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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01200

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COUNSEL: Work-Product

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded to honorable or general (under honorable conditions) and his narrative reason be changed to "Secretarial Authority."

### APPLICANT'S CONTENTIONS

His discharge should be upgraded based on clemency. His current discharge characterization is unjust; the conduct leading to his BCD was far outside the norm given his exemplary military career, which included promotions, several commendations, and numerous positive evaluations. Despite his otherwise sterling record, he engaged in two isolated and out-of-character incidents, which led to his discharge. He took full responsibility for these actions. These two instances of misconduct should not overshadow his otherwise sterling military career. His conduct during his post-military life also supports clemency, as he has maintained steady employment, raised a family, and has been active in his community and church. With the exception of a speeding ticket, he has had no legal issues during his post-military life.

In support of his request for clemency, the applicant provides a personal statement and copies of military kudos, a Federal Bureau of Investigation (FBI) report, and several character reference letters.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 14 May 92, AF Form 2098, *Duty Status Change*, indicates the applicant was convicted by court-martial for grand theft and was sentenced to 45 days of military confinement.

On 16 Jun 92, AF Form 2098, indicates the applicant was released from confinement early for good behavior.

On 15 Feb 94, AF Form 2098, indicates the applicant was found guilty by General Court-Martial for violation of Article 121, Uniform Code of Military Justice (UCMJ), and sentenced to confinement for 18 months, a reduction to the grade of E-1, and a BCD.

Controlled by: SAF/MRB  
CUI Categories: Work-Product  
Limited Dissemination Control: N/A  
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On 20 Mar 95, the convening authority published General Court-Martial Order (GCMO) [Work-Product]. The Order stated the sentence of BCD, confinement for 18 months, and reduction to the grade of E-1 as promulgated in GCMO 16 had been affirmed and the BCD would be executed.

On 20 Apr 95, the applicant received a BCD. His separation code and corresponding narrative reason for separation is JJD, *Court-Martial (Other)*, and he was credited with 4 years, 11 months, and 18 days of total active service.

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

## POST-SERVICE INFORMATION

On 5 Dec 22, the Board sent the applicant a request for additional post-service information and advised the applicant of the requirement for a FBI Identity History Summary Check, which would indicate whether or not he had an arrest record (Exhibit C). Although the applicant has not replied with additional post-service information, he did provide an FBI report with his original application. According to the report, the applicant has had no arrests since discharge.

## APPLICABLE AUTHORITY/GUIDANCE

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 regarding courts-martial are limited to two types: (1) corrections reflecting actions taken by the reviewing officials pursuant to the UCMJ (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and (2) action on only the sentence of the court-martial and solely 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 5 Dec 22, the Board staff provided the applicant a copy of the clemency 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.

**Under Other than Honorable Conditions.** 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 airmen. 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 Air Force.
- 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 assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

## 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on clemency. The Board contemplated the many principles included in the Wilke Memo to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition. Given the evidence presented, the Board finds the applicant's post-service accomplishments sufficient to warrant a discharge upgrade. Therefore, the Board recommends the applicant's records be corrected as indicated below.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 20 Apr 95, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

## CERTIFICATION

The following quorum of the Board, as defined in Department of the DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00639 in Executive Session on 16 Feb 23:

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Panel Chair

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Panel Member

Panel Member

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All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Apr 22.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 5 Dec 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.

4/12/2023

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Board Operations Manager, AFBCMR

Signed by:

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