



Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2018-02750

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: NO

APPLICANT’S REQUEST

- 1. His bad conduct discharge (BCD) be upgraded to honorable or in the alternative, general.
- 2. His narrative reason for separation annotated as “Drug Abuse (Court-Martial)” [sic] be changed to “Secretarial Authority.”

APPLICANT’S CONTENTIONS

In the time leading up to his discharge, he was an exemplary airman. Against sound judgement, he participated in the recreational use of drugs, namely marijuana and cocaine with other servicemen during off-duty hours while off-base. He struggled with the monotonous daily life while stationed at Altus Air Force Base (AFB). At the time of the incident, he was a young 22- year-old and the stigma of his BCD has haunted him since leaving the service. He admitted to using drugs but received a serious discharge characterization contrary to AFI 36-3208, *Administrative Separation of Airmen*. He should have received an administrative discharge; under the current AFI he would not have received a BCD for his misconduct. There were no reported incidents of drug use prior to or after the admitted instances of drug use. Following his discharge, he has been an exemplary member of his community.

In support of his request for clemency, the applicant provides a college graduation certificate and several character reference letters.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 24 Feb 05, the convening authority published General Court-Martial Order Work-Pro... The Order stated the applicant pled guilty to one charge, two specifications of wrongful use of marijuana and cocaine (Article 112a). The applicant was sentenced to confinement six months, reduction to the grade of airman basic, and discharge from the service with a BCD.

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Controlled by: SAF/MRB
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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 23 Jun 06, the applicant received a BCD. His narrative reason for separation is “Misconduct (Court-Martial)” and he was credited with four years, two months, and three days of total active service.

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

POST-SERVICE INFORMATION

On 28 Feb 19, 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 15 Feb 22 (Exhibit E). According to the report, the applicant has had no arrests since discharge.

APPLICABLE AUTHORITY

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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.

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

AFLOA/JAJM recommends denying the applicant's requested relief. There is no error or injustice that tends to undermine the findings and sentence adjudged at the applicant's general court-martial, as finally approved by the Convening Authority. The sentence was within the permissible range for the offenses of which the applicant was convicted. He has not submitted any new evidence or information that casts doubt on the outcome of his trial. Therefore, AFLOA/JAJM finds no basis to set aside the sentence adjudged at the applicant's general court-martial.

The applicant was tried by general court-martial before officer and enlisted on 25 Jan 05, on one charge, two specifications of wrongful use of a controlled substance (cocaine and marijuana) on divers occasions, in violation of Article 112a, Uniform Code of Military Justice (UCMJ). Pursuant to the applicant's pleas, the panel found him guilty of the charge and both specifications. The panel imposed a punishment of a BCD, confinement for six months, and reduction to the grade of E-1. On 24 Feb 05, the General Court-Martial Convening Authority approved the sentence as adjudged, and, except for the BCD, ordered it to be executed. On 23 Jun 06, the convening authority finally affirmed the sentence and ordered the BCD to be executed.

In accordance with 10 U.S.C. §1552(f), the AFBCMR has no authority to overturn the court-martial conviction, but may, on the basis of clemency, adjust the sentence. The applicant, through his defense counsel, had an opportunity to present matters in extenuation and mitigation to the panel on sentencing. Therefore, the panel presumably considered the circumstances of the applicant's offenses and the overall character of his service in adjudicating his sentence. The applicant has not presented anything additional that would tend to undermine the panel's decision. In addition, the DD Form 214's, *Certificate of Release or Discharge from Active Duty*, citation to AFI 36-3208 does not undermine the legality of his BCD. While the DD Form 214 should have referred to General Court-Martial Order Number **Wor...** dated 23 Jun 06, as the separation authority, the citation to the AFI appears to be an administrative oversight that does not affect the legality of the sentence imposed.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 28 Feb 19 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. 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 UCMJ. 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. While the applicant has presented some supporting statements indicating he has apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, the supporting statements from the applicant's co-worker and family indicate their admiration for the applicant and the way he has lived his life before his entry into the service and since his separation. However, these statements do not provide his impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, additional character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. 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 clemency. 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2018-02750 in Executive Session on 11 Oct 22:

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 A: Application, DD Form 149, w/atchs, dated 12 Jun 18.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFLOA/JAJM, dated 26 Feb 19.
- Exhibit D: Notification of advisory and non-viable letter ((FBI required w clemency), SAF/MRBC to applicant, dated 28 Feb 19.
- Exhibit E: Applicant’s response, w/FBI report, dated 15 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.

11/13/2024
Work-Product
Board Operations Manager, AFBCMR
Signed by: Work-Product