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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02663

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His under honorable conditions (general) discharge be upgraded to honorable.
2. His narrative reason for separation of "Misconduct, Fraudulent Enlistment" be changed.

APPLICANT'S CONTENTIONS

He was never given an explanation on how he fraudulently enlisted. For 40 years he has not known how his enlistment was fraudulent. This has affected him his entire adult life.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

The applicant enlisted in the Regular Air Force on 10 Sep 81.

On 16 Jul 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*. The specific reasons for the action were:

- a. On 23 Jan 75, he was arrested for reckless driving.
- b. On 26 Jun 75, he was fined \$11.00 for not having a mirror on his car.
- c. On 21 Jul 75, he was arrested for speeding and eluding a police officer.
- d. On 8 Apr 77, he was fined \$15.00 for possession of alcoholic beverages.
- e. On 3 Sep 77, he forfeited \$10.00 bail for speeding.
- f. On 29 Dec 77, he was arrested for trespass and harassment.
- g. On 12 Jan 78, he was convicted of making an improper turn.

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- h. On 13 Jul 78, he was cited for having defective headlights.
- i. On 14 Oct 78, he was convicted of failure to signal.
- j. On 29 Mar 79, he was convicted of driving under the influence (DUI) of intoxicating beverages and having possession of an open container of alcoholic beverage and was fined \$300.00 and \$50.00, respectively.
- k. On 18 Oct 78, he was fined \$25.00 for not having a driver's license.
- l. On 6 Nov 79, he was fined for having an expired vehicle license and for not having an adequate exhaust system.
- m. On 6 Mar 80, he was convicted of careless driving and fined \$85.00.
- n. On 23 Sep 80, he was convicted of failure to obey a traffic signal.
- o. On 10 Dec 80, he was convicted of speeding.
- p. On 4 Apr 79, he was arrested for trespassing.

On 30 Jul 82, the applicant acknowledged the discharge recommendation for fraudulent enlistment and offered a conditional waiver of an administrative discharge board contingent on his receipt of a general discharge.

In an undated memorandum, the Staff Judge Advocate (SJA) found the discharge recommendation for fraudulent enlistment with a general discharge legally sufficient. The basis for the discharge was the applicant omitted a material fact on his enlistment document. He certified he only had 11 involvements with the police or judicial authorities. However, he omitted 16 other violations, including various moving and non-moving traffic violations, harassment and trespass. The SJA also noted the applicant was currently pending disposition in civilian court for a charge of shoplifting.

On 12 Aug 82, the discharge authority approved the conditional waiver and the issuance of a general discharge.

On 13 Aug 82, the applicant received an under honorable condition discharge. His narrative reason for separation is "Misconduct Fraudulent Enlistment." He was not credited with any active duty service.

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

POST-SERVICE INFORMATION

The applicant provided a Federal Bureau of Investigation (FBI) Identity History Summary Check dated 31 Oct 22, which reflects no post-service arrests.

The applicant provides an order issued by the State of Oregon dated 7 Jun 23 setting aside his 18 Oct 77 arrest for disorderly conduct and resisting arrest and conviction of criminal drug activities. It stated the applicant fully complied with and performed the sentence of the Court.

The applicant's complete response is at Exhibit A.

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 25 Oct 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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.

AIR FORCE EVALUATION

AFPC/DPMSSR (Military Retirements and Separations) recommends denial. The applicant was notified by his commander of the specific reasons he was being discharged for fraudulent entry. Information obtained by the commander revealed that the applicant mentioned on his initial entry form a lower number of involvements with the police. Specifically, he only listed 11 involvements with the police, but it was revealed he omitted an additional 16 involvements with the police. The intentional omissions constituted fraudulent entry. The applicant was given proper due process, had an attorney and waived his right to go before a discharge board under the condition he received a general discharge.

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 25 Oct 23 for comment (Exhibit E) but has received no response.

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 Board concurs with the rationale and recommendation of AFPC/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends he does not know how his enlistment was fraudulent, the evidence clearly shows the applicant was properly made aware and acknowledged the reason for his fraudulent discharge. Moreover, the Board notes the applicant's conditional waiver request for a general discharge was approved and the applicant was discharged with an under honorable conditions discharge as requested. The Board finds no error in the applicant's discharge processing and his DD Form 214 is correct as reflected. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds insufficient evidence to upgrade the applicant's discharge on the basis of clemency. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02663 in Executive Session on 28 Mar 24:

Work-Product	, Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Sep 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 25 Oct 23.
- Exhibit D: Advisory Opinion, AFPC/DPMSSR, dated 25 Oct 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Oct 23.

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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.

6/12/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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