



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02323

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

**APPLICANT'S CONTENTIONS**

He injured his back as a reservist while training on active duty and was unable to complete his obligation to the Air Force Reserve (AFR). He applied for a medical discharge under the impression his drill absences would be excused.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 2 Jan 01, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, Chapter 3, paragraphs 3.21.2.4, 3.21.3.4, and 3.13.2. The specific reason for the action was the applicant making repeated unauthorized purchases with his government issued credit card.

On 1 Mar 01, AFRC/JAM found the discharge action legally sufficient.

On 23 Mar 01, the discharge authority directed the applicant be discharged for Misconduct, a Pattern of Misconduct, Failure to Meet Financial Obligations; Misconduct, Commission of Serious Offense, Other Serious Offenses; and Unsatisfactory Participation with an UOTHC service characterization without the offer of probation and rehabilitation.

On 6 Apr 01, according to Reserve Order *Work-Prod...* dated 23 Mar 01, the applicant was discharged from the AFR with an UOTHC discharge under the provisions of AFI 36-3209.

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

**POST-SERVICE INFORMATION**

**AFBCMR Docket Number BC-2022-02323  
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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

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On 31 Mar 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 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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 31 Mar 23, the Board staff provided the applicant a copy of the clemency guidance (Exhibit D).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

**Honorable.** The quality of the airman's service generally has met Department of the 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.

**General (Under Honorable Conditions).** 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 member's military record.

**Under Other than Honorable Conditions.** This characterization is used 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 members. 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 DAF.
- 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 abuse of a child, sexual harassment, and attempts to commit these offenses.

### **AIR FORCE EVALUATION**

**AFBCMR Docket Number BC-2022-02323**

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ARPC/DPTT recommends denying the application. Based on a review of the documentation provided by the applicant and his personnel record, the applicant does not qualify for an honorable discharge. Therefore, his record does not require correction.

The complete advisory opinion is at Exhibit C.

The Physician Adjudicator completed a thorough review of the limited available records and cannot, without pure speculation, conclude the validity of the applicant's claim of a back injury while serving in an active duty status. However, if the applicant submitted medical evidence to support his claim of a back injury occurring in 99, we would reconsider his request. Therefore, in the absence of such evidence, the Physician Adjudicator finds no factual basis to granting the relief sought.

The complete advisory opinion is at Exhibit E.

**APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 29 Jun 23 for comment (Exhibit F), 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. The Board concurs with the rationale and recommendation of ARPC/DPTT and the Physician Adjudicator and finds a preponderance of the evidence does not substantiate the applicant's contentions. The burden of proof is placed on the applicant to submit evidence to support his claim. 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 and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

**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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02323 in Executive Session on 26 Jul 23:

**Work-Product** Panel Chair

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*Work-Product* 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 9 Aug 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 20 Dec 22.
- Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 31 Mar 23.
- Exhibit E: Advisory Opinion, Staff Adjudicator, dated 28 Jun 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Jun 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.

2/7/2024

*Work-Product*

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