



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2000-00173

Work-Product

COUNSEL: NONE

Work-Product

HEARING REQUESTED: NO

APPLICANT’S REQUEST

The Board consider the applicant’s request to upgrade the decedent’s dishonorable discharge to honorable.

RESUME OF THE CASE

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

On 29 Jun 00, the Board considered and denied the decedent’s request for a discharge upgrade changing his dishonorable discharge to general (under honorable conditions); finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

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

On 16 Aug 22, the applicant requested consideration of the decedent’s original application. The applicant would like an upgrade to her deceased spouse’s record and feels it would be beneficial to the family and help with the negative attitude that the family had to endure for over 30 years. After the decedent was discharged from the Air Force, he came home with many problems trying to cope with everyday life experiencing frustration, sleepless nights, drinking, and smoking. He had a hard time letting go of his past which made him feel he was not treated fairly. The applicant is seeking possible income that her husband never applied for.

The applicant’s complete submission is at Exhibit F.

STATEMENT OF FACTS

On 26 Oct 75, the convening authority published General Court-Martial Order (GCMO) *Work-Product*. The Order stated the applicant pled not guilty but was found guilty of one charge, one specification of rape, in violation of Article 120, Uniform Code of Military Justice, and pled not guilty and was found not guilty of one charge, one specification of possessing marijuana, in violation of Article 92, Uniform Code of Military Justice. The decedent was sentenced to confinement at hard labor for three years, forfeiture of all pay and allowances, reduction to the rank of airman basic (E-1), and a dishonorable discharge.

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On 4 Aug 77, the convening authority published GCMO [Work-Product] The Order stated the sentence promulgated in GCMO [Work-Pro...] as pertaining to confinement at hard labor in excess of 30 months was remitted.

On 19 Mar 80, the convening authority published GCMO [Work-Product] The Order stated the sentence promulgated in GCMO [Work-Pro...] was affirmed.

On 9 May 80, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was dishonorably discharged in the grade of E-1 after serving 3 years and 22 days of active duty. He was discharged, with a narrative reason for separation “Conviction by Court-Martial – Other than Desertion.”

For more information, see the excerpt of the applicant’s record at Exhibit G and the advisory at Exhibit I.

POST-SERVICE INFORMATION

On 13 Apr 23, the Board sent the applicant a request for post-service information pertaining to the decedent, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, she has not replied.

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 13 Apr 23, the Board staff provided the applicant a copy of the clemency guidance (Exhibit H).

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.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

AF/JAJI recommends denying the application. This application pertains to records resulting from a court-martial conviction and sentence. Consequently, pursuant to 10 U.S.C. § 1552(f), the Board can take only two types of action: (1) correction of a record to reflect an action taken by review authorities under the Uniform Code of Military Justice; or (2) action on the sentence of a court-martial for purposes of clemency. Hence, Board corrections can merely reflect actions regarding a court-martial that were already taken by review authorities under the Uniform Code of Military Justice (such as convening authority clemency, or appellate corrections); or the AFBCMR can take action only on the sentence, but even then, only on the basis of clemency and not on the basis of alleged legal error or injustice).

After careful review, AF/JAJI finds no error warranting the first type of authorized correction. With regard to clemency, the application contains only a statement from the applicant, a marriage license, and a certificate of death. AF/JAJI finds that neither the stated basis for correction nor any other evidence provides sufficient grounds for a discharge upgrade.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Jun 23 for comment (Exhibit J), 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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the available evidence of record, the Board finds no evidence that the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the decedent's service, the seriousness of the offenses committed, and the applicant's post-service conduct. However, the Board finds no basis for clemency in the case. Nonetheless,

in the interest of justice, the Board considered upgrading the decedent's discharge. The Board contemplated the many principles included in the Wilke Memo to determine whether to grant relief based on an injustice or fundamental fairness. However, the applicant provided no evidence of the decedent's post-service activities; therefore, the Board does not find the evidence she did submit sufficient to warrant an upgrade. 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 the decedent's efforts in the community have impacted others. Should the applicant provide documentation pertaining to the decedent's post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of her request based on fundamental fairness. Therefore, the Board recommends against correcting the 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-2000-00173 in Executive Session on 20 Jul 23:

Work-Product [Redacted] Panel Chair
Work-Product [Redacted] Panel Member
Work-Product [Redacted] Panel Member

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

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 29 Jun 00.
- Exhibit F: Application, DD Form 149, w/atchs, dated 16 Aug 22.
- Exhibit G: Documentary Evidence, including relevant excerpts from official records.
- Exhibit H: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 13 Apr 23.
- Exhibit I: Advisory Opinion, AF/JAJI, dated 12 Jun 23.
- Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Jun 23.

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.

9/7/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by: *Work-Product* [Redacted]