



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-2022-00896

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He joined the U.S. Army National Guard eight months after being discharged from the Air Force and has risen to the rank of staff sergeant (E-5). At the same time, he has completed his Bachelor and Master of Science degrees. He has completed almost 20 years enlisted in the military and would like to go to Officer Candidate School (OCS) to become an officer.

In support of his request for clemency, the applicant provides several character reference letters, copies of military kudos, numerous post service certificates of achievement, academic transcripts, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Nov 05, the applicant's commander recommended he be discharged from the Air Force, for minor disciplinary infractions, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The specific reasons for the action were:

- a. On 11 Feb 03, the applicant received an Article 15 for being a derelict in the performance of his duties by willfully failing to refrain from consuming alcoholic beverages until the age of 21. As a result, he was ordered to perform extra duty days, restriction to the limits of the Base, and reduced to the grade of airman (E-2), with a new date of rank of 11 Feb 03.
- b. On 9 Sep 03, the applicant received a Record of Individual Counseling (RIC) for failing to properly inspect the Fuels Government Service Station.
- c. On 12 Sep 03, the applicant received a RIC for discussing information referring to an ongoing investigation after being ordered not to by the law enforcement official conducting the investigation.

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- d. On 25 Feb 04, the applicant received a RIC for being negligent in allowing a fuel spill.
- e. On 30 Sep 05, the applicant received a Letter of Reprimand after being arrested by the City Police Department for urinating in public.
- f. On 31 Oct 05, the applicant received an Article 15 for being drunk and disorderly. As a result, he was reduced to the rank of airman basic (E-1), with a new date of rank of 31 Oct 05.

On 23 Nov 05, the staff judge advocate found the discharge action legally sufficient.

On 2 Dec 05, the discharge authority directed the applicant be discharged for misconduct; specifically, minor disciplinary infractions, with a general (under honorable conditions) service characterization, without the offer of probation and rehabilitation.

On 5 Dec 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct." He was credited with 4 years, 3 months, and 22 days of total active service.

On 20 Feb 08, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 7 Jul 09, 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.

On 4 Dec 21, 14 Dec 21, and 5 Jan 22, the applicant's commander recommended he be approved for a Civilian Conviction Waiver to become an officer in the Air National Guard.

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

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 23 Jan 23, 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 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 addition, the applicant has provided documentation indicating he was charged with felony burglary five years post discharge from the Regular Air Force. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of criminal history provided by the applicant, the Board finds no basis to do so. 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 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-2022-00896 in Executive Session on 16 Feb 23:

 Panel Chair
 Panel Member
 Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Mar 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 23 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.

4/11/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product