

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02795

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

Correction should be made because he has come to understand and realize his faults from years ago as he has matured in life. He understands the relationship of military personal (sic) and its importance and he is just asking for forgiveness.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 20 Oct 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. *Minor Disciplinary Infractions*. The specific reasons for the action were:

- a. On 13 Mar 95, the applicant was issued nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) for violation of Article 92, UCMJ for, him, having knowledge of a lawful order issued by his commander, to wit: paragraph 2a. Coeducational Dormitory Policy, dated 19 Sep 94, an order which it was his duty to obey, did, at Sheppard Air Force Base (AFB), Texas (TX), on or about 4 Mar 95, fail to obey the same by wrongfully entering a dormitory room, belonging to a member of the opposite sex, later than 0100 hours on a weekend. The applicant received 30 days correctional custody.
- b. On 30 Mar 95, the applicant was issued a Letter of Reprimand (LOR) for on or about 26 Mar 95, at Building 596, Sheppard AFB, TX, caused a breach of peace by wrongfully assaulting another female airman. On 4 Apr 95, an Unfavorable Information File (UIF) was established, and the LOR filed in the UIF.
- c. On 6 Jun 95, the applicant was issued an LOR for on or about 2 Jun 95, reported for duty without his homework assignment and willfully failed to obey an order.
- d. On 25 Sep 95, the applicant was issue nonjudicial punishment under Article 15, UCMJ for violation of Article 134, UCMJ, for, he did at or near Wright-Patterson AFB, Ohio, on or about 30 Aug 95, commit an indecent assault upon a female airman, a person not his wife by wrapping his arms around her waist from behind and kissing her neck, and by then grabbing her wrist, attempting to pull her closer to himself and stating, "do you

know how long it's been since I've been with a cute girl," with intent to gratify his sexual desires. He received a reprimand and forfeited \$427 in pay.

- e. Academic and Non-Academic counseling sessions on various dates.

On 20 Oct 95, the Staff Judge Advocate found the discharge action legally sufficient.

On 24 Oct 95, the discharge authority directed the applicant be discharged for Misconduct – Minor Disciplinary Infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 26 Oct 95, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year of active service.

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

POST-SERVICE INFORMATION

On 9 Nov 22, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant provided an FBI report, dated 15 Nov 22. According to the report, the applicant was arrested on 15 Jan 11 for Failure to Stop at a Red Light and Speeding; on 16 Jan 11 for Driving While License Revoked and Speeding; on 12 Apr 12 for Failure to Appear on Misd; and on 15 May 12 for Driving While License Suspended or Revoked and Knowingly Driving Motor Vehicle on Suspended, Canceled, or Revoked Registration. In addition, on 29 Oct 24, the applicant provided a personal statement and two character reference letters.

The applicant's complete response is at Exhibit D.

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 9 Nov 22, Board staff provided the applicant a copy of the clemency 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.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 1552(b).
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's response, 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 the interest of justice, the Board considered upgrading the discharge based on clemency/fundamental fairness; however, given the evidence presented, and in the absence of post-service information, beyond the FBI report, provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.
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-2022-02795 in Executive Session on 31 Aug 23 and 19 Mar 25:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, dated 25 Oct 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 9 Nov 22.
- Exhibit D: Applicant's Response, w/atchs, dated 29 Oct 24.
- Exhibit D: FBI Report, dated 15 Nov 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.

X

Board Operations Manager, AFBCMR