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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2018-01613-2

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for reinstatement of his grade of master sergeant (E-7) with all back pay and allowances.

RESUME OF THE CASE

The applicant is a retired Air Force technical sergeant (E-6).

The applicant was tried by general court-martial from 1 to 5 Apr 13. General Court-Martial Order Number 9 dated 10 Jun 13 includes the charges and specifications pertaining to making false or fraudulent claims, dereliction in the performance of his duties, shipment and inspection of aerospace ground equipment (AGE) and disposing of AGE equipment without proper authority. The sentence adjudged was reduction to the grade of staff sergeant (E-5).

On 31 Oct 13, he was honorably discharged and retired on 1 Nov 13 in the grade of E-5. Per Special Order Number AC-000527 dated 16 Oct 13, he was advanced to the grade of E-6 by reason of completing 30 years of active service plus service on the retired list in accordance with 10 U.S.C. § 8964 and 8992 and the Secretary of the Air Force Personnel Council (SAFPC) memorandum dated 10 Oct 13.

On 8 Sep 16, the Board considered and denied his request under AFBCMR case number BC-2015-03795 to restore his grade to E-7 finding the applicant had provided insufficient evidence of an error or injustice. It was noted the Board was without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with 10 U.S.C. § 1552(f), actions by the Board were limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. Counsel argued the applicant's grade of E-7 should be reinstated as he was not guilty of the charges for which he was convicted by general court-martial and there were numerous errors and injustices that occurred during the court-martial and the discharge process. However, no evidence was presented to indicate the applicant's reduction to the grade of E-5, which had its basis in his court-martial conviction and was a part of the sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). Counsel also urged the Board to consider clemency based on the applicant's post-service activities. While the Board was pleased to see the applicant's positive contributions to his community, the information was insufficient to grant relief on this basis. In this respect, the Board was mindful, the adjudged sentence of the court-martial could have been more severe, to include a sentence of more than 27 years in confinement and reduction to the grade of airman basic (E-1) but noted the applicant's

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punishment was solely a two-grade reduction which also permitted him to retire rather than be discharged. Furthermore, the SAFPC determined the applicant served satisfactorily in the grade of E-6 and directed that he be advanced to this grade on the retired list on 26 Aug 16 (active-duty time and time on the retired list totaled 30 years). In view of the above and given the severity of the crimes the applicant was found guilty of, the Board opined the applicant had already benefitted from the process and received clemency. Accordingly, the Board agreed with the opinions and recommendations of the Air Force offices of primary responsibility and adopted the rationale expressed as the basis for the conclusion the applicant had not sustained his burden of proof he had been the victim of an error or injustice.

On 31 Oct 18, the Board considered and again denied his request to restore his grade of E-7 finding the applicant had provided insufficient evidence of an error or injustice. The Board concurred with the rationale and recommendations of AFLOA/JAJM, AFRC/A1K, and AFPC/DP2SPP. In these advisories, it was noted the applicant failed to present any new evidence to overturn the convening authority's decision. The Secretary of the Air Force effectively advanced the applicant to the grade E-6 on the United States Air Force retired list determining he did not serve honorably in the grade of E-7. The applicant provided a response to the advisory opinions on 23 Oct 18. However, it appears his response was never seen by the Board. In his response, the applicant contended, as an E-6, he was not given proper guidance by his supervisor when he was sent on a temporary duty assignment (TDY) to ship equipment nor was he responsible for making decisions on contracts without leadership approval or knowledge. He provides an explanation for each charge and specification in the court-martial order.

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 Exhibits G and H.

The applicant complete submission is at Exhibit I.

On 16 Jan 25, the applicant requested reconsideration of his request to reinstate his grade to E-7. He again contends he was unfairly charged, he was the only one charged and he did not willfully commit the crimes he was convicted of. He was filling in for a senior master sergeant (E-8) and was sent TDY to close down a refurbishment contract and ship 300 pieces of equipment. He took orders from the chief master sergeant (E-9) at the time. After returning from the TDY, he was told he did a good job and would be moved to United States Central Air Force (USCENTAF) permanently. After being in the position for a few months, he was told he needed training before he could continue making decisions with regards to the contracted company. The contracting office performed monthly inspections and corrections were made based on their findings. Per the contract, the vendor under contract was required to be inspected monthly but this did not happen due to leave and TDYs and the contracting office was informed. He was scheduled to retire when the investigation regarding the vendor was initiated and he was told he could not retire until the investigation was complete. All of the individuals that could corroborate his story were not available at trial nor could he use the information from the Article 32 hearing. He goes on to outline each charge and specification and his response and actions. There was communication with each entity involved that support he was following the orders regarding the contracted vendor.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) email correspondence from various entities (2) equipment/contracting documents and (3) the civil lawsuit document.

The applicant's complete submission is at Exhibit J.

On 21 Jan 25, the Board staff 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 (Exhibit K).

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense issued supplemental guidance (Wilke 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 the supplemental guidance, paragraphs 6 and 7.

The entire guidance can be found at Exhibit K.

AIR FORCE EVALUATION

AF/JAJI recommends denying the application finding insufficient evidence to recommend relief on the basis of any legal error. The AFBCMR has the authority to grant clemency in the form of a discharge upgrade. The AFBCMR has limited authority to correct court-martial records. Under 10 U.S.C. § 1552(f), the AFBCMR may extend its authority to correct a record to reflect an action taken by review authorities under the UCMJ or take action on the sentence of a court-martial for purposes of clemency. The applicant does not request correction of a record to reflect an action taken by review authorities. Therefore, clemency on the applicant's sentence is the only option available for consideration. The applicant has not offered anything that was not available at the Article 32, UCMJ hearing, the court-martial, or on appeal. In accordance with the Wilkie Memo, when determining whether to grant relief on the basis of clemency, BCMRs should consider a variety of factors to include character references, evidence of rehabilitation, severity of misconduct, the applicant's meritorious service, character, and reputation. Of note in this case, the AFBCMR should also consider the applicant's candor, and whether the punishment, including any collateral damages, was too harsh.

The complete advisory opinion is at Exhibit L.

AFPC/DPMSPP recommends denying the application. No official documentation was provided nor located that verifies the court-martial was reversed, set aside, or expunged from the applicant's records. The applicant's grade was reduced to staff sergeant by court-martial. The SAFPC restored the applicant's grade back to E-6 and denied restoration of any higher grade held; therefore, the applicant's current grade is correct as it is.

The complete advisory opinion is at Exhibit M.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 24 Jul 25 for comment (Exhibit N) but 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 recommendations of AF/JAJI and AFPC/DPMSPP and finds a preponderance of the evidence does not substantiate the applicant’s contentions. While the applicant provides an explanation for the court-martial charges and other documents in support of his request, the Board finds the applicant’s statements and the new evidence not persuasive or compelling to warrant relief. In this respect, the emails, contracting documents and statements provided are not sufficient to conclude the applicant did not commit the egregious misconduct which led to his court-martial and subsequent demotion to the grade of E-5. The Board also considered the passage of time, the overall quality of the applicant’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. The Board also notes the applicant was advanced to the grade of E-6 in accordance with 10 U.S.C. § 8964 and 8992. Accordingly, the Board opines the applicant was already afforded leniency and clemency. 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 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-2018-01613-2 in Executive Session on 12 Nov 25:

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

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

- Exhibit G: BC-2015-03795 Record of Proceedings (Exhibits A-G), dated 8 Sep 16.
- Exhibit H: Record of Proceedings, w/ Exhibits A-F, dated 31 Oct 18.
- Exhibit I: Applicant’s Response from Previous Case, dated 23 Oct 18.
- Exhibit J: Application, DD Form 149, w/atchs, dated 16 Jan 25.
- Exhibit K: Clemency Guidance, emailed to Applicant, dated 21 Jan 25.
- Exhibit L: Advisory Opinion, AF/JAJI, dated 8 Jul 25.
- Exhibit M: Advisory Opinion, AFPC/DPMSPP, dated 15 Jul 25.
- Exhibit N: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jul 25.

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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.

12/14/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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