



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00505

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded to honorable.

APPLICANT'S CONTENTIONS

He was told after ten years his BCD would qualify for review, and he is just now applying for it. This correction was promised to him after his release from probation, but never happened. The applicant provides a copy of his BCD dated 21 Dec 63.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 8 Jul 63, the convening authority published General Court-Martial Order (GCMO) Number [REDACTED]. The Order stated the applicant pled guilty to one charge and two specifications of wrongfully appropriating two different vehicles on or about 16 Jan 63 and between 1 Feb 63 and 6 Feb 63 (Article 121) and pled guilty to one charge and one specification of unlawfully entering a building with the intent to commit larceny (Article 130). The applicant was sentenced to confinement at hard labor for 18 months, reduction to the grade of airman basic, and discharge from the service with a BCD.

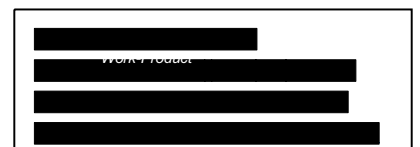
On 19 Dec 63, the applicant's request for clemency and parole were disapproved.

On 21 Dec 63, DD Form 259AF, *Bad Conduct Discharge Certificate*, provided by the applicant, indicates he was discharged from the armed forces on 21 Dec 63.

Dated 19 Mar 64, the applicant's *Certificate of Parole* indicates he was released on parole, effective on or before 4 May 64 (actual parole released date, 14 Apr 64) with a term of parole until 6 Dec 64 unless the parole was suspended or revoked in violation of the parole conditions. However, on this same date, he was disapproved for clemency.

AFBCMR Docket Number BC-2024-00505

Work-Product



On 6 Dec 64, the applicant's *Certificate of Release from Parole* indicates he was released from parole having complied with the requirements and set at liberty.

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

POST-SERVICE INFORMATION

On 5 Apr 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI), which the applicant provided on 28 May 24 (Exhibit D). According to the report, the applicant has had no arrests since discharge.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 5 Apr 24, the Board staff provided the applicant a copy of the clarifying 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.

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.

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 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 limitations 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 injustice. 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 applicant was charged with Article 121 and 130 of the UCMJ; he was found guilty of the crime by a general court martial and duly sentenced. While it was noted that his FBI record reflects no arrest since discharge, the applicant has not submitted sufficient evidence of post-service accomplishment to grant relief in the form of clemency. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. However, the Board finds no basis for clemency in the case.

Therefore, the Board recommends against correcting the applicant's records.

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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-00505 in Executive Session on 5 Mar 25:

Work-Product, Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

Exhibit A: DD Form 149, w/atchs, dated 16 Jan 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 5 Apr 24.

Exhibit D: Applicant's Response, w/atchs, dated 28 May 24.

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.

3/14/2025

X

Work-Product

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF