



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-2020-02224

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He seeks an upgrade to receive medical care. He was diagnosed with dementia and has medical issues of which his current medical plans do not cover. One of his current medical plans is getting ready to expire.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 17 Sep 56, according to DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, provided by the applicant, he received an UOTHC discharge. In Block 32, *Remarks*, it is noted he was discharged for larceny, housebreaking, and utter worthless checks. He was credited with 11 months and 2 days of total active service.

For more information, see the excerpt of the applicant's submission at Exhibit A.

POST-SERVICE INFORMATION

On 1 Sep 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 B). The applicant replied on 16 Feb 21 and provided an FBI report dated 7 Oct 20. According to the report, the applicant was arrested on 5 Jul 62 for issuing checks to defraud, 8 Jan 66 for probation violation uttering check, 27 May 77 for passing bad checks, 15 Nov 77 for passing bad checks on closed accounts, 18 Oct 78 for defrauding livery, 23 Oct 78 for grand theft felony and 22 Oct 83 for probation violation.

APPLICABLE AUTHORITY/GUIDANCE

**AFBCMR Docket Number BC-2020-02224
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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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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 1 Sep 20, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit B).

Department of the Air Force (DAFI) 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 not 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).

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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 applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. The burden of proof is placed on the applicant to submit evidence to support his claim. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, FBI report indicating he has had some criminal activity since his discharge and in the absence of post-service information, the Board finds no basis to do so. Furthermore, the Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2020-02224 in Executive Session on 22 Feb 23:

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 21 Jun 20.
- Exhibit B: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 1 Sep 20.
- Exhibit C: FBI Report, dated, 7 Oct 20.

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.

12/26/2023
Work-Product
Board Operations Manager, AFBCMR
Signed by: *Work-Product*