

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS****RECORD OF PROCEEDINGS****IN THE MATTER OF:****DOCKET NUMBER:** BC-2024-02833

Attorney-Client

COUNSEL: Attorney-Client**HEARING REQUESTED:** NO**APPLICANT'S REQUEST**

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. The narrative reason for separation of "misconduct" be removed or corrected.

APPLICANT'S CONTENTIONS

He was a first responder in Apr 95 during the Oklahoma City bombing relief recovery effort. He suffers from post-traumatic stress disorder (PTSD) with insomnia due to what he experienced. His PTSD was diagnosed by the Department of Veterans Affairs (DVA) and is service connected. As a result, he could not concentrate, his job performance suffered, and he failed his career development course (CDC). He received a Letter of Reprimand (LOR) and an Article 15 for the CDC failure and his career was cut short. He was administratively discharged due to poor job performance with a general (under honorable conditions) discharge.

In support of his request for a discharge upgrade, the applicant provides a DVA rating decision.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

According to the legal review, dated 24 Apr 96, 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 5.50.2 for Misconduct, a pattern of misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 30 Mar 95, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for committing

indecent assault on a person, not his wife, by grabbing her breast with the intent to gratify his sexual desires on or about 31 Dec 94. The applicant received a reduction to the grade of airman (E-2), suspended and forfeiture of \$300.00 pay.

b. On 28 Feb 96, a Record of Individual Counseling (RIC) was issued for failing the end of course exam for his CDC on 28 Feb 96.

c. On 20 Mar 96, a Letter of Counseling (LOC) was issued for being preoccupied, wandering the work center and making phone calls after being constantly reminded to get to work. He had been tasked to either study or stay busy at work due to the failure of his CDC exam on 19 Mar 96.

d. On 27 Mar 96, an LOR was issued for disobeying a lawful order by failing to attend a study session as instructed on 26 Mar 96.

e. On 2 Apr 96, an AF Form 3070 indicates the applicant received NJP, Article 15 for using provoking gestures by extending his middle finger towards another airman on or about 27 Mar 96. The applicant received a reduction to the grade of airman (E-2), suspended.

On 24 Apr 96, the Chief of General Law Division found the discharge action legally sufficient.

On 26 Apr 96, the discharge authority directed the applicant be discharged for misconduct, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 1 May 96, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 9 months, and 10 days of total active service.

According to the Air Force Discharge Review Board (AFDRB) brief, the applicant submitted a request to the AFDRB for an upgrade to his discharge on 3 Nov 97. The applicant contended his discharge character was unjust because it was not an accurate reflection of his active duty service.

On 14 May 98, 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 determined the applicant was given ample opportunities to correct his behavior and the misconduct committed outweighed the positive contributions he made during 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-2024-02833

On 24 Feb 25, 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

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 24 Feb 25, 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 changes to his records from a mental health perspective. A review of the available records finds the applicant's contentions are partially corroborated by his objective military records. There is evidence he was part of the recovery team after the bombing of the Oklahoma City federal building as corroborated by his enlisted performance report (EPR) rating period of 22 Mar 95 to 22 Dec 95. There is, however, no evidence he developed PTSD or had insomnia during service from his traumatic experience with the recovery efforts. His entire service treatment records are not available for review so there are no records he received any mental health evaluation, treatment, or a mental disorder diagnosis including PTSD and insomnia during service. There was a Memorandum for Record (MFR) from his primary care manager (PCM) in his military records reporting he was prescribed and took Atarax for pruritus or itchy skin which was primarily stress-induced. He was recommended to take a stress reduction class by his PCM but the applicant balked at the idea because of a mental health record. His PCM explained it was not the same as a referral for a mental illness. This MFR would verify he did not have a mental health condition or illness and did not receive mental health treatment during service. His military records reported he was stressed over his Article 15 for indecent assault on a woman, causing him to submit a complaint to the inspector general (IG) and inquiries to his congressman and the Secretary of the Air Force (SecAF). He repeatedly denied grabbing, touching, or assaulting this individual so if his report was true, then it is not possible his mental health condition including PTSD and insomnia caused his reported misconduct of indecent assault. It was the allegation of this misconduct and its ensuing consequences which caused him to be emotionally upset and stressed. There were no reports he was in emotional distress or had a mental health condition at the time of this misconduct which he repeatedly denied doing or his mental health condition caused him to engage in indecent

assault of another individual. Additionally, this misconduct occurred on 31 Dec 94, which predated his participation in the recovery effort in Apr 95, so his mental health condition from this traumatic experience could not have caused this misconduct. Despite the applicant's denial of engaging in this misconduct, he did receive an Article 15 for the misconduct. His misconduct of indecent assault of another individual is a serious offense and would not be excused or mitigated, even if he had a mental health condition. The applicant did not address this misconduct in his petition, and this was not the only misconduct which caused his discharge.

The applicant was also discharged from service for failing his CDC exam, failing to attend a study session, spending a good deal of his time wandering around his work center preoccupied with placing personal telephone calls and being constantly reminded to get to work, and used provoking gestures by extending his middle finger towards an airman. The applicant only addressed his CDC exam failure in his petition, and claimed his mental health condition of PTSD and insomnia developed from his traumatic recovery efforts caused his CDC exam failures, which resulted in him receiving an LOR and an Article 15. There is no actual evidence or records to substantiate his claims. As mentioned, there are no records he had any mental health conditions including PTSD and insomnia during service, and he did not receive an LOR or Article 15 for his CDC exam failures as claimed. He addressed his CDC exam failure in at least two statements he had submitted at the time of service on 29 Feb 96 and 20 Mar 96, respectively. In both statements, he denied negative comments were made about the reasons he failed his CDC exam. In his earlier statement dated 29 Feb 96, he reported he most likely failed his CDC exam because he was working on an issue concerning a congressional inquiry in reference to his misconduct and/or disciplinary action for indecent assault. His preoccupation with his issue may have caused him to neglect his studies but were not caused by his mental health condition. In his second statement dated 20 Mar 96, he reported spending a lot of time with a technical sergeant (E-6) for help with his CDC and disputed the comments he did not seem to care about his CDC retest. He alleged he was constantly told to do something different or was not doing something the right way, causing him to feel stressed. Again, no mental health issues were discussed as a reason he failed his CDC exam. The applicant did address his misconduct of wandering around the work center being preoccupied with placing personal phone calls in the same statement dated 20 Mar 96. He claimed he was not the only person using the telephone and taking a break, and these activities were common for all individuals in his shop. His explanation did not demonstrate his misconduct was caused by having a mental health condition, including PTSD and insomnia. The applicant also did not address this misconduct in his petition.

The applicant provided a statement in response to his LOR dated 1 Apr 96 for oversleeping and not attending a supervised study session. He explained he was prescribed and took hydroxyzine hydrochloride for a medical problem, and after speaking with his physician/PCM, he learned the medication could cause drowsiness and impair one's ability to think as the reason for his issues. His PCM attested to his statement via an MFR dated 1 Apr 96 reporting his prescribed medication of Atarax (hydroxyzine hydrochloride) used to treat a medical condition (pruritus) could cause drowsiness. He was not prescribed this medication to treat his insomnia or PTSD, nor did this medication cause him to have insomnia. His and his PCM's explanations did not demonstrate his

tardiness and inability to attend his supervised study session were caused by his mental health condition. He also did not address this misconduct in his petition.

Lastly, the applicant was discharged for using provoking gestures by extending his middle finger towards an airman. He did not clearly address this misconduct in his statements to his commander but he mentioned the final indicator for the intent to separate him was the NJP he received for extending his middle finger towards another airman. He also mentioned making a mistake in his judgment, alluding to him admitting to making this gesture. There is no evidence his mental health condition caused this misconduct.

It appears the applicant was diagnosed with PTSD and insomnia disorder about 28 years after his discharge by the DVA and he received service connection for this condition. The DVA's rating decision letter he provided did not identify the cause or traumatic event for his PTSD but could have been from his participation in the recovery efforts as he contended. The mental health evaluation report which would discuss the reason for this diagnosis was not available for review, and there are also no records in the DVA's electronic medical records reporting he had a diagnosis or treatment for PTSD or insomnia. The rating decision reported he received a 70 percent rating for PTSD with Insomnia Disorder based on his problems and symptoms of anxiety, chronic sleep impairment, depressed mood, difficulty in adapting to a work-like setting, stressful circumstances, and work, difficulty in establishing and maintaining effective work and social relationships, disturbances of motivation and mood, flattened affect, forgetting directions, names, and recent events, mild memory loss, obsessional rituals which interfere with routine activities, occupational and social impairment with reduced reliability and productivity, and suspiciousness. There is no evidence or records he developed, had, or experienced any of these problems or symptoms from his traumatic experience of recovery efforts during service. It appeared he may have had a delayed onset of PTSD causing him to develop these problems and symptoms years or decades after his traumatic experience. Delayed onset of PTSD is not an uncommon occurrence. It is acknowledged the applicant received service connection for his mental health condition from the DVA, but receiving service connection does not indicate causation or mitigation of his misconduct and discharge but merely suggests the condition was somehow related to his service and not necessarily the cause of his discharge.

There is no evidence the applicant's mental health condition, including PTSD and insomnia, had a direct impact or was a contributing factor to any of his misconduct, resulting in his discharge from service. The applicant was not discharged for poor performance caused by his mental health condition as claimed but from engaging in a pattern of misconduct, which had no nexus to his mental health condition developed from his traumatic experience with recovery efforts.

Liberal consideration is applied to the applicant's request due to his contention of having a mental health condition. It is reminded, liberal consideration does not mandate an upgrade or a change to the record per policy guidance. The following are responses to the four questions from the Kurta Memo from the available records for review:

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

The applicant contended in Apr 95, he was a first responder during the Oklahoma City bombing recovery relief effort and developed PTSD with insomnia from this experience. He claimed his job performance suffered, and he received an LOR and then an Article 15 for failing his CDC exam, which ultimately ended his Air Force career.

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

There is evidence the applicant was part of the recovery team for the aftermath of the bombing of the Oklahoma City federal building sometime during the EPR rating period of 22 Mar 95 to 22 Dec 95. This would corroborate his contention he was a first responder in Apr 95 with the recovery efforts. There is, however, no evidence he developed PTSD or had insomnia during service from his traumatic experience with the recovery efforts. His entire service treatment records are not available for review, so there are no records verifying he received any mental health evaluation, treatment, or a mental disorder diagnosis, including PTSD and Insomnia Disorder, during service. An MFR from his PCM reported he was prescribed and took Atarax for pruritus or itchy skin which was primarily stress-induced, and this medication may produce drowsiness as a reason for his tardiness. He was not prescribed this medication to treat PTSD or insomnia, nor did he have insomnia from this medication. He was recommended to take a stress reduction class by his PCM, but the applicant balked at the idea because of a mental health record. His PCM explained it was not the same as a referral for a mental illness. This MFR verified he did not have a mental health condition or illness, and he did not receive mental health treatment during service. His military records reported he was stressed over his Article 15 for indecent assault on a woman causing him to submit a complaint to IG and inquiries to his congressman and the SecAF and not because of his traumatic experience. He was diagnosed and service-connected with PTSD with insomnia disorder by the DVA about 28 years after his discharge from service. He received a 70 percent rating based on his problems and symptoms of anxiety, chronic sleep impairment, depressed mood, difficulty in adapting to a work-like setting, stressful circumstances, to work, difficulty in establishing and maintaining effective work and social relationships, disturbances of motivation and mood, flattened affect, forgetting directions, names, and recent events, mild memory loss, obsessional rituals which interfere with routine activities, occupational and social impairment with reduced reliability and productivity, and suspiciousness. There is no evidence or records that he developed, had, or experienced any of these symptoms from his traumatic experience of recovery relief efforts during service.

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

There is no evidence the applicant's mental health condition, including PTSD and insomnia, had a direct impact or was a contributing factor to any of his misconduct consisting of indecent assault on an individual/woman, failing his CDC exam, failing to attend a study session, spending a good amount of time wandering around his work center being preoccupied with placing personal phone calls and being constantly reminded to get to work and using provoking gestures by extending his middle finger towards an airman. He repeatedly denied assaulting, grabbing, or touching the individual in question, explained his CDC failure was most likely caused by working on an issue (indecent assault) concerning a congressional which went all the way up to the SecAF, he overslept and did not attend his study session because of the side effect of a medication he took for a medical condition causing drowsiness and impaired thinking which was corroborated by his PCM. He did

not deny and may have admitted to extending his middle finger towards an airman. None of these explanations provided during service demonstrated they were caused by his mental health condition. There is no evidence his job performance declined due to his mental health condition or traumatic experience. Therefore, his mental health condition or traumatic experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition or traumatic experience does not excuse or mitigate his discharge, his mental health condition or traumatic experience 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 25 Mar 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 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 to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. There is evidence the applicant was a part of the recovery efforts after the Oklahoma City bombing, however, there is no evidence he developed PTSD or insomnia during service. Furthermore, the applicant's most severe infraction occurred prior to the recovery efforts. The Board acknowledges the applicant is service connected for his PTSD by the DVA 28 years after his discharge. While the applicant may have had delayed onset of PTSD, there is no evidence he had the symptoms reported to the DVA while he was in service. Moreover, a DVA rating does not determine causation or mitigation and is not binding on the Military Department. 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, was 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 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 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-2024-02833 in Executive Session on 26 Jun 25:

Attorney-Client, Panel Chair
 Attorney-Client, Panel Member
 Attorney-Client, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Aug 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 24 Feb 25.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 24 Mar 25.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Mar 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.

Attor...

Attor... Attorney-Client

8/15/2025

X

Attorney-Client

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-02833

Attor... Attorney-Client

Attor...