

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02669

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

According to applicant's counsel, he enlisted in the Air Force in Mar 00 where he served as an aerospace propulsion apprentice. The applicant consistently demonstrated outstanding performance, exceeding Air Force standards in his duties. His commitment to excellence extended beyond his technical skills; he was also actively engaged in community events and was recognized for his support of peers, earning a reputation as an exceptional mechanic and dedicated service member.

Over the course of the applicant's 57 months in the Air Force, his record was generally exemplary, with only minor trivial infractions noted, such as a speeding citation in Apr 02 and a failure to stop at a stop sign in Sep 01, for which he did not immediately inform his supervisor. A significant turning point occurred in Oct 04 when the applicant was arrested by civilian authorities in XXXXXXXXXX on charges of felony burglary of a vehicle and grand theft. This incident led to civilian confinement and subsequent conviction, resulting in a parole sentence.

In Mar 05, the applicant received a Letter of Reprimand (LOR) from the Air Force related to this civilian arrest. Unfortunately, this occurred during a challenging period in the applicant's life. Prior to the arrest, he experienced the loss of his mother and the disappointment of being removed from deployment orders to Japan, which deeply affected him. This series of events triggered a profound depression, compounded by alcohol misuse as a form of self-medication. Recognizing the need for intervention, the applicant sought help from the Life Skills Center, where he was diagnosed with depression, bereavement, and alcohol dependency. The applicant actively engaged with professionals to address these issues, undertaking efforts to rehabilitate himself and improve his mental health. Despite the applicant's desire to continue serving, he was recommended for discharge in May 05 and subsequently left the Air Force with an under honorable conditions discharge in Jun 05.

In his argument, counsel references timeliness of the application, the Board's jurisdiction under Title 10, United States Code § 1552 (10 USC § 1552), the legal standards under Department of Defense Directive 1332.41, *Boards for Correction of Military Records (BCMR) and Discharge Review Boards (DRB)*, and Air Force Instruction (AFI) 36-2608¹.

Per counsel, the applicant's service was honorable other than his infraction that led to his separation. This act of misconduct during a period of mental and emotional illness should not permanently define the applicant's service. Counsel listed the applicant's military awards and decorations in support. In addition to his official duties, the applicant actively contributed to his

¹ Considering the previous references cited, it appears counsel intended to cite AFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.

community and unit through participation in fundraising events and formal military ceremonies. He regularly volunteered off-duty with his local Special Olympics basketball team as a coach, and his involvement in initiatives like car wash fundraisers and the Hail/Farewell and Recognition program, in which he raised \$500.00, underscored his commitment to fostering morale and camaraderie among fellow service members.

Despite the applicant's missteps, he confronted personal challenges and sought rehabilitation for depression, alcohol dependency, and bereavement. His proactive approach to addressing these issues while serving reflects a commitment to personal growth and recovery within the military framework and accepting responsibility for his actions. This journey of self-improvement continued into his civilian career, where colleagues have observed his positive demeanor and moral character, demonstrating a successful transition and ongoing commitment to personal development. In support, counsel cites Department of Defense Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, and *Sofranoff v. United States*, 165 Ct. Cl. 470 (Ct. Cl. 1964).

Counsel further contended in the case of the applicant, it is imperative to reevaluate and consider the circumstances surrounding his military service, particularly in light of his distinguished career and subsequent efforts toward rehabilitation and continued service to the community. Following his military service, the applicant transitioned to civilian life and continued to excel in his field of aerospace engineering. His role involved overseeing complex maintenance tasks and leading a team in engine repairs, earning him praise for his technical proficiency and leadership abilities. Counsel provides excerpts from two character references submitted with the application to the AFBCMR in support.

According to counsel, considering these factors, it is evident the applicant is a deserving candidate for a discharge status upgrade. His exemplary service in the Air Force, coupled with his remorseful acknowledgement of past mistakes and subsequent efforts toward personal and professional development, warrant a reassessment of the discharge characterization. Although the applicant takes personal responsibility for his actions, the fact remains the applicant's chain of command failed to consider his compromised mental state as a mitigating factor of his misconduct. The applicant has overcome his previous mental health issues and now seeks to remove the indelible stain on his character by correcting his military records.

In support of his request for a discharge upgrade, the applicant provides excerpts from his Enlisted Performance Reports, a Patient Encounter Form, dated 5 Nov 04, an Order Withholding Adjudication of Guilt and Placing Defendant on Probation (Circuit Court of XXXXXX), dated 23 Mar 05 (Excerpt), copies of LORs, and character references.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 4 Oct 01, according to AF Form 174, *Record of Individual Counseling*, the applicant was counseled for: on 8 Sep 01, [the applicant] was stopped and cited for failure to stop at a stop sign. [The applicant] then failed to notify his supervisor of his infraction. The First Sergeant is the individual that notified [the applicant's] supervisor. [The applicant] then misplaced the copy of his citation.

On 23 Apr 02, according to a XX MXS/LGM memorandum, Subject: Letter of Reprimand (LOR), the applicant was reprimanded for: on or about 21 Apr 02, [the applicant] was cited for speeding, travelling at 29 miles per hour in a 20 mile per hour zone. This was [the applicant's] fourth ticket

in a 10-month period worth a total of 17 points. This is in violation of AFI 31-204, *Air Force Motor Vehicle Traffic Supervision*, and Article 92 of the Uniform Code of Military Justice.

On 5 Nov 04, according to an SF 600, *Patient Encounter Form*, provided by the applicant, he was seen for an Alcohol and Drug Abuse Prevention and Treatment (ADAPT) evaluation after an incident in which he was accused of having stolen stereo equipment from a parked car while intoxicated. The applicant was diagnosed with Alcohol Dependence, Nicotine Dependence, and Bereavement.

On 23 Mar 05, according to an *Order Withholding Adjudication of Guilt and Placing Defendant on Probation*, Circuit Court of XXXXXXXX, the applicant entered a plea of Nolo Contendere to the offense of Count 1: Burglary of Unoccupied Conveyance; and Count 2: Grand Theft. The applicant was placed on probation for a period of two years, each count concurrent, under the supervision of the Department of Corrections, with conditions of probation provided.

According to a XX AMXS/CC memorandum, Subject: Letter of Reprimand, dated 23 Mar 05, the applicant was reprimanded for: on or about 24 Oct 04, at XXXXXXXX, [the applicant] was arrested by civilian authorities for felony burglary of a vehicle and grand theft. [The applicant] was placed in civilian confinement for two days, subsequently released on his own recognizance, and placed under pretrial supervision by XXXXX. On or about 11 Mar 05, at [the applicant's] final court appearance, he pled no contest and was sentenced to two years probation with no restrictions.

On 4 May 05, the applicant's commander recommended the applicant be discharged from the Air Force for Misconduct: Civilian Conviction, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.51. The commander recommended an under other than honorable conditions discharge. The specific reason for the action was:

- On or about 24 Oct 04, at XXXXXXXXX, [the applicant] was arrested by civilian authorities for felony burglary of a vehicle and grand theft. For this offense, [the applicant] was placed in civilian confinement for two days, subsequently released on his own recognizance, and placed under pretrial supervision by XXXXX. [The applicant] was later convicted of Grand Theft and Burglary of an Unoccupied Conveyance, both second-degree felonies. For this offense, [the applicant] received an LOR, dated 23 Mar 05.

On 25 May 05, according to an AFLSA/ADC memorandum, Subject: Discharge of [Applicant], the applicant offered a conditional waiver of his rights associated with an administrative board hearing contingent upon his receipt of no less than a discharge under honorable conditions (general).

On 11 Jun 05, the Staff Judge Advocate found the conditional waiver action legally sufficient.

On 14 Jun 05, the discharge authority directed the applicant be discharged for misconduct, specifically a civilian conviction, with a general (under honorable conditions) service characterization, under the provisions of AFI 36-3208, paragraph 5.51. Probation and rehabilitation were considered but not offered.

On 29 Jun 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 4 years, 9 months, and 29 days of total active service.

On 4 Nov 05, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 25 May 06, 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.

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; 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 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.

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 available records finds there is evidence from his objective military records to corroborate most of his legal counsel's contentions. There is no evidence the applicant's chain of command did not consider his mental state when determining his discharge and service characterization. The applicant stated in his response to his LOR he became depressed from his mother's death and after his orders to Japan were canceled from being under false suspicion of drug use. He also stated he had coped with his depression developed from these stressors with alcohol. The applicant was assessed by ADAPT after he was accused of stealing stereo equipment from a vehicle while intoxicated and was diagnosed with Alcohol Dependence, Nicotine Dependence, and Bereavement from the assessment. He apparently received counseling for grief, alcohol issues, and other stressors and was able to control his drinking and depression per his statement to his LOR. While there is evidence the applicant was intoxicated at the time of his misconduct of burglary and grand theft, and his intoxication was possibly from his alcohol dependency problems developed from coping with depression, this Psychological Advisor opines the applicant's mental health condition may have caused and explained his misconduct but does not excuse or mitigate his misconduct. The applicant's misconducts were serious offenses that resulted in two felony charge convictions of Grand Theft and Burglary of an Unoccupied Conveyance. Having a mental health condition does not exempt the applicant from assuming criminal responsibility for his actions or the consequences of his actions. His misconduct of burglary and grand theft were not the only misconduct or legal problems he had during service. The applicant was also discharged for speeding and failing to stop at a stop sign, for which he forgot to notify his supervisor. There is no evidence or records the applicant's mental health condition, including depression and alcohol dependency problems, caused any of these other misconducts. This Psychological Advisor concurs with the AFDRB's decision and finds the applicant's misconduct, especially his misconduct of burglary and grand theft, was a significant departure from conduct expected of all military members. Therefore, and based on a thorough review of the applicant's available records, this 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. The applicant's misconducts were determined to be too egregious to be outweighed by his mental health condition.

Liberal consideration is applied to the applicant's request due to the contention of having a mental health condition during service. 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 information presented in his records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant's legal counsel, on behalf of the applicant, contended the applicant became depressed from his mother's death and after his orders to Japan were canceled. He coped with his depression with alcohol, which was a mitigating factor to his misconduct and discharge, and which supposedly his chain of command did not consider.

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

The applicant's entire service treatment records are not available for review, but there is evidence the applicant received an assessment from ADAPT after he was accused of stealing stereo equipment from a parked vehicle while intoxicated. He was diagnosed with Alcohol Dependence, Nicotine Dependence, and Bereavement (grief from his mother's death) from the ADAPT assessment and was referred to the Life Skill Support Center for grief counseling and ADAPT's Level 1 treatment program for his alcohol dependency problem. In the applicant's response to his LOR for his misconducts of theft and burglary submitted at the time of service, he reported he became depressed following his mother's death and after his orders to Japan were canceled from being under suspicion of drug use. He said he coped with his depression with alcohol.

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

While there is evidence, and it is compelling, the applicant's alcohol dependency problem was caused by his depression from his mother's death and the cancellation of his orders to Japan that led to his misconduct of burglary and grand theft while intoxicated, his misconduct was too egregious and serious to be excused or mitigated even by his mental health condition (Kurta Memorandum #18). He was convicted in a civilian court for two felony charges from his misconduct of burglary and grand theft and having a mental health condition does not exempt him from assuming responsibility for his actions and/or the consequences of his actions. The applicant's misconducts of burglary and grand theft were not the only misconduct or legal problems he had during service. The applicant was also discharged for speeding and failing to stop at a stop sign, for which he forgot to notify his supervisor. There is no evidence or records the applicant's mental health condition, including depression and alcohol dependency problems, caused any of these other misconducts. Therefore, the applicant's 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

The Board sent a copy of the advisory opinion to the applicant on 22 Jan 25 for comment (Exhibit E) 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 USC § 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. While there is evidence the applicant was intoxicated at the time of his misconduct of burglary and grand theft, and his intoxication was possibly due to his alcohol dependency developed from coping with depression, and the applicant's mental health condition may have caused and explained his misconduct, it does not excuse or mitigate his misconduct. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. The Board found the applicant's misconduct was too egregious and serious to be excused or mitigated, even by his mental health condition, in accordance with the Kurta Memorandum #18. The applicant was convicted in a civilian court for two felony charges from his misconduct of burglary and grand theft. Having a mental health condition does not exempt the applicant from assuming responsibility for his actions and/or the consequences of his actions.

Additionally, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. The service characterization was in accordance with the conditional waiver request submitted by the applicant. Furthermore, there is no evidence the applicant's chain of command did not consider his mental state when determining his discharge and service characterization. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of compelling post-service information and criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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, paragraph 2.1, considered Docket Number BC-2024-02669 in Executive Session on 21 May 25:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 10 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 12 Nov 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Jan 25.
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 22 Jan 25.

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.

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Board Operations Manager, AFBCMR