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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01271

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board grant relief from his court-martial sentence by upgrading his bad conduct discharge (BCD).

APPLICANT'S CONTENTIONS

His relationship problems coupled with his insecurities caused him to drink heavily, which led to him becoming an alcoholic. This led to his reckless behavior to include indulging in the use of marijuana and cocaine. He was eventually court-martialed for drug use and drinking while on duty. He has struggled with an alcohol and drug addiction for 17 years causing him to lose his driving privileges three times and effecting his jobs and relationships. He became sober on 7 Mar 99 after turning himself into a detox center. He has been clean and sober for the past 22 years. He has volunteered helping at-risk kids and got a job at a hospital working in housekeeping and maintenance.

In support of his request for clemency, the applicant provides a personal statement and several character reference letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 20 Feb 84, SF 600, *Chronological Record of Medical Care*, indicates the applicant would be entered into the local Alcohol Rehabilitation Program within 60 days.

On 6 Mar 84, the applicant received a Letter of Reprimand (LOR) for intoxication and damaging government property on 29 Feb 84.

On 24 Jul 84, according to SF 600, the applicant made satisfactory progress and graduated from the Alcohol Rehabilitation Program.

On 14 Aug 84, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for drunk and disorderly misconduct. He received a reduction in grade to airman basic (E-1), suspended until 13 Feb 85, forfeiture of pay of \$50 for two months, and 15 days of correctional custody.

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

Dated 11 Mar 85, AF Form 2731, *Notification of Drug or Alcohol Abuse*, indicates the applicant was identified as an experimenter of marijuana due to a positive urinalysis result.

On 1 Jul 85, AF Form 2098, *Duty Status Change*, indicates the applicant was placed into confinement for four months due to his court-martial conviction.

On 13 Aug 85, the convening authority published Special Court-Martial Order No. [REDACTED]. The Order stated the applicant pled guilty to one charge, two specifications of wrongful use of cocaine and marijuana (Article 112a) and to one charge, two specifications of drinking while operating a motor vehicle and drunk and disorderly misconduct (Articles 111 and 134). The applicant was sentenced to confinement for four months, reduction to the grade to E-1 and a BCD.

On 11 Oct 85, AF Form 2098, indicates the applicant was released from confinement.

On 23 May 86, the convening authority published Special Court-Martial Order No. [REDACTED]. The Order stated the applicant's sentence was affirmed and his BCD would be executed.

On 17 Jun 86, the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial (Other than Desertion)" and he was credited with three years and eight months of total active service.

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

POST-SERVICE INFORMATION

On 21 May 21, the Board sent the applicant a request for post-service information and advised him 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 25 Jun 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided character reference statements from his family.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/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 regarding courts-martial are limited to two types: (1) corrections reflecting actions taken by the reviewing officials pursuant to the UCMJ (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and (2) action on only the sentence of the court-martial and solely 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 21 May 21, the Board staff provided the applicant a copy of the clemency/fundamental fairness 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 the victim of an 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. However, the Board contemplated the many principles included in the Wilke Memo and based on the passage of time, the overall quality of the applicant's service, the seriousness of the offense committed, and the

applicant's post-service conduct, the Board concludes relief is warranted on grounds of clemency. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 17 June 1986, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF, *Secretarial Authority*.

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-2021-01271 in Executive Session on 19 Jan 23:

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Panel Chair

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Panel Member

Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 8 Feb 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 21 May 21.

Exhibit D: Applicant's Response, w/atch FBI Report, dated 25 Jun 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.

2/15/2023

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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