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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2017-05492

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was given a Letter of Reprimand (LOR) for leaving at the end of a duty day after being dismissed. Over the next year, he was an exemplary airman, given exceptional evaluations, never late for duty and was praised by his co-workers and staff. He was given his first Article 15 for leaving a briefing that he was given permission to leave. His second Article 15 was over a missed payment he made to the Base Exchange. At the time of the incident, the NCO in charge of personnel received the notification of a missed payment and went to the command to start the Article 15 process. She never informed him and not only did he make the payment but had the receipt and paid more than the amount that was due. In addition, he failed his Career Development Course (CDC) and chose to be discharged. He is not asking for medical benefits, but "wants his eligibility as a Veteran that did over 180 days of service."

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 9 Feb 94, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

a. On or about 13 Mar 93, the applicant wrote a Non-Sufficient Funds (NSF) check to Army Air Force Exchange Service (AAFES) resulting in a verbal counseling.

b. On or about 26 May 93 and on or about 30 May 93, the applicant wrote two NSF checks to AAFES resulting in a Letter of Counseling (LOC).

c. On or about 28 May 93, the applicant failed to go to his appointed place of duty resulting in an Article 15 and it was placed in an existing Unfavorable Information File (UIF).

d. On or about 7 Jun 93, the applicant failed to report to his leadership with a receipt of payment for NSF checks written to the AAFES resulting in an LOR.

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POC: SAF.MRBC.Workflow@us.af.mil

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e. From on or about 23 Jul 93 to on or about 1 Sep 93, he dishonorably failed to pay an overdue AAFES Deferred Payment Plan (DPP) account, for which he received an Article 15 and an UIF.

f. On 14 Dec 93, the applicant failed his CDC end-of-course examination. The corrective action taken was supervised study periods, reviewing the missed areas and increased self-study, scheduled and taken to ensure that reading was not a problem. Later, the applicant declined a retest.

g. An incident report was disclosed to the squadron concerning a complaint to the Travis Security Police when the applicant failed to leave a car in which he was a passenger resulting in a Letter of Admonishment (LOA).

h. After a previous verbal counseling for failing to report for duty, the applicant again failed to report for duty, was belligerent and showed a disrespectful attitude, resulting in a LOC.

On 11 Feb 94, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 14 Feb 94, the discharge authority directed the applicant be discharged for A Pattern of Misconduct: Conduct Prejudicial to Good Order and Discipline, with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered, but not offered.

On 17 Feb 94, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with one year, five months, and one day of total active service.

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

POST-SERVICE INFORMATION

On 6 Feb 19, 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 C). The applicant replied on 5 Aug 21 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

The applicant's complete response is at Exhibit D.

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

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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 6 Feb 19, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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.

Under Other than Honorable Conditions. 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 airmen. 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 Air Force.
- 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 assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

AFPC/DP2STM recommends denying the applicant's request to upgrade his character of service. The commander provided the Base Discharge Authority (BDA) ample documentation to support discharge and the character of service. The BDA determined that the significant aspects of the applicant's misconduct outweighed any positive aspects of the applicant's brief military career. Based on review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on or about 24 Feb 22 for comment (Exhibit F), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application

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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. § 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 and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant’s contentions. 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. Therefore, the Board recommends against correcting the applicant’s records.




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 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-2017-05492 in Executive Session on 25 May 22:

-  Panel Chair
-  Panel Member
-  Panel Member

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

- Exhibit A: Application, DD Form 149, dated 14 Dec 17.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request Guidance), dated 6 Feb 19.
- Exhibit D: Applicant’s Response, w/FBI Report, dated 5 Aug 21.
- Exhibit E: Advisory Opinion, AFPC/DP2SSR, w/atchs, dated 17 Feb 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Feb 22.

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.

3/16/2023



Board Operations Manager, AFBCMR
Signed by: USAF

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