

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03114

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His official military personnel record be amended to:

1. Upgrade his discharge from general (under honorable conditions) to honorable.
2. Upgrade/Restore his grade to senior airman (E-4).
3. Award Operation IRAQI FREEDOM Medal. **(failed to exhaust lower administrative remedy)**

### APPLICANT'S CONTENTIONS

His upgrade request should be reconsidered under *Johnson et al v. Kendall*, Case Number 3:21-cv-01214. The applicant has a service-connected disability of 70 percent, with a pending request for an increase, for Post-Traumatic Stress Disorder (PTSD), anxiety, depression, memory loss, insomnia, and tinnitus. Alcohol abuse led to his discharge and proper treatment was not provided. The applicant needed help, and his country let him down. The applicant asked that he be granted dignity. It was his desire to remain active duty beyond his four-year commitment until retirement. Shame has haunted the applicant all these years. The Board's decision to help him can aid in lifting some of this sorrow.

In support of his request for a discharge upgrade, the applicant provided an excerpt from an enlisted performance report, a Department of Veterans Affairs (DVA) summary of benefits letter, dated 31 Jan 24, and an Air Force Discharge Review Board (AFDRB) letter, Notice of Potential Right to Apply for Reconsideration, dated 9 Aug 24.

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 1 Feb 06, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment under Article 15, Uniform Code of Military Justice, for:

- Violation of Article 86:
  - [The applicant] did, on or about 27 Dec 05, without authority, fail to go at the time prescribed to his appointed place of duty.
- Violation of Article 134:
  - [The applicant] was, on or about 27 Dec 05, as a result of wrongful previous overindulgence in intoxicating liquor or drugs, incapacitated for the proper performance of his duties.

The applicant received a reduction in grade to airman, suspended, forfeiture of \$150.00 pay per month, and 14 days extra duty.

On 3 Apr 06, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years, 1 month, and 23 days of total active service.

On 15 Oct 12, the applicant submitted a request to the AFDRB for an upgrade to his discharge.

On 28 Feb 13, 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 29 Jan 25, 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.

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 Instruction (AFI) 36-2502, *Airman Promotion Program*, Chapter 2 – *Active Duty Airmen Promotions to Grades Amn Through CMSgt*;

## 2.2. SrA Promotions:

2.2.1. Airmen are promoted (fully qualified) to SrA upon meeting minimum requirements in Table 2.1., recommended by the commander in writing, and have:

2.2.1.1. 36 months TIS and 20 months TIG, or

2.2.1.2. 28 months TIG, whichever occurs first.

## AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds there is insufficient evidence to support the applicant's request for an upgrade of his discharge.

There is insufficient evidence to suggest the applicant had any mental health condition other than alcohol abuse during his military service or at discharge. The applicant was not diagnosed with any other mental health condition until 16 years after his military service. After his deployment in 2004-2005, the applicant denied any mental health symptoms (11 Jul 05). He was diagnosed and treated for alcohol abuse during his military service. His separation physical noted a muscle strain, but the provider noted the applicant had no other complaints or problems. The applicant was seen by the DVA from 2012 through 2020. During each of his encounters, he was screened for and denied depression, and when screened, he denied any anxiety symptoms as well. The applicant denied mental health symptoms until 2022, 16 years after his military separation. In 2023, he was diagnosed with anxiety disorder and Major Depressive Disorder. He was also service-connected by the DVA for PTSD on 5 Jan 22.

It is important to note the DVA is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired

since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran. In the applicant's case, his symptoms appeared to have developed over time and worsened post-service, and he met the criteria for a mental health diagnosis.

This Psychological Advisor concludes the applicant did not have any mental health condition that would excuse or mitigate his misconduct during the time of his service or at discharge.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate the misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. 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 Memorandum 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 check-marked PTSD and Other Mental Health on his application.

2. Did the condition exist, or experience occur, during military service?  
There is insufficient evidence to suggest the applicant had any mental health condition other than alcohol abuse during his military service or at discharge. The applicant was not diagnosed with any other mental health condition until 16 years after his military service.

3. Does the condition or experience excuse or mitigate the discharge?  
This Psychological Advisor concludes the applicant did not have any mental health condition that would excuse or mitigate his misconduct during the time of his service or at discharge.

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 sent a copy of the advisory opinion to the applicant on 3 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 Title 10, United States Code § 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. There is no

evidence the applicant had any mental health condition other than alcohol abuse during his military service or at discharge. The applicant was not diagnosed with any other mental health condition until 16 years after his military service. Liberal consideration was applied; however, the applicant did not have a mental health condition that excused or mitigated his discharge.

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. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information or criminal history provided by the applicant, the Board finds no basis to do so.

Further, there is no evidence the applicant previously held the grade of senior airman (E-4) or was eligible for promotion to that grade. 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, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-03114 in Executive Session on 18 Jun 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 29 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 29 Jan 25.  
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 20 Feb 25.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 3 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.

**X**

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Board Operations Manager, AFBCMR