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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01653

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was not given proper legal/disciplinary counseling before his discharge, and his commander failed to ensure due process during a period of downsizing, which he believes led to his original punishment being abruptly changed after serving half of his time (30 days) in correctional custody. He contends the Air Force policy of allowing an 18-year old to consume alcohol on base led to some of his issues as a young, immature service member. He also states his contributions to his community since his discharge should be considered.

In support of his discharge upgrade request, the applicant provides copies of his airman performance reports, performance evaluations from his employment as a sergeant, and now captain, at the Work-Product county sheriff's office, and a current position description.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Feb 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 4.56 for misconduct, minor disciplinary infractions. The specific reasons for the action were:

- a. On 31 Aug 88, he unlawfully struck another airman on the arms, shoulders, face, and head with his hands, for which he received an Article 15, dated 31 Oct 88.
- b. On 20 Jan 90, he wrongfully used provoking words and gestures towards another airman, for which he received a letter of reprimand, dated 1 Feb 90.

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- c. On 2 Feb 91, he operated a passenger vehicle in a parking lot while drunk, for which he received an Article 15, dated 11 Feb 91.

Not dated, the Staff Judge Advocate found the discharge action legally sufficient.

Not dated, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation was considered but not offered.

On 3 Mar 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern of Minor Disciplinary Infractions" and he was credited with 4 years, 1 month, and 20 days of total active service.

On 11 Feb 99, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 9 Apr 99, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was 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 17 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 25 Aug 23 and provided an FBI report, which showed he has had no arrests since discharge. The applicant also provided character references.

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 17 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.

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 the victim of an injustice. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief. While the Board finds no error in the original discharge process, it recommends relief based on clemency. Specifically, the applicant's commendable post-service conduct, to include his gainful employment and service as a corrections captain at the county sheriff's office, positive character references, and a clear FBI report, warrant a discharge upgrade. Therefore, the Board recommends the applicant's records be corrected as indicated below.
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 pertinent military records of the Department of the Air Force relating to the applicant be corrected to show on 1 Mar 91, he was discharged with service characterized as honorable, and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2023-01653 in Executive Session on 23 May and 30 May 24:

-  Panel Chair
-  Panel Member
-  Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Apr 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 17 Aug 23.
- Exhibit D: Applicant’s Response, w/atchs, dated 25 Aug 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.

6/7/2024



Board Operations Manager, AFBCMR
Signed by: USAF