



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02297

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was loyal and a good Airman. His master sergeant treated him unfairly. His mother had recently passed away and was going through terrible financial hardship, so he had to help her. He made the mistake of not pushing for a general discharge. He is not looking for any benefits or pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 17 Dec 71, DD Form 4, *Enlistment Contract – Armed Forces of the United States*, indicates the applicant enlisted in the Regular Air Force for a period of four years.

On 7 Mar 72, a memorandum from the applicant's commander, indicates the applicant received Article 15 punishment in violation of Article 86, without authority, fail to go at the time prescribed to his appointed place of duty.

On 3 Aug 73, the convening authority published Special Court-Martial (SPCM) Order Number Wor... The order stated the applicant pled guilty to one charge, without authority, absent himself from his organization (Article 86). The applicant was sentenced to confinement at hard labor for two months and reduction to the grade of airman basic, and discharge from the service with a BCD.

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

POST-SERVICE INFORMATION

**AFBCMR Docket Number BC-2021-02297
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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 4 Jan 22, the Board sent the applicant a request for post-service information (Exhibit C), including a standard criminal history report from the Federal Bureau of Investigation (FBI), which the applicant provided on 25 Jan 22 (Exhibit D). According to the report, the applicant has had no arrests since discharge. In addition, the applicant provides a personal statement to support his request.

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 are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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 5 Feb 20, 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.

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.

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- 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.

AIR FORCE EVALUATION

AF/JA recommends denying the application. The applicant's contentions of unfair treatment and underappreciation are insufficient evidence of error or injustice in his court-martial or his BCD sentence. Additionally, the applicant's contention there was an error or injustice in his not "pushing for a general discharge" is an incorrect statement of the law. At a Special Court-Martial (SPCM), a general discharge is not an option, as the only kinds of discharge a SPCM can adjudge are a BCD or a Dishonorable Discharge. A general discharge is an administrative discharge, and this option is not available at a court-martial. After a thorough review, we find no error or injustice, and find no basis for clemency. The applicant was convicted by a SPCM of being absent without authorization for over four months during wartime (the Vietnam War ended on 30 April 1975). He had already received NJP the prior year for being absent without authorization a mere two months into his enlistment. Based on the totality of the circumstances, including the repeated and serious nature of misconduct during a short period of service, there are no grounds to grant clemency in the form of a discharge upgrade.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the AF/JA advisory opinion to the applicant on 13 Feb 23 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such 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 limitations 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 not the victim of an error or injustice. The Board finds no evidence the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the

offense(s) committed, and the applicant's post-service conduct. However, the Board finds no basis for clemency in the case. Therefore, the Board recommends against correcting the applicant's records. 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/her post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his/her request based on fundamental fairness.

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 the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02297 in Executive Session on 22 Mar 23:

Work-Product [Redacted] Panel Chair
[Redacted] Panel Member
Work-Product [Redacted], Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Jun 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Request FBI Report and Clemency Guidance, SAF/MRBC to applicant, 4 Jan 22
- Exhibit D: Applicant Response with FBI Report, 25 Jan 22
- Exhibit E: Advisory opinion, AF/JA, dated 13 Feb 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Feb 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

12/27/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by: *Work-Product* [Redacted]