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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00260

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His discharge upgrade request is due to undo treatment by a senior officer. He injured his knee while in Basis Military Training (BMT) and continued having issues with his knee. He was flown by Medivac to be seen by doctors to determine what was wrong with his knee. His commander denied his request to cross train to another position and went after him for malingering on his post. The applicant guesses his commander never took a close look at his medical history and only gave him the option of court-martial or a general discharge. The reason for now requesting a discharge upgrade is because this is what his father always wanted but he just kept waiting to submit the request.

In support of his request, the applicant provided copies of AF Forms 422, *Physical Profile Serial Report*, and DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 30 May 78, according to Standard Form 88, *Report of Medical Examination*, the applicant underwent an entrance medical exam. The applicant indicated, "knee & chest injury, motorcycle accident, broken metacarpal [sic] in hand."

On 3 Jan 79, according to AF Form 286, *Human/Personnel Reliability (HPR) Certificate*, the applicant's leadership requested a review of the applicant's health records for qualification of HPR/Personnel Reliability Program (PRP) duties due to lost medical records, and on 12 Jan 79, the applicant was deemed medically qualified for (PRP) duties.

On 13 Sep 79, according to DD Form 1610, provided by the applicant, the applicant received routine temporary duty (TDY) orders for the purpose of, "Further evaluation, treatment and

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disposition (outpatient),” and to proceed from Griffiss AFB, NY on 14 Sep 79 to Andrews AFB, MD for approximately 10 days.

On 2 Jan 80, the applicant received a referral Airman Performance Report (APR) for the period 1 Aug 79 thru 31 Dec 79 for his overall duty performance and was strongly recommended for separation.

On 17 Jan 80, the applicant’s commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Personal Abuse of Drugs; Resignation or Request for Discharge for the Good for the Service, and Procedures for the Rehabilitation Program*, for demonstration of a effective attitude towards his assigned duties. The specific reasons for the action were:

a. On 16 May 79, his assigned barracks room failed to meet inspection standards. As a result, he was issued a Letter of Reprimand (LOR).

b. On 4 Jun 79, his assigned barracks room was found to be in an unsatisfactory condition. As a result, he was issued an LOR.

c. On or about (o/a) 6 Sep 79, he failed to go at the time prescribed to his appointed place of duty for guardmount. As a result, he was issued an LOR.

d. O/a 15 Nov 79, he failed to go at the time prescribed to his appointed place of duty for a dental appointment. As a result, he was issued nonjudicial punishment (NJP) pursuant to Article 15, Uniform Code of Military Justice (UCMJ), in violation of Article 86.

e. O/a 7 Dec 79, he failed to go at the time prescribed to his appointed place of duty for a dental appointment. As a result, he was issued NJP pursuant to Article 15, UCMJ, in violation of Article 86.

On 17 Jan 80, according to AF Form 286, the applicant was permanently disqualified for PRP for reason of, “continued involvement in acts of misconduct.” On the same date his authorization to bear firearms was withdrawn for the same reason.

On 23 Jan 80, the applicant underwent a separation medical exam. The applicant indicated, he “was advised for knee surgery.” The evaluating healthcare provider acknowledged the applicant “wears a brace on the right leg due to chondromalacia,” “painful joint refers to the right knee”, and “trick right knee.”

On 25 Jan 80, the applicant’s commander appointed an evaluation officer to the applicant’s discharge case and on the same date, the evaluation officer conducted an interview and counseled the applicant on the discharge action, his right to provide evidence on his behalf, and offered assistance in the preparation of any written rebuttal or statement the applicant wished to provide on his behalf. On 25 Jan 80, the applicant acknowledged the interview and elected not to submit a rebuttal or statements.

On 1 Feb 80, the Deputy Staff Judge Advocate found the discharge action legally sufficient and on the same date, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 5 Feb 80, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is “Unsuitable-Apathy, Defective Attitude – Evaluation Officer” and he was credited with one year, six months, and five days of total active service.

On 27 May 83, the applicant addressed a letter to the National Personnel Records Center, requesting medical records pertaining to original injury sustained during BMT and the possibility of surgery with his orthopedic surgeon, with whom he had an appointment on 3 Jun 83.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits C and D.

POST-SERVICE INFORMATION

On 31 Mar 23, 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 F). The applicant replied on 28 Jul 23 and provided an FBI report, dated 24 Jul 23. According to the report, the applicant has had no arrests since discharge. The applicant did not provide any other post-service information.

The applicant’s complete response is at Exhibit G.

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense 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 31 Mar 23, the Board staff provided the applicant a copy of the clarifying guidance (Exhibit F).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the types of service characterization:

Honorable. The quality of the member’s service generally has met DAF 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 a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

AIR FORCE EVALUATIONS

AFPC/DP2SSR recommends denying the application. Based on review of the master of personnel record, the applicant's commander provided sufficient evidence to the Base Discharge Authority (BDA) to support separation and the character of service. The BDA determined the significant negative aspects of the applicant's behavior outweighed any positive aspects of his brief military career. Furthermore, there is no evidence of the applicant's claim of maltreatment by a superior officer in the record. It is recognized it has been about 42 years since the applicant's discharge. The board could consider granting the request based on clemency. Based on review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. No evidence was found to corroborate the applicant's contention that he was denied cross-training, due to "alleged malingering on his post," nor that it was a cause for the administrative discharge or the service characterization he received. The Board may yet elect to upgrade the applicant's discharge characterization based upon Clemency.

No specific service treatment records are supplied for review or comment. Of the two AF Forms 422, *Physical Profile Serial Reports*, available in the case file, the first one was initiated in Sep 78, with restrictions to lower extremity activities, corroborates the applicant's report of knee complaints during BMT, which likely resulted in the previous "L4" profile restrictions. However, the more contemporaneous second AF Form 422, with an **expiration** date of **31 Dec 79**, shows the previous "L4" profile had been changed to "L1" worldwide qualified, indicating resolution or significant improvement of the knee condition; but with added new "U4" upper extremity profile restrictions, again rendering him non-worldwide qualified, due to "acute trauma to right wrist/shoulder."

The medical advisor considered the potential for an *impropriety* in the applicant's discharge, given he may have continued to require attention to his medical condition(s), despite the impending administrative actions. It is noted the last profile **restrictions expired on 31 Dec 79**, prior to his separation. The medical advisor could not determine, due to lack of objective medical evidence, whether the applicant's restrictions should have been extended beyond this date. However, even if the applicant was the subject of a concurrent medical separation, due to an unresolved upper or lower extremity condition, in the absence of medical mitigation or a causal relationship with his multiple administrative infractions, the medical advisor opines he would still have been vulnerable for the administrative discharge, following a "dual-action" review by the Secretary of the Air Force Personnel Board.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 31 Mar 23 for comment (Exhibit E), but has received no response.

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. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information, the Board finds no basis to do so. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his good citizenship since his discharge, in the consideration for an upgrade of discharge characterization under fundamental fairness based on clemency. Therefore, the Board recommends against correcting the applicant's record.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00260 in Executive Session on 11 Jul 23 and 7 Nov 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 12 Sep 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 23 Sep 22.
- Exhibit D: Advisory Opinion, BCMR Medical Advisor, dated 24 Mar 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Mar 23.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance),

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dated 31 Mar 23.
Exhibit G: Applicant’s Response, w/atch (FBI Report), dated 25 Jul 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.

X *Work-Product* /14/2025

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