

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00813

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, Block 27, *Reentry Code*, be changed from 2B, *Separated with a general or under-other-than-honorable-conditions discharge* to 1, *Eligible to reenlist*, or 2K, *Has been formally notified by the commander/civilian director of initiation of involuntary separation action*.

APPLICANT'S CONTENTIONS

He is requesting his reentry code be adjusted to allow him to join a branch of service other than the Air Force. This was discovered while he was trying to enlist in the United States Army and a waiver was denied due to the 2B reentry code. He feels this is unjust as his separation was 15 years ago and should not affect him today.

At the time of his initial service, he was a teenager and had no regard for consequences. It has been 15 years since separation, and he is now grown into a mature contributor to society and would love an opportunity to reenlist. He is married with two children and understands the importance of serving this beautiful country. He has been gainfully employed since 2007.

In support of his request for clemency, the applicant provides a personal statement and copies of military kudos, numerous certificates of achievement, letters of support, and other documents related to his request for correction.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Aug 05, according to DD Form 214, the applicant entered the Regular Air Force.

On 19 Sep 07, according to AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru TSgt)*, the applicant was issued nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ) for: (1) failing to go at the prescribed time to his appointed place of duty in violation of Article 86, UCMJ; (2) failure to obey a lawful general order by wrongfully consuming alcoholic beverages while under the legal drinking age of 21, in violation of Article 92, UCMJ; and (3) failure to obey a general order by wrongfully withdrawing funds from his Government Travel Card in excess of the authorized per diem allowed for the duration of his travel status, in violation of Article 92, UCMJ. The applicant was reduced to the grade of E-1, with reduction below E-2 suspended until 18 Mar 08, after which time it would be remitted without further action, unless sooner vacated. The new date of rank for E-2 was 19 Sep 07. He also received 14 days extra duty and a reprimand.

On 25 Oct 07, according to AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, the applicant's suspended reduction to E-1 was vacated because on or about 13 Oct 07, he was derelict in the performance of those duties in that he willfully failed to refrain from wrongfully consuming alcoholic beverages while under the legal drinking age of 21, as it was his duty to do, in violation of Article 92, UCMJ. The applicant was reduced in grade to E-1, with a new date of rank of 19 Sep 07, effective 25 Oct 07.

On 30 Nov 07, according to DD Form 214, the applicant received a general (under honorable conditions) discharge. His reentry code is 2B and his separation code and corresponding narrative reason for separation is JKM, *Misconduct*. He was credited with 2 years, 3 months, and 15 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 23 Mar 23, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did reply to the request for post-service information, his response did not include an FBI background check; however, he did provide a copy of the Office of Personnel Management Federal Investigations Processing Center Report requested by the U.S. Army Recruiting Command.

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

AIR FORCE EVALUATION

AFPC/DP2SSM (Reenlistments) recommends denying the application. There is no evidence of an error or injustice that would support a change of reentry code based on the documentation provided by the applicant and analysis of the facts.

The applicant was discharged with a narrative reason for separation of Misconduct on 30 Nov 07, with a general (under honorable conditions) character of service after 2 years, 3 months, and 15 days of service. He received a 2B reentry code based on his general character of service. Although the discharge package is missing from the applicant's records, he is not contesting the reentry code, and there are two Articles 15 to support the general service characterization. The

applicant states his discharge was 15 years ago, he was a teenager, had no regard for consequences, and has grown into a mature contributor to society.

Additionally, he is asking specifically for a 2K reentry code or a "1" series reentry code. The reentry code 2K is not appropriate as it was no longer valid after the involuntary discharge was approved. A reentry code in the "1" series would not be valid as 1J, *Eligible to reenlist but elects separation*, is the only "1" series reentry code Airmen can separate with; the applicant was not eligible for reenlistment, but involuntarily discharged due to misconduct.

Should the board elect to grant the request for a more favorable reentry code, 3K, *Reserved for use by HQ AFPC or the AFBCMR when no other RE code applies or is appropriate*, may be suitable.

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 18 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/DP2SSM and finds a preponderance of the evidence does not substantiate the applicant's contentions. Neither reentry code requested by the applicant is appropriate to the discharge. Additionally, 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 criminal history 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 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-2023-00813 in Executive Session on 16 Nov 23:

, Panel Chair
, 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 8 Feb 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 23 Mar 23.
Exhibit E: Advisory Opinion, AFPC/DPMSSM, dated 18 Oct 23.
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Oct 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.

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Board Operations Manager, AFBCMR