



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00846

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to reflect the following:

- a. His character of service be upgraded from bad conduct to general (under honorable conditions).
- b. His reentry code be changed from 2M¹ to 1².
- c. His narrative reason for separation be changed from Court-Martial to Secretarial Authority.

APPLICANT'S CONTENTIONS

The applicant through counsel makes the following contentions:

During his time in the Air Force, the applicant earned the Air Force Training Ribbon, the National Defense Service Medal, and the Air Force Overseas Short Tour Ribbon. He also earned the highest marks (5/5) on his performance report. The future was very bright for the applicant, and he knew he had come a long way from his humble beginnings. However, following his return from a deployment, the applicant returned to his hometown for an extended leave. During this period a friend was tragically killed in a car accident after leaving a "welcome home" party in his honor. He attempted to extend his leave to attend the funeral and was denied. Rather than seeking healthy ways to cope, the 21-year-old applicant considered suicide and ultimately made the regrettable decision to flee to his hometown. There, he reconnected with his friends who were mourning the loss of their mutual friend. The applicant turned to drugs and alcohol to deal with this trauma. After some time, the applicant's commander reported his status as Absent Without Leave (AWOL). When the applicant returned to see his mother, she contacted the police, and he was apprehended. In total, the applicant was AWOL from 16 Jul 03 through 4 Aug 03. When he was apprehended, he was drug tested and the test came back positive for methamphetamine. For his conduct, the applicant was tried at a Special Court-Martial. The applicant took full responsibility and pled guilty to one violation of Article 86, Uniform of Military Justice (UCMJ), and one violation of Article 112a, UCMJ. A military judge sentenced the applicant to a Bad Conduct Discharge (BCD), seven months confinement, seven months forfeiture of pay, and a reduction to E-1.

Being discharged felt like the biggest failure. At the time, the applicant was angry and entirely gave up on himself and spiraled into drug addiction. When he became a father, his life changed

¹ Serving a sentence or suspended sentence of court-martial; or separated while serving a sentence or suspended sentence of court-martial.

² Eligible for immediate reenlistment.

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forever. Knowing he had to first tackle his addiction, the applicant reached out to a Christian-based rehabilitation facility. He completed the program and has been sober for 14 years. He is married with three children and is an active member in his community where he counsels at-risk youth, mentors children struggling with addiction, and coaches a youth baseball league. The applicant found work as a coal miner where he labored for five years. Following his time in the mines, the applicant was offered a position with the [REDACTED] *Work-Product*. Additionally, the applicant is also a [Town] Street Commissioner.

The applicant requests clemency, upgrading his character of service to under honorable conditions (general) so that he can have greater access to Veteran's Administration benefits. Most importantly, the applicant makes this request so that he and his children can be proud of his military service and the sacrifices he has made. An upgrade to his characterization would also speak to the personal tragedy and extenuating circumstances surrounding his misconduct. Further, it would reflect the applicant's youth and immaturity, and give him the ability to provide to the fullest extent for his family. As the applicant has already demonstrated, there is more to him than one isolated moment of immaturity that occurred nearly twenty years ago.

Considering the extensive mitigating and extenuating facts surrounding the misconduct, it is apparent that anything less than a general discharge is just not appropriate. More specifically, this includes the fact all the applicant's misconduct stems from a tragic, fatal car accident. Although the applicant was not legally liable, he nonetheless carried with him a tremendous amount of guilt and self-blame for his friend's death. Grief is a crippling emotion, and for the applicant, it broke him. At just 20 years old, he numbed his feelings with drugs and ran away from reality and the military. However, despite these wrongs, the applicant took responsibility, pled guilty, and paid his debt to society and the military. His conviction and his time in confinement are permanent reminders of his misconduct. Even though AWOL and drug abuse are serious offenses and warrant discharge, the facts described above nevertheless make a BCD characterization unfair after almost 20 years.

Equity demands his discharge be upgraded from the most severe characterization at a Special Court-Martial to a more reasonable and appropriate characterization given his exceptional post-military accomplishments, consistent and dedicated military service, and his extensive mitigating and extenuating facts surrounding his flawed and immature decision.

In support of his request for clemency, the applicant provides an FBI report dated 29 Sep 21 and counsel's brief to support his post-service accomplishments and community involvement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 20 Nov 03, the convening authority published Special Court-Martial Order [REDACTED] *Work-Prod...* The Order stated the applicant pled guilty to one charge, one specification of violation for failure to go to an appointed place of duty (Article 86). The applicant also pled guilty to one charge, one specification of wrongfully using methamphetamine (Article 112a). The applicant was sentenced to confinement for 7 months, forfeiture of \$700 pay per month for 7 months, reduction to the rank of airman basic (E-1), and discharge from the service with a BCD.

On 25 Oct 04, according to Special Court-Martial Order [REDACTED] *Work-Prod...* the sentence to confinement for 7 months, forfeiture of \$700 pay per month for 7 months, reduction to the rank of airman basic was affirmed. As a result, the discharge from the service with a BCD was executed.

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On 10 Nov 04, according to DD Form 214, the applicant received a BCD in the rank of airman basic. His narrative reason for separation is "Court-Martial." He was credited with three years and four months of total active service. Dates of lost time during the period was from 17 Jan 04 to 15 May 04.

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

POST-SERVICE INFORMATION

On 12 Sep 22, 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 (Exhibit C). The applicant did, however, provide an FBI report with his initial application (Exhibit A). According to the report, the applicant was arrested on 31 Mar 07 for driving while intoxicated and on 28 May 12 for violation of a protective order.

APPLICABLE AUTHORITY

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections reflecting actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency.

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 12 Sep 22, the Board staff provided the applicant a copy of the liberal consideration 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 is not timely. 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 limitations 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 injustice. The Board finds no evidence that the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. The Board also considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. The applicant has provided an FBI report indicating he has had some criminal activity since his discharge; however, the Board finds no basis to grant relief based on fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown that 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 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-2022-00846 in Executive Session on 18 Nov 22:

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 4 Jan 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request/Clemency Guidance), dated 12 Sep 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.

9/1/2023

Work-Product [Redacted]

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