



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-00221

Attorney-Client

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

It has been over 19 years since his separation and in that time, he has not been in any trouble. Since his separation, he has owned a business for 7 years, sponsored a girl's youth softball team for several years, and over the past 10 year, he volunteered in a community clean-up program for the elderly. He was proud he served the Air Force for 15 years.

In support of his request for clemency, the applicant provides a personal statement and character letter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 7 Nov 97, AF Form 1359, *Report of Result of Trial*, indicates the applicant was found guilty in a General Court Martial of Article 112a of the Uniform Code of Military Justice (UCMJ), specifically on diverse occasions, between on/about 1 Jan 97 and on/about 27 Mar 97, wrongfully using cocaine. He was sentenced to a BCD, confinement for four months, and reduction to the grade of E-1.

On 8 Nov 97, AF Form 2098, *Duty Status Change*, dated 13 Nov 97, indicates the applicant's duty status changed from "Present for Duty" to "Military Confinement."

On 16 Feb 98, AF Form 2098, dated 26 Mar 98, indicates the applicant's duty status changed from "Military Confinement" to "Present for Duty."

On 12 Jan 00, General Court-Martial Order *Attorney-Cl...* indicates the commander directed the BCD be executed, based on the sentence that was adjudged on 7 Nov 97.

On 12 Jan 00, DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a BCD. His narrative reason for separation is "Court Martial" and he was credited with 15 years, 5 months, and 13 days of total active service for the period.

**AFBCMR Docket Number BC-2020-00221
CUI//SP-MIL/SP-PRVCY**

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

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

POST-SERVICE INFORMATION

On 5 Feb 20, 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 22 Feb 22 and provided an FBI report. According to the report, the applicant was "Arrested or Received" and charged on 16 Dec 05 for "Failure to Appear 2d Degree." The applicant also provided a personal statement, biography, work history log, and two character statements.

The applicant's complete response is at Exhibit D.

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, 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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 5 Feb 20, 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.

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 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. The discharge was not unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. The post-service evidence provided by the applicant was not sufficient enough to warrant a discharge upgrade. Therefore, the Board recommends against correcting the applicant's record. The Board encourages the applicant to apply in the future and provide additional evidence such as post-service certificates of achievements, civilian memberships, volunteer work, and character references.

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 the 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-2020-00221 in Executive Session on 25 Jan 23:

Attorney-Client	Panel Chair
Attorney-Client	Panel Member
	Panel Member

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

CUI//SP-MIL/SP-PRVCY

- Exhibit A: Application, DD Form 149, w/atchs, dated 13 Oct 19.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Consideration Guidance), dated 5 Feb 20.
- Exhibit D: Applicant's Response, w/FBI Report, dated 22 Feb 22.

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.

12/8/2023

Attorney-Client

Board Operations Manager, AFBCMR

Signed by:

Attorney-Client