

ADDENDUM RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-1989-00396

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to show the proper spelling of his middle name (**No Board Action Needed -Will be Administratively Corrected**).

RESUME OF THE CASE

On 31 May 89, the Board concluded the applicant's discharge was proper and in consonance with the provisions of the discharge directive. The reasons the discharge proceedings were initiated against the applicant were well documented in the record and it appears he was afforded every right to which he was entitled under the discharge directive. The discharge case file was found legally sufficient by competent military legal authority. In an independent review, the discharge authority determined the proposed separation should be approved. Therefore, in view of the foregoing and in the absence of any evidence by the applicant indicating he did not commit the offenses that led to his separation, that his commanders abused their discretionary authority, or that his service warranted a better characterization than the one he received, the Board found no sound basis to warrant a finding his discharge and the corresponding reenlistment and separation codes assigned at the time of his separation were erroneous. The applicant believed favorable consideration should have been given to his application based on clemency; however, the Board found the applicant's assertions, in and of themselves, were not sufficient to warrant a finding that his discharge was inequitable.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit F.

On 9 Feb 22, the applicant requested reconsideration of his request for a discharge upgrade. He again contends he experienced injustices for the way he was treated relating to his alcohol related incidents. If the Board does not agree with this contention, he would like his case to be considered under clemency.

In support of his request for clemency, the applicant provides a personal statement and copies of military kudos, several character reference letters, and articles and other documents relating to alcohol use in the military.

The applicant's complete submission is at Exhibit G.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

Dated 23 Mar 83, a Summary of Treatment letter indicates the applicant entered into the Alcohol Rehabilitation Program noting he had strong indicators of an ongoing alcohol abuse problem. The letter also indicates the applicant wanted help with alcohol causing problems but did not see himself as having an alcohol problem.

On 24 Mar 83, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-47 for a pattern of misconduct. The specific reasons for the action were:

- a. Dated 4 Mar 82, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for disorderly conduct to include drinking. He received a forfeiture of \$75 for one month and seven days of correctional custody.
- b. Dated 30 Nov 82, AF Form 3070, indicates the applicant received NJP, Article 15 for being drunk in station. He received a reduction in grade from E-2 to E-1, suspended until 8 Jun 83, and a forfeiture of \$50 for one month.
- c. Dated 21 Mar 83, AF Form 366, *Notification of Intent to Vacate Suspended Nonjudicial Punishment*, indicates the applicant violated Article 111 by operating a motor vehicle while drunk resulting in an accident involving injuries. He received a reduction in grade to E-1 with a new date of rank of 9 Dec 82.

On 30 Mar 83, a medical examination report indicates the applicant had a history of alcohol abuse since 1980.

In an undated Legal Review, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant receive a general discharge and that he not be offered probation and rehabilitation.

On 12 Apr 83, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 22 Apr 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Discreditable Involvement with Military or Civil Authorities" and he was credited with 1 year, 6 months, and 2 days of total active service.

On 3 Mar 84, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 3 Mar 87, 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.

On 31 Jan 89, the applicant submitted a request to the Air Force Board for the Correction of Military Records (AFBCMR) for an upgrade to his discharge and a change to his reenlistment and separation codes stating at the time he was drinking, he was immature. It has been four years since he had a drink and would like to rejoin the Air Force Reserve to fulfill his obligation to his country.

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

POST-SERVICE INFORMATION

On 14 Feb 22, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit I). The applicant replied on 17 Jun 22 and provided proof of employment in which background checks are part of the hiring process.

The applicant's complete response is at Exhibit J.

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance 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 the supplemental guidance, paragraphs 6 and 7.

On 14 Feb 22, the Board staff provided the applicant a copy of the clemency based on fundamental fairness guidance (Exhibit I).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application finding no error or injustice with the discharge processing. The commander provided the Base Discharge Authority (BDA) ample evidence to support discharge and the character of service. The BDA determined that the significant negative aspects of the applicant's behavior outweighed any positive aspects of the applicant's brief military service. However, due to the excessive length of time since discharge, AFPC/DP2SSR contends that the board could consider granting the applicant's request based on clemency.

The complete advisory opinion is at Exhibit K.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 1 Sep 22 for comment (Exhibit L), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board majority concludes the applicant is not the victim of an error or injustice. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence that would lead the Board majority 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 applicant's discharge. In support of his request for an upgrade, the applicant has provided a personal statement and copies of military kudos, several character reference letters from the time of his discharge, and articles and other documents relating to alcohol use in the military. He also provided proof of employment in which background checks are part of the hiring process. He contends since his discharge he has dedicated his life to serving his country and community. Due to the alcohol abuse that led to his discharge, he attended Alcoholics Anonymous and has been sober for over 38 years. He has served his community as a police officer and is currently working for the Department of Homeland Security, Customs and Boarder Protection. However, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. While the applicant has presented some evidence indicating he has apparently made a successful post-service transition, the Board majority does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, the supporting evidence did not provide his impact in the community and if the impact is so admirable the Board majority could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service.

The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, 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, the Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness. Therefore the Board majority recommends against correcting the applicant's record.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board majority 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-00516 in Executive Session on 2 Feb 23:

, Chair, AFBCMR
, Panel Member
, Panel Member

A majority of the panel voted against correcting the record. XXXXX voted to correct the record and did provide a minority opinion (Exhibit M). The panel considered the following:

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 31 May 89.
Exhibit G: Application, DD Form 149, w/atchs, dated 9 Feb 22.
Exhibit H: Documentary Evidence, including relevant excerpts from official records.
Exhibit I: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 14 Feb 22.
Exhibit J: Applicant's Response, w/atchs, dated 17 Jun 22.
Exhibit K: Advisory Opinion, AFPC/DP2SSR, dated 1 Sep 22.
Exhibit L: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Sep 22.
Exhibit M: Minority Opinion, dated 9 Feb 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR