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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00277

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable, and his record be corrected.

APPLICANT'S CONTENTIONS

His discharge was due to a third party improperly contacting the Air Force regarding a returned check, which he had already paid. This contact was in violation of the Fair Debt Collection Practices Act because the collection agency was not allowed to contact and release his debt information to an Air Force agent. His denied discharge upgrade request by the Air Force Discharge Review Board (AFDRB) was in error because the Air Force was unable to locate his discharge paperwork and prove his discharge was correct. His discharge was only issued after the area judge advocate ordered his charges be presented or dismissed when his status remained pending after nine months without any formal charges.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 12 Nov 97, according to AF Form 418, *Selective Reenlistment Program Consideration*, the applicant was not recommended for reenlistment due to financial irresponsibility. His supervisor noted he "wrote 60 checks on a closed account and was issued a citation by the local police department;" and had also received additional unit disciplinary action for "other instances of financial irresponsibility."

On 11 Feb 98, according to AF Form 286A, *Notification of Personnel Reliability Program Permanent Decertification Action*, the applicant's commander permanently decertified him from the nuclear weapons personnel reliability program for failing to meet AF standards and for financial irresponsibility. Specifically, the applicant had received notifications from numerous creditors on indebtedness for insufficient funds and made/signed false official statements. The

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commander further stated the applicant's permanent decertification was necessary since the applicant's reliability was "highly questionable," with no "resolution in the near future."

On 3 Mar 98, the applicant received an UOTHC discharge. His narrative reason for separation is "Triable by Court Martial" and he was credited with 3 years and 26 days of total active service.

On 12 Dec 12, the applicant submitted a request to the AFDRB for an upgrade to his discharge.

On 21 Mar 13, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and within the discretion of the discharge authority; and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 11 Aug 23, 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 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 replied on 21 Sep 23 and provided an FBI report. According to the report, the applicant was charged on 9 Sep 99 for writing a fraudulent check; and on 25 Mar 02 for writing a fraudulent check under five hundred dollars.

The applicant's complete response is at Exhibit D.

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 11 Aug 23, the Board staff provided the applicant a copy of the clarifying 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.

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.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade 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. 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; however, given the evidence presented, and in the absence of post-service information, the Board finds no basis to do so. Specifically, the applicant did not provide any additional evidence about the quality of his military service prior to the misconduct that caused the discharge, the nature of that misconduct, and what he has done since his discharge. Examples of post-service information includes educational accomplishments,

employment history, community contributions, and character references from people who know the applicant well and can vouch for his honesty and integrity. Additionally, the applicant's FBI report showed two charges for fraudulent checks written in 1999 and 2002. 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-2023-00277 in Executive Session on 9 Jul 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, dated 10 Jan 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 11 Aug 23.

Exhibit D: Applicant Response, with FBI Report, dated 21 Sep 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.

9/25/2024

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