



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00564

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her under other than honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

She served with honor. Her discharge was the result of a domestic dispute which had nothing to do with her military service. It was self-defense. She had one letter of counseling at the beginning of her career due to oversleeping for her shift due to jet lag. She was in a very abusive marriage to which the police were called several times with no action taken against her husband. She was two weeks from receiving an honorable discharge when a domestic violence incident occurred. She attacked her husband with a baseball bat to which she claims self-defense after he was being abusive towards her. In another event, her husband's son from a previous marriage came to stay with them. He was very disruptive to their family and her husband would not discipline him. She was arrested for assault of a minor when a neighbor heard the child screaming and called the police. The child told the police she hit him which she denies. She was forced from her home, separated from her children, and was put into the dorms for 90 days. The stepson was admitted to a children's psychiatric hospital which diagnosed him with opposition defiant disorder. She took the UOTHC discharge in lieu of a court-martial hearing because she wanted to get back to her children. She left her husband and moved to another state with no support from him. She started volunteering at a battered women's shelter and realized she was a victim of abuse. The support she gave to other women helped her start the healing process.

In support of her request for clemency, the applicant provides a personal statement, copies of military kudos, and several character reference letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

Dated 21 Jun 95, DD Form 458, *Charge Sheet*, indicates the applicant was charged with one charge, four specifications of assault against a minor and assault against her spouse in violation of Article 128, Uniform Code of Military Justice (UCMJ).

Dated 25 Jul 95, DD Form 458, indicates the applicant was charged with one charge, two specifications of disobeying a direct order of no-contact in violation of Article 92, UCMJ.

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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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Dated 27 Jul 95, DD Form 458, indicates the applicant was charged with one charge, one specification of assault against her spouse in violation of Article 128, UCMJ.

On 28 Aug 95, the applicant, through her counsel, submitted a request for discharge in lieu of a trial by court-martial with a request for a general service characterization instead of a UOTHC characterization.

On 1 Sep 95, the applicant's commander recommended she be discharged from the Air Force in lieu of a trial by court-martial with a UOTHC discharge noting the applicant's good record established over ten years and a promise that she and her spouse continue with counseling.

On 5 Sep 95, the Staff Judge Advocate found the request for discharge in lieu of a trial by court-martial action legally sufficient.

On 13 Sep 95, the applicant received a UOTHC discharge. Her narrative reason for separation is "Triable by Court-Martial" and she was credited with 9 years, 8 months, and 16 days of total active service.

On 29 Mar 10, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to her discharge.

On 9 Feb 12, 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.

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

POST-SERVICE INFORMATION

On 3 Aug 22, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 11 Oct 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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

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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 Aug 22, the 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.

Under Other than Honorable Conditions. This characterization is used 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 members. 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.
- 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 DAF.
- 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 abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

AF/JAJI recommends denying the application finding no evidence of legal error or injustice that would undermine the applicant's UOTHC characterization of service. The applicant requests a discharge upgrade, although she does not specify the characterization of service. She contends she was acting in self-defense and has submitted a 19 Apr 21 letter from the Department of Veterans Affairs (DVA) deciding on her application for disability benefits. The DVA letter evaluated her disability rating as 70 percent and stated, "We have decided that your military service for the period of 29 May 85 through 13 Sep 95 is honorable for DVA purposes." After careful review, AF/JAJI finds the applicant has provided no evidence of legal error or injustice. On 5 Sep 95, after consulting with her defense counsel and with full knowledge that a UOTHC was a possible outcome, she voluntarily requested to be administratively separated in lieu of trial. Her letter specifically acknowledged the UOTHC. There is no evidence the general court-martial convening authority's acceptance of her request or the UOTHC characterization was erroneous or unjust. With regard to the applicant's claim, "it was considered self-defense," no such official determination was made. She could have challenged the evidence against her at trial, but opted against doing so. With regard to the DVA's determination the applicant served honorably for DVA purposes, the applicant has submitted no evidence of what standards of proof or evidence the DVA considered to reach that conclusion. Furthermore, the DVA's determination for the

purpose of benefits is not dispositive for the present application, and AF/JAJI finds no rule to the contrary.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Jun 23 for comment (Exhibit F), and the applicant replied on 1 Jul 23. In her response, the applicant contends the charges against her were fabricated. She tried to make contact with her former spouse; however, he has not responded. She again explains in length, the events that led to her discharge which she alleges were due to the numerous incidents of spousal abuse and her stepson's behavior and mental health problems. Before the incidents that led to her discharge, she served honorably and only had one letter of counseling during that ten year period. It took her a long time to realize this was not all her fault; however, she never denied the wrong that she did and thought she had to fight back. She only wants her discharge upgraded and feels she deserves a flag on her casket and to be granted veterans status.

The applicant's complete response is at Exhibit G.

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. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence which would lead the Board to believe her service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed.

Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. In support of her request for an upgrade, the applicant has provided an FBI report with no evidence of arrests since her discharge, a personal statement, and character statements. However, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the serious misconduct for which she was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant has presented some supporting statements indicating she has apparently made a successful post-service transition, the Board does not find the preponderance of evidence sufficient to overcome the seriousness of her misconduct nor does she show remorse for her actions stating her discharge was

the result of a domestic dispute and her stepson's behavior which had nothing to do with her military service. Therefore the Board recommends against correcting the applicant's record.

The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, copies of awards, achievements, or accomplishments, and additional character statements and testimonials from community leaders/members specifically describing how her efforts in the community have impacted others. Should the applicant provide additional documentation pertaining to her post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of her request based on fundamental fairness.

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

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-2022-00564 in Executive Session on 20 Jul 23:

Work-Product [Redacted] Panel Chair
Work-Product [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 5 Feb 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Non-Viable Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 3 Aug 22.
- Exhibit D: FBI Report, dated, 11 Oct 22.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 12 Jun 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Jun 23.
- Exhibit G: Applicant's Response, dated 1 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.

9/13/2023

Work-Product [Redacted]

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