



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2018-01510

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was not given the opportunity to work within his military occupational specialty. Instead, he was put to work as a truck driver. While on duty, he got into a motor vehicle accident which resulted in hospitalization for back pain. The attending doctor told him he should get a medical discharge. Once his superiors found out, he was promptly discharged.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 Oct 62, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-16, *Inaptitude or Unsuitability*. The specific reasons for the action were the applicant's inability to expend effort constructively as evidenced by:

- a. His demonstration of frustration and hostility during the performance of duties.
- b. His excessive supervision over his performance of duty.
- c. His inability to possess the required degree of suitability for military service.

On 23 Oct 62, an evaluation officer interviewed the applicant and found he lacks the maturity and adaptability to cope with normal military duty. He recommended the applicant be discharged from the Air Force and be furnished with an honorable discharge certificate.

On 26 Oct 62, the discharge authority directed the applicant be discharged under the provisions of AFR 39-16, with a general (under honorable conditions) discharge service characterization.

On 27 Oct 62, the applicant received a general (under honorable conditions) discharge. His authority and reason is SDN 363, Section B, AFR 39-16, which denotes discharge for inaptitude or unsuitability. He was credited with one year, two months, and eight days of total active service.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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

POST-SERVICE INFORMATION

On 12 Sep 22, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he 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 paragraphs 6 and 7 of the Wilkie memorandum.

On 12 Sep 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit D).

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 applicant's request. Based on the review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing. The commander provided sufficient evidence to the Base Discharge Authority (BDA) to support separation and the character of service. The BDA determined the significant negative aspects of the applicant's behavior outweighed any positive aspects of his brief military career. AFPC/DP2SSR recognizes it has been almost 60 years since the applicant's discharge; therefore, the Board could consider granting the applicant's request based on clemency.

The complete advisory opinion is at Exhibit C.

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The AFBCMR Medical Advisor finds it in the interest of justice to upgrade the applicant's discharge characterization to honorable, based upon clemency. However, the Medical Advisor recommends the applicant expedite submission of any post-service evidence, whether from occupational, community, religious, or educational sources, for the Board's consideration. The Medical Advisor also considered a possible wrongful or unjust quick pursuit of an administrative separation, at the expense of a yet to be resolved, albeit improved, medical condition. However, the Medical Advisor could not make this a definitive assertion, without risk for speculation or conjecture to make such a definitive assertion.

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 12 Sep 22 and 17 Mar 23 for comment (Exhibit D and F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such 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 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. In the interest of justice and fundamental fairness, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of substantial post-service information and a criminal history report, the Board finds no basis to do so. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness. 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 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-2020-02888 in Executive Session on 24 May 23:

 *Work-Product*, Panel Chair
 *Work-Product*, Panel Member
 *Work-Product*, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Jun 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 12 Sep 22.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance) and Notification of Advisory, SAF/MRBC to Applicant, dated 12 Sep 22.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 16 Mar 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Mar 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.

1/4/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*