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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00099

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His pay grade be changed from E-3 to E-4.
3. He be awarded an Overseas Short Tour Medal. (**Administratively Corrected, No Board Action Required**).

APPLICANT'S CONTENTIONS

He was harassed by his chain of command and they made disparaging remarks about him to his spouse and other members of the command. In addition, his chain of command falsified his test scores and promotion testing paperwork and evaluations and stopped his promotion. Finally, he should be awarded the Overseas Short Tour Medal.

In support of his request for clemency, the applicant provides a personal statement from himself and his spouse.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 27 Feb 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. He received several Letters of Reprimand (LORs) for financial irresponsibility and Failure to Go.
- b. He failed to progress in upgrade training.

On 1 Mar 91, the Staff Judge Advocate found the discharge action legally sufficient.

On 4 Mar 91, the discharge authority directed the applicant be discharged for Conduct Prejudicial to Good Order and Discipline and Dishonorable Failure to Pay Just Debts, with a general service characterization. Probation and rehabilitation was considered, but not offered.

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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 6 Mar 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Misconduct-Pattern Conduct Prejudicial to Good Order and Discipline” and he was credited with three years, two months, and eight days of total active service.

On 13 Dec 91, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 22 Oct 92, a memo from HQ AFMPC shows on 21 Aug 92 the AFDRB denied the applicant’s request for discharge upgrade and concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 22 Mar 21, 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 provided an FBI report, dated 4 Aug 21. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement and spouse statement.

The applicant’s complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

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 22 Mar 21, the Board sent the applicant clemency guidance information at 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.

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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.

AIR FORCE EVALUATION

AFPC/DP2SPP recommends against changing the applicant's pay grade. It is a requirement that a member must meet 5-skill level requirement by the effective date of promotion for SrA. An AF Form 910, *Enlisted Performance Report (EPR)*, for the reporting period 30 Dec 88 thru 16 Oct 89 stated the applicant "...is currently enrolled in the 5-level Career Development Course and is progressing satisfactorily." On 31 May 90, the commander non-recommended the applicant for promotion for failure to progress in upgrade training. There is a 7-month gap between the time of the EPR comment and the time of the non-recommendation for promotion letter. Without the training records it is difficult to determine what occurred during the member's upgrade training. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice for promotion progression.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 24 Jan 22 for comment (Exhibit F), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DP2SSR recommends against changing the applicant's service characterization to honorable. A review of the master of personnel record reveals that the commander provided the Base Discharge Authority (BDA) sufficient documentation to support discharge and the character of service. The BDA determined that the significant negative aspects of the applicant's behavior outweighed any positive aspects of the applicant's brief military career. The discharge was consistent with the procedural and substantive requirements of the discharge regulation, the applicant was provided due process, and was at the discretion of the discharge authority. There is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Jun 22 for comment (Exhibit H), but has received no response.

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.

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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 recommendations of AFPC/DP2SPP and AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board contemplated the many principles included in the Wilke Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, given the evidence presented, the Board determined relief is not warranted. Therefore, the Board recommends against correcting the applicant's record. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, or testimonials from community leaders/members specifically describing how his/her efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness.

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-2021-00099 in Executive Session on 22 Jun 22 and 11 Jul 22:

- 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 15 Nov 20 and 24 May 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 22 Mar 21.
- Exhibit D: FBI Report, dated, 4 Aug 21.
- Exhibit E: Advisory Opinion, AFPC/DP2SPP, dated 19 Oct 21.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jan 22.
- Exhibit G: Advisory Opinion, AFPC/DP2SSR, dated 2 Jun 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Jun 22.

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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.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

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