



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-2022-00745

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was never given the opportunity to refute the drug abuse charge or given any test results. He was not given proper time to prepare a defense or given legal counsel.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 4 May 87, 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 5-49c for drug abuse. The specific reason for the action was:

- a. On 10 Apr 87, a Command Notification Letter indicates the applicant tested positive for marijuana on 16 Mar 87.
- b. On 21 Apr 87, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongful use of marijuana. He received a reduction in grade to sergeant (E-4) and forfeiture of \$300.00 pay for two months.

On 5 May 87, the applicant requested a conditional waiver of his rights associated with an administrative discharge board hearing contingent upon his receipt of no less than a general discharge.

On 26 May 87, the Staff Judge Advocate found the discharge action legally sufficient.

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On 28 May 87, the discharge authority accepted the applicant's request for a conditional waiver to an administrative discharge board and directed the applicant be discharged for drug abuse, with a general service characterization. Probation and rehabilitation were considered, but not offered.

On 29 May 87, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Drug Abuse" and he was credited with six years, three months, and three days of total active service.

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

POST-SERVICE INFORMATION

On 9 Jan 23, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense 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 9 Jan 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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.

AIR FORCE EVALUATION

DAF/JA recommends denying the application finding no error or injustice in either the NJP or the administrative separation. The applicant received legal counsel prior to both actions, then voluntarily consented to both. He submitted no new evidence to cast doubt on the legal sufficiency of either proceeding. Therefore, DAF/JA finds no legal basis to set aside or change the NJP or the discharge.

The applicant states the following: “I was never given the opportunity to refute the condition of drug abuse or given any test results at the time. I could not get legal counsel without the results of a test I never received. I had no time to prepare a case in my defense or obtain legal counsel because of such a fast discharge.” DAF/JA concludes this allegation of error or injustice lacks merit. Contrary to the applicant’s assertions, the NJP record shows he consulted with counsel, then voluntarily accepted NJP and waived his right to a trial by court-martial, and the conditional waiver offer letter to the Work-Product dated 5 May 87 shows he waived his right to present a defense regarding the administrative separation and regarding the characterization of discharge (i.e., honorable, general, or under other than honorable conditions) to an administrative discharge board, as was his rights. Furthermore, the applicant dictated the conditions of discharge to ensure he would receive no worse than a general discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Jan 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. 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 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. Additionally, the Board concurs with the rationale and recommendation of DAF/JA and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Specifically, the Board finds no evidence to support his contentions as he was provided counsel and voluntarily dictated and accepted the terms of his separation. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so.

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The applicant provided no post-service evidence to warrant a discharge upgrade. 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, FBI standard criminal history report, character statements, and/or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his 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 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-2022-00745 in Executive Session on 22 Feb 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, dated 24 Feb 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, DAF/JA, dated 6 Jan 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jan 23.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 9 Jan 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.

12/22/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: Work-Product