, led to his discharge.

In support of his request for a discharge upgrade, the applicant provides a personal statement and excerpts of his military records.

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 27 Mar 09, 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 minor disciplinary infractions. The specific reasons for the action were:

- a. On 26 Apr 07, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongfully using the civil engineer squadron utilities standby cellular phone to obtain services under false pretenses between on or about 30 Dec 06 and on or about 3 Jan 07. The applicant received a reduction to the grade of airman (E-2) and forfeiture in the amount of \$729.00 per month for two months, suspended, 60 days restriction, and a reprimand.
- b. On 2 Sep 08 a Letter of Counseling (LOC) was issued for failure to report to his duty station at the appointed time, on 19 Aug 08. On the same date, an LOC was issued for failure to report to his appointed place of duty at the appointed time on 27 Aug 08.
- c. On 19 Sep 08, a Letter of Reprimand (LOR) was issued for failure to complete a family care plan between on or about 10 Jun 08 and 18 Sep 08.
- d. On 3 Oct 08, an LOR was issued for failure to report to a mandatory physical training (PT) formation on or about 29 Sep 08.
- e. On 25 Nov 08, an LOC was issued for making false official statements to two non-commissioned officers (NCO) on or about 19 Nov 08.
- f. On 18 Feb 09, an AF Form 3070 indicates the applicant received NJP, Article 15 for absenting himself from his place of duty on or about 10 Jan 09. The applicant received a reduction to the grade of airman (E-2), suspended, 15 days extra duty and a reprimand.

On 9 Apr 09, the Staff Judge Advocate found the discharge action legally sufficient.

On 18 Apr 09, 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 17 Apr 09, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 3 years, 5 months, and 23 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 27 Aug 24, the Board staff 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-2024-02443

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 27 Aug 24, the Board staff provided the applicant with 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 mental health condition. The applicant checked post-traumatic stress disorder (PTSD) and other mental health on his application. There is no evidence the applicant had any mental health condition during his military service or at discharge. There are no mental health records in his electronic medical record, nor did the applicant submit any documentation to support his contention of a mental health condition. He was evaluated for his separation on 1 Apr 09 and the examiner determined he did not have any symptoms of depression or anxiety and he was cleared for separation. A security clearance encounter on 10 Oct 19 and a pre-employment physical on 24 Oct 19, completed 10 years after his military separation, determined he did not have any mental health conditions. Therefore, the Psychological Advisor concludes the applicant does not have any mental health conditions which would mitigate or excuse his misconduct. The applicant contended he dealt with subtle racism and toxic management throughout his time in service, however, there is no evidence in the applicant's record that indicates such. 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 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 Memo 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.

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

There is no evidence the applicant had any mental health condition during his military service or at discharge.

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

There is no evidence the applicant had any mental health condition during his military service or at discharge. While the applicant checked PTSD and other mental health on his application, there are no mental health records in his electronic medical record, nor did the applicant submit any documentation to support his contention of a mental health condition. He was evaluated for his separation on 1 Apr 09 and the examiner determined he did not have any symptoms of depression or anxiety and was cleared for separation. A security clearance encounter on 10 Oct 19 and a pre-employment physical on 24 Oct 19, completed 10 years after his military separation, determined he did not have any mental health conditions. Therefore, the Psychological Advisor concludes the applicant does not have any mental health conditions which would mitigate or excuse his misconduct.

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 AIR FORCE EVALUATION

The Board staff sent a copy of the advisory opinion to the applicant on 12 Feb 25 for comment (Exhibit F) but has received no response.

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 concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board applied liberal consideration; however, it is not sufficient to grant the applicant's request. There is no evidence of any mental health condition during service or at discharge. The applicant had no symptoms or conditions during his separation physical and he was cleared for discharge. Furthermore, 10 years post-service he had a security clearance encounter and a physical for employment where it was determined he had no mental health conditions. Therefore, his contended mental health condition does not excuse or mitigate his discharge. The Board noted the applicant's contention he was the victim of racism and toxic management; however, he has provided insufficient evidence to substantiate his claim. The Board finds no evidence the applicant

was discriminated against on any basis or that he was treated disparately. 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 clemency and fundamental fairness; however, given the evidence presented, the Board finds insufficient basis to do so. The Board considered the principles included in the Wilkie Memo to determine whether to grant relief; however, the applicant did not provide sufficient evidence pertaining to his post-service transition. The evidence he provides lacks references that demonstrate his character and service to the community. The applicant retains the right to request reconsideration of this decision should he provide additional evidence, which could be in the form of a criminal history background check, a personal statement, character statements, and/or testimony 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 reconsider his request based on clemency and fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

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-2024-02443 in Executive Session on 6 Jun 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 12 Jul 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 27 Aug 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Feb 25.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Feb 25.

AFBCMR Docket Number BC-2024-02443

Work...

Work... Work-Product

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.

6/27/2025

X

Work-Product

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-02443

Work... Work-Product

Work...