
RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-00796

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His retirement rank and pay of airman basic (E-1), be upgraded to technical sergeant (E-6), the highest rank he held on active duty.

APPLICANT'S CONTENTIONS

His retirement grade as an E-1 is unjust because of his Air Force, Department of Veteran's Affairs (DVA), and Social Security diagnosis of Post-traumatic stress disorder (PTSD) and physical pain disabilities resulting from deployments as a Combat Controller Joint Terminal Attack Controller (JTAC) to Afghanistan and Iraq. He did not receive proper mental and physical therapy needed after these deployments. He currently receives DVA therapy and sees a DVA therapist regularly. He will probably never work again due to the physical and mental pain he is in.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 26 Aug 93, the applicant entered the Regular Air Force.

On 16 Aug 13, the applicant was convicted at a Special Court-Martial (SPCM) of one charge and two specifications of wrongfully using cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). His sentence: Reduction to E-1, hard labor without confinement for three months, restriction to the limits of [Base] for two months, and a reprimand. The court-martial did not adjudge a punitive discharge, although one was authorized.

On 13 Sep 13, the area defense counsel submitted to the Convening Authority a *Petition for Clemency* on behalf of the applicant to reduce the length of both hard labor without confinement and restriction of 30 days to allow him to retire from the Air Force and continue his treatment for addiction and PTSD.

On 20 Sep 13, the squadron commander notified the applicant he was recommending his discharge for Misconduct: Drug Abuse. His reasons for this action:

- a. The applicant did, within the continental U. S., between on or about 30 Apr 13 and on or about 6 May 13, wrongfully use cocaine. For this offense, he was convicted by Special Court Martial on 16 Aug 13.

- b. The applicant did, within the continental U. S. between on or about 5 Jun 13 and on or about 12 Jun 13, wrongfully use cocaine. For this offense, he was convicted by Special court Martial on 16 Aug 13.

On 30 Sep 13, the applicant submitted a request for Retirement in Lieu of (RILO) administrative discharge proceeding.

On 2 Oct 13, the squadron commander submitted to the wing commander his recommendation for the applicant's discharge for Misconduct: Drug Abuse. He recommended the applicant be RILO discharge.

On 6 Jan 14, the group commander notified the applicant he was submitting an addendum to the squadron commander's recommendation for his discharge. The addendum recommends he receive an under other than honorable conditions (UOTHC) discharge for a Pattern of Misconduct: Conduct Prejudicial to Good Order and Discipline, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. His reasons for this action are:

- a. On or about 30 Jun 12, he physically controlled a vehicle, to wit: a passenger car, while drunk. Punished under Article 15, UCMJ, dated 17 Jul 12
- b. On or about 30 Jun 12, he wrongfully communicated to a threat to a technical sergeant, stating "I will kill you," or words to that effect. Punished under Article 15, UCMJ, dated 17 Jul 12.
- c. On or about 30 Jun 12, unlawfully struck [Redacted] on the head with his hand. Punished under Article 15, UCMJ, dated 17 Jul 12.
- d. On or about 30 Jun 12, unlawfully struck a [Redacted] in the nose and right cheek with his forearm. Punished under Article 15, UCMJ, dated 17 Jul 12.
- e. On or about 6 May 12, unlawfully struck a person 65 years of age or older and was cruel to his son. For these offenses he received a Letter of Reprimand (LOR), dated 15 Jun 12.
- f. On or about 15 Dec 08 and on or about 1 Aug 09, he was charged with driving under the influence during an off duty/off base activity. For this offense he received an LOR.
- g. On or about 15 Dec 08 and on or about 1 Aug 09, violated a squadron Operating Instruction which led to an OPSEC [operations security] violation. For this offense he received an LOR.

On 6 Feb 14, the group commander recommended to the wing commander the applicant be discharged for Misconduct. He recommended a UOTHC discharge.

On 12 Feb 14, the wing commander denied the applicant's request for RILO Administrative Discharge Proceeding and directed the discharge proceeding continue.

On 25 Apr 14, an Administrative Discharge Board determined that based on the evidence, a basis for discharge in accordance with AFI 36-3208, paragraph 5.50.2, Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline, does exist. The Board recommended the applicant be separated with a general (under honorable conditions) discharge.

On 8 Aug 14, the wing judge advocate provided the wing commander a legal review of the applicant's administrative discharge board proceedings for Misconduct: Drug Abuse and Pattern of Misconduct: Conduct Prejudicial to Good Order and Discipline; concurring with the board's findings and recommending the applicant be discharged with an under honorable conditions (general) discharge without probation and rehabilitation. In-turn, the wing commander in a memorandum to the major commander (MAJCOM) commander, recommended denial of the applicant's request to RILO Administrative Discharge.

On 19 Aug 14, the MAJCOM judge advocate provided their legal review of the applicant's RILO request to the MAJCOM commander, recommending the applicant's request for RILO administrative discharge be forwarded to the Secretary Air Force Personnel Council (SAFPC), recommending approval.

On 2 Sep 14, MAJCOM/A1 in a memorandum to AFPC/DPSOR [Retirements], recommended the applicant's RILO request be approved.

On 5 Jan 15, the Air Force Review Boards Agency approved the applicant's application for retirement.

On 31 Jan 15, in accordance with Special Orders No. Work-Product, dated 8 Jan 15, the applicant was relieved from active duty, organization, and station of assignment, and retired effective 1 Feb 15, in the grade of E-1, having served 21 years, 5 months, and 5 days of active service.

On 10 Jun 15, SAFPC found the applicant served satisfactorily in the higher grade of E-6 within the meaning of 10 U.S.C. § 8964 and directed the applicant's advancement to that grade on the retired list effective the date of completion of all required service.

On 18 Jun 15, Special Orders No. AC-XXXXXX, amended Special Orders No. AC-XXXXXX, dated 8 Jan 15 by the following REMARKS: Effective 26 Aug 23, the above named individual is advanced to the grade of E-6 on the USAF Retired List by reason of completing a total of 30 years active service plus service on the Retired List on 25 Aug 23. Authority: 10 U.S.C. § 8964 and 8992 and SAFPC memo dated 10 Jun 15.

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

AIR FORCE EVALUATION

SAF/MRBP recommends denying the application. The applicant's records revealed that on 17 Jul 12, he was reduced to staff sergeant (E-5) based on an Article 15 for the following specifications: On or about 30 Jun 12, at or near [Base], the applicant did (1) Physically control a vehicle, to wit: a passenger car, while drunk; (2) Wrongfully communicated to [redacted] a threat, stating "I will kill you," or words to that effect, which conduct was prejudicial to good order and discipline in the armed forces; (3) Unlawfully strike [redacted] on the head with his hand; and (4) Unlawfully strike [redacted] in the nose and right cheek with his forearm.

Additionally, on 30 Aug 13 [sic], the applicant was reduced to E-1 based on a SPCM where he plead guilty to: Specification 1: Within the continental USA, between on or about 30 Apr 13 and on or about 6 May 13, wrongfully used cocaine; and Specification 2: Within the continental USA, between on or about 5 Jun 13 and on or about 12 Jun 13, wrongfully used cocaine. He was sentenced to reduction to E-1, hard labor without confinement for three months, restriction to the limits of the installation for two months, and a reprimand, with no punitive discharge. On 26 Aug 13, the applicant attained twenty years of service and became retirement eligible.

On 6 Jan 14, the applicant's commander notified him he was recommending he be involuntarily discharged for a pattern of misconduct. On 29 Apr 14, the applicant applied for RILO of involuntary administrative discharge. On 5 Jan 15, the Director of the Air Force Review Boards Agency granted his RILO request. In accordance with AFI 36-3203, *Service Retirements*, paragraph 8.5.1., When Regular enlisted members' and certain reserve enlisted members' active service plus service on the retired list totals 30 years, they may be advanced on the retired list to the highest grade served on active duty satisfactorily and receive retired pay in that grade, as determined by the Secretary of the Air Force or designee under 10 U.S.C. § 9344. On 9 Jun 15 the Air Force Personnel Board unanimously determined he served in the higher rank of E-6 satisfactorily for at least six months, approving he be advanced to the higher grade upon his 30 years of service date of 26 Aug 23, in accordance with AFI 36-3203. There were no errors, nor any evidence provided by the applicant that undermines the validity of the decision of the Secretary of the Air Force designee for advancement to the grade of E-6 upon 30 years of service date, 26 Aug 23.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Jul 22 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
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 concurs with the rationale and recommendation of SAF/MRBP and finds a preponderance of the evidence does not substantiate the applicant's contentions. In accordance with 10 USC § 9344, on 26 Aug 23, the applicant will be advanced on the retired list to technical sergeant (E-6), the highest grade in which he served on active duty satisfactorily, as determined by SAFPC. 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 Air Force Instruction 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 finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2020-00796 in Executive Session on 29 Sep 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, w/atchs, dated 31 Jan 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, SAF/MRBC, w/atch, dated 7 Jul 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Jul 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.

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Board Operations Manager, AFBCMR