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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01612

Work-Product

COUNSEL: NONE

Work-Product

HEARING REQUESTED: NO

APPLICANT’S REQUEST

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

- a. His general (under honorable conditions) discharge be upgraded to honorable.
- b. His narrative reason for separation be changed from Misconduct - Pattern of Minor Disciplinary Infractions to Secretarial Authority.
- c. His separation code be changed from JKN to JFF.
- d. His reenlistment code be changed from 2B¹ to RE-IJ².

APPLICANT’S CONTENTIONS

His discharge was based on his homosexual admission.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 4 Dec 86, according to a statement provided by the applicant, dated 5 Dec 86, he admitted to a representative at the Security Police Investigations office, he was bisexual and had engaged in homosexual activity.

On 18 Dec 86, the applicant’s commander recommended the applicant be discharged from the Air Force for unsatisfactory performance and minor disciplinary infractions, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-26a (Unsatisfactory Performance) and 5-46 (Minor Disciplinary Infractions). The specific reasons for the action were a 5 Dec 86, Correctional Custody Status report describing the applicant as an extremely poor correction custody assignee with no potential for an Air Force Career. In addition, between 4 Sep 86 and 5 Dec 86 the applicant received one Article 15 for failure to go, nine letters of counseling, control

¹ Discharged under general or other-than-honorable conditions.

² Elected to separate but eligible for reenlistment.

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roster placement and six memoranda for record for reporting late to duty, financial indebtedness, poor duty performance and sleeping on duty.

On 7 Jan 87, the acting staff judge advocate (SJA) found the discharge action legally sufficient. Despite numerous rehabilitative efforts, the applicant continued to perform less than satisfactorily. As such, the acting SJA recommended the applicant receive a general discharge. Probation and rehabilitation was considered and deemed inappropriate in this case.

On 20 Jan 87, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern of Minor Disciplinary Infractions." He was credited with 1 year, 10 months, and 9 days of total active service.

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

POST-SERVICE INFORMATION

On 3 Aug 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. The applicant did, however provide an FBI Identity History Summary Check, dated 18 Aug 22, with his initial application. According to the report, the applicant has had no arrests since his discharge (Exhibit A).

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 3 Aug 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.

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2022-01612

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AFPC/DP2SSR recommends denying the application. A review of the applicant's records find that the commander notified the applicant of the intent to discharge for minor disciplinary infractions. There is no evidence in the discharge documentation that indicates the commander's intent on discharging the applicant for homosexual admission/acts. Furthermore, there is no mention of homosexuality made by the applicant in his discharge rebuttal. The commander provided the base discharge authority (BDA) ample documentation to support separation and character of service. The BDA determined that the significant negative aspects of the applicant's behavior clearly outweighed any positive aspects of the applicant's brief military career. Therefore, there is no evidence of an error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 31 Aug 22 for comment (Exhibit E), and the applicant replied on 31 Aug 22. In his response, the applicant contends he was placed in correction custody as a result of his disciplinary infractions. During that time, he was questioned by security police investigations regarding his sexuality. He made a statement admitting his sexuality and homosexual activity. He was then removed from correctional custody and was told he could be honorably discharged based on not being able to complete correction custody instead of being charged for homosexuality under the Uniform Code of Military Justice.

The applicant's complete response is at Exhibit F.

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 applicant provided a statement that indicates he admitted to Security Police investigations he was bisexual and engaged in homosexual activity. Nevertheless, his discharge was not based on homosexual conduct, rather he was discharged for misconduct as evidenced by the narrative reason for separation on his DD Form 214. Therefore, the Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information the Board finds no basis to do so. Accordingly, 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-2022-01612 in Executive Session on 20 Apr 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 10 Jun 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 3 Aug 22.
- Exhibit D: Advisory Opinion, AFPC/DP2SSR, dated 31 Aug 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 22.
- Exhibit F: Applicant’s Response, w/atchs, dated 31 Aug 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.

6/28/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR

Signed by: *Work-Product* [Redacted]