

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03319

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He is requesting relief based on his behavior and commitment of service to his community, the United States Government, veterans, his church, and those less fortunate than himself. He regrets the decisions he made during his Air Force career; he now commits his life to making a positive impact to the lives of those he interacts with.

In support of his request for clemency, the applicant provides a personal statement, numerous post- service certificates of achievement, numerous character reference letters, and a Federal Bureau of Investigation (FBI) Identity History Summary Check.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 23 Jan 90, 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 5.47(a) for minor disciplinary infractions. The specific reasons for the action were:

- a. On 25 Oct 85, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for operating a passenger vehicle while drunk. For this misconduct, he received a reduction in grade to technical sergeant (E-6), suspended until 20 Apr 86 and forfeiture of \$300.00 pay for 2 months.
- b. On 20 Jun 86, AF Form 3070, indicates the applicant received NJP, Article 15 for failure to go. For this misconduct, he received a reduction in grade to technical sergeant (E-6).

c. On 21 Nov 89, AF Form 3070, indicates the applicant received NJP, Article 15 for operating a passenger vehicle while drunk. For this misconduct, he received a reduction in grade to staff sergeant (E-5) and forfeiture of \$300.00 pay for 2 months.

On 12 Mar 90, the applicant was notified of his board hearing scheduled for 14 Mar 90.

On 14 Mar 90, the applicant underwent an Administrative Discharge Board hearing which recommended he be separated with a general discharge and not be offered probation and rehabilitation with a conditional suspension of the discharge.

On 23 Mar 90, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Apr 90, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 27 Apr 90, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Pattern of Conduct Involvement with Military or Civilian Authorities" and he was credited with 15 years, 8 months, and 16 days of total active service.

On 25 Mar 92, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 8 Feb 93, the AFDRB 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.

On 8 Jul 94, the applicant submitted a request for reconsideration to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 13 Apr 95, the AFDRB again 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 7 Mar 22, the Board staff sent the applicant a request for any additional post-service information he may wish the Board to consider; however, he has not replied (Exhibit C). The applicant did however, provide an FBI Identity History Summary Check, dated 21 Apr 21, with his initial application. According to the report, the applicant has had no arrests since his discharge.

#### **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 7 Mar 22, the Board staff provided the applicant a copy of the clarifying 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 fundamental fairness requests are technically untimely. However, it would be illogical to deny a fundamental fairness 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. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness finding the applicant's post-service life, including giving up alcohol and 17 years of public service work, sufficient to grant his request. Therefore, the Board recommends the applicant's records be corrected as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 27 April 1990, he was discharged with service characterized as honorable and a separation code of “JFF” and corresponding narrative reason for separation “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-2021-03319 in Executive Session on 22 Jun 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/atchs, dated 27 Sep 21.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 7 Mar 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.

**X**

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Board Operations Manager, AFBCMR