

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01667

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

The quality of his service in the Air Force was above reproach. He never had any disciplinary problems and all his performance reports were of the highest rating. He received two medals during his career. There is no evidence of his alleged drug use; no positive drug test nor was he caught with drugs. The allegation was based on hearsay from one person. He was told he was caught up in a bigger operation and if he did not take the discharge, he would be court-martialed.

In support of his request for clemency, the applicant provides numerous character reference letters attesting to his conduct post-service.

The applicant's complete submission is at Exhibits A and D.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 30 May 84, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-49c for drug abuse. The specific reasons for the action were:

- a. Dated 8 Mar 84, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment, Article 15 for possession and wrongful use of marijuana on 1 Mar 83 and 18 Sep 83. He received a reduction in grade to sergeant (E-4), with a new date of rank of 26 Mar 84.
- b. On 1 May 84, the applicant's noncommissioned officer (NCO) status was vacated.

On 3 Jul 84, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

On 10 Jul 84, the discharge authority directed the applicant be discharged for drug abuse, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 23 Jul 84, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Drug Abuse" and he was credited with 7 years and 25 days of total active service.

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

POST-SERVICE INFORMATION

On 11 Aug 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 replied on 27 Oct 21 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided numerous character statements.

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 11 Aug 21, the Board staff provided the applicant a copy of the liberal consideration 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.

FINDINGS AND CONCLUSION

1. The application was 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 applications 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. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. In particular, the numerous character reference letters attesting to his conduct post-service and the fact that he has had no arrests since discharge was sufficient to award an upgrade. 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 23 July 1984, he was discharged with service characterized as honorable, and a separation code of "JFF," and corresponding narrative reason for separation of 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-2021-01667 in Executive Session on 27 Apr 22:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atch, dated 13 Jan 21.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 11 Aug 21.

Exhibit D: Applicant's Response, w/atchs, dated 27 Oct 21.

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