

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-01709

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

It is an injustice because his previous years of honorable service accounted for nothing. The penalty for his offense was really severe and his whole life should not be taken because of it. He is proud of his service in the Air Force. His discharge should be upgraded in the interest of justice based on clemency and the Veterans Cares Act. Until just recently he never understood his troubles, behavior or way of thinking. He just finished a Veteran Rehabilitation Program and for the first time in 40 years he feels delivered from his struggles. It is been over 30 years since discharge.

In support of his request for clemency, the applicant provides a personal statement, numerous character references, a certificate of completion of a drug treatment program and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 22 Jan 90, AF Form 2098, *Duty Status Change*, shows the applicant's duty status changed from "present for duty" to "military confinement," as a result of a general court-martial conviction. The applicant was sentenced to 12 months confinement, a bad conduct discharge (BCD), reduction to E-1 and forfeiture of \$224.00 pay for 12 months.

On 19 Oct 90, AF Form 2098 shows the applicant's duty status changed from "parole" to "military confinement," for violating his parole agreement.

On 9 Jan 91, AF Form 2098 shows the applicant's duty status changed from "military confinement" to "appellate review leave as a result of completing military confinement in violation of his parole agreement.

On 24 Jul 91, General Court-Martial Order XXX ordered the applicant be discharged with a BCD.

On 8 Aug 91, DD Form 214, *Certificate of Release or Discharge from Active Duty*, shows the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial

(Other than Desertion)” and he was credited with 2 years, 10 months, and 13 days of net active service for that period.

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

### **POST-SERVICE INFORMATION**

On 14 May 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 24 Aug 20 and provided an FBI report. According to the report, the applicant has had numerous convictions since discharge. He was convicted of misdemeanor and felony charges in Feb 06, May 06, May 07, Mar 10, Sep 11, Feb 12 and Feb 13 to include, but not limited to, drug possession, felony possession of a firearm, probation violations, driving while license suspended or revoked and possession of cocaine and/or marijuana with intent to distribute. There is also an arrest in May 19 for theft. The applicant also provided a personal statement, character statements, certificates, commendations, and letters from his employers, and evidence of community service.

The applicant’s complete response is at Exhibit D.

### **APPLICABLE 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 the supplemental guidance, paragraphs 6 and 7.

On 14 May 20, the 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. 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 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-01709 in Executive Session on 24 Mar 22:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, dated 12 Mar 20.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 24 Aug 20.

Exhibit D: Applicant's Response, with FBI Report and Post-Service Info, dated, 24 Aug 20.

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.