

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-03279

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His discharge Under Honorable Conditions (General) be upgraded to Honorable;
2. His Re-entry (RE) code of 2B be changed to 3K; and,
3. His narrative reason for separation changed to secretarial authority.

APPLICANT'S CONTENTIONS

His post-service and prior service accomplishments far outweigh his two mistakes in his Air Force career; failure to be a good wingman and a court-martial resulting in a false official statement charge. He is an Air Force government employee, completed multiple presidential, National Aeronautics and Space Administration (NASA), and Space-X missions, holds five titles in his current squadron, has received school and community accolades, and asks the Board to consider his case on the basis of clemency. He has researched other Discharge Review Board cases and includes one that shows the Board encouraging the applicant to apply for clemency due to his post-service accomplishments.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic.

On 11 Mar 14, according to Special Court-Martial Order No. 1, the applicant was arraigned under four separate charges under Articles 92 (three specifications), 81 (one specification), 107 (one specification), and 134 (one specification). The applicant pled not guilty; however, found guilty of one charge, making a false official statement. For this misconduct, he received a sentence at court-martial of reduction to E-1, forfeiture of \$500 per month for 3 months, and 30 days restriction to the base.

On 28 Mar 14, the applicant's commander recommended the applicant be discharged from the Air Force for misconduct: commission of a serious offense. The specific reasons for the action were as follows:

- a. On 26 Sep 13, the applicant made a false official statement.

b. On 29 Jul 13, he received a letter of admonishment for failure to be a good wingman.

On 8 Apr 14, the discharge action was found legally sufficient, and the discharge authority approved the recommendation on 28 Mar 14 [sic].

On 22 Apr 14, the applicant received an Under Honorable Conditions (General) discharge with a narrative reason for separation of Misconduct (Serious Offense), and a RE code of 2B.

On 9 Sep 19, the Air Force Discharge Review Board (AFDRB) unanimously denied the applicant's request for a discharge upgrade finding insufficient evidence of an inequity or impropriety.

On 9 Aug 20, the AFDRB unanimously denied the applicant's request for a discharge upgrade following his personal appearance finding insufficient evidence of an inequity or impropriety.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits D-F.

POST-SERVICE INFORMATION

On 23 Nov 20, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI). The applicant responded with an FBI report and additional information to include evidence of employment from 2014 – 2017 with the federal government requiring a background check as well as post-service information in his initial application. The FBI report shows no other arrests other than that identified in the statement of facts above (Exhibit H).

APPLICABLE AUTHORITY

According to AFI 36-3208, *Administrative Separation of Airmen*, incorporating changes through 8 June 2017, paragraph 1.18, the types of service characterization are as follows:

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.

On 25 Jul 18, the Under Secretary of Defense 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 23 Nov 20, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the applicant's request for a change to his Separation Program Designator (SPD) code to secretarial authority and to have his discharge upgraded to Honorable. The commander provided ample evidence to the base discharge authority to support separation and the character of service. The discharge authority determined that the negative aspects of the applicant's misconduct outweighed any positive aspects of the applicant's military career. Based on review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit D.

SAF/MRBP recommends denying the application. The applicant previously applied to the AFDRB (FD-2019-00237) and the case was adjudicated on 10 Sep 19 as a non-personal appearance/records review. The applicant made no contentions that the discharge was inequitable or improper, accepted responsibility for his actions, and admitted he was hanging around the wrong people. After a thorough review of the evidence of record and the applicant's complete submission, the AFDRB found no evidence that his discharge was inequitable or improper and denied his request.

The applicant subsequently applied to the AFDRB (FD-2020-00239) requesting a personal appearance. He again made no claim that the discharge was inequitable or improper, but stated that he learned from his mistakes and can rebound from his past. He also stated that he has matured since discharge and requested the upgrade so that he can join a reserve unit. On 14 Sep 20, his request was unanimously denied.

After a thorough review of both AFDRB decisions in the applicant's cases, and the evidence provided in support of his application before the AFBCMR, there is no evidence of an error or injustice regarding the applicant's discharge or the AFDRB's adjudication of his appeals for an upgrade of his discharge and the evidence provided in support of clemency is not sufficient to conclude that any relief is warranted.

The complete advisory opinion is at Exhibit E.

AFPC/DP2SSM recommends denying the applicant's request to change his Reenlistment Eligibility (RE) code to 3K since there is no evidence of an error or injustice based on the documentation provided by the applicant and analysis of the facts. On 22 Apr 14, the applicant was discharged with a narrative reason for separation of *Misconduct (Serious Offense)* and a general (under honorable conditions) character of service after serving 1 year, 11 months, and 22 days of service. His RE code was updated to 2B (separated with a general or under other than honorable conditions discharge), based on his involuntary discharge with general character of service.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 9 Dec 20 for comment (Exhibit G), and the Board staff received the applicant's reply on 18 Dec 20. In his response, the applicant reiterates he has grown in more ways than he ever could have imagined. He is an Air Force government employee and is the equipment custodian for over \$500,000 worth of assets. The applicant's complete response, with attachments, is at Exhibit H.

FINDINGS AND CONCLUSION

1. The application is timely.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the majority of the Board agrees with the rationale and recommendations of the offices of primary responsibility and 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. Nor was the discharge 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 majority of the Board finds the seriousness of the applicant's in-service misconduct continues to outweigh his post-service accomplishments. Therefore, the Board recommends against correcting the applicant's record.
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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-03279 in Executive Session on 3 Feb 21:

Chair, AFBCMR
Panel Member
Panel Member

A majority of the panel voted against correcting the record. **Work-Product** voted to correct the record; however, did not provide a minority opinion. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 2 Oct 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Notification of Clarifying Guidance, SAF/MRBC, dated 23 Nov 20.
- Exhibit D: Advisory opinion, AFPC/DP2SSR, dated 23 Nov 20.
- Exhibit E: Advisory opinion, SAF/MRBP, dated 2 Dec 20.
- Exhibit F: Advisory opinion, AFPC/DP2SSM, dated 8 Dec 20.
- Exhibit G: Notification of advisories, SAF/MRBC to applicant, dated 9 Dec 20.
- Exhibit H: Applicant's response, w/atchs, received 18 Dec 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.

X

Board Operations Manager, AFBCMR