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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03465

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

1. His under honorable conditions (general) discharge be upgraded to honorable.
2. His Separation Code be changed to a favorable code.
3. His Reentry (RE) Code be changed to a favorable code.
4. His Narrative Reason for Separation be changed to a more favorable reason.

### APPLICANT'S CONTENTIONS

He was not guilty of what he was accused of and was not court-martialed; however, he was a young man threatened and afraid of the Air Force system and gang mentality. His command did not treat him fairly and he felt victimized, and it was easier to take the separation than fight against a system he could not win against. He now holds a bachelor's degree, SEC certifications and works full time teaching in Texas. He always felt he was treated harshly during his time in the service and the derogatory remarks have characterized him horribly. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, has unfairly marked his entire adult life and he would like and upgrade as he has proven himself not to be the character described.

In support of his request for clemency, the applicant provides a Graduation Certificate and a Skill Certification.

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 20 December 2002, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 19 July 2001, on the AF Form 2030, *USAF Drug and Alcohol Abuse Certificate*, he gave a false statement about his experimentation, use, and possession of illegal drugs.
- b. On 30 July 2001, on the SF 86, *Questionnaire for National Security Positions*, he gave false statements about his use of illegal drugs, specifically he used marijuana three times in May 1996.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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- c. On 6 December 2002, on the DSS Form 23a, *Statement of Subject*, he provided a hand-written statement to the Office of Special Investigations (OSI), which revealed he deliberately concealed information about his use of illegal drugs, specifically admitting to using marijuana up to about 100 times, and cocaine 3-4 times while living in Germany and Texas.

On 23 December 2002, the Area Defense Counsel asked that the discharge action be terminated based on the discrepancies created during the enlistment process already being resolved.

On 24 December 2002, the applicant asked the discharge action be withdrawn so he can continue his military service.

On 13 January 2003, the Chief of Adverse Actions provided a memorandum for record explaining the circumstances surrounding the erroneous enlistment waiver.

On 18 February 2003, according to the DD Form 214 the applicant was discharged with an under honorable conditions (general) discharge for "Fraudulent Entry into Military Service, Drug Abuse" with the corresponding separation code of JDT and RE code 2B. He was credited with 1 year, 5 months and 28 days of net active service for the period.

On 14 April 2003, according to the DD Form 215, *Correction to DD Form 214*, block 12c, was changed to reflect 0 years, 0 months, and 0 days of net active service for the period.

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

## **POST-SERVICE INFORMATION**

On 13 April 22, 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 3 May 2022 and provided an FBI report. According to the report, the applicant had one post-service arrest on 9 April 2010 where he was charged with assault of a family member; however, the charge was dismissed on 29 March 2012.

The applicant's complete response is at Exhibit D.

## **APPLICABLE AUTHORITY/GUIDANCE**

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 3 May 2022, Board staff provided the applicant a copy of the clemency guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

**Honorable.** The quality of the airman's service generally has met Department of the 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.

**General (Under Honorable Conditions).** 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 member's military record.

## 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 not the victim of an error or injustice. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. The post-service evidence provided by the applicant was not sufficient to warrant a discharge upgrade. Therefore, the Board recommends against correcting the applicant's record. The Board encourages the applicant to apply in the future and provide additional evidence such as post-service certificates of achievements, civilian memberships, volunteer work, and character references.
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

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The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03465 in Executive Session on 15 Aug 23:

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 26 Oct 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request), dated 13 Apr 22.
- Exhibit D: FBI Report, dated, 3 May 22.

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.

7/2/2025

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Board Operations Manager, AFBCMR

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