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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01930

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COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. He be credited with completing four years of active duty service.
3. He receive retroactive backpay.

APPLICANT'S CONTENTIONS

At the time he entered service, he was asked if he was ever arrested or detained in civilian life. He answered the questions about a crime which happened. He was 19 at the time and he was never handcuffed or detained. However, he was discharged for fraudulent entry. He is now 50 and attempting to get a Department of Veterans Affairs (DVA) loan.

He was wrongfully discharged. He never went to court. Due diligence was not done by the Air Force at the military entrance processing station (MEPS). His life has been completely altered, and he did nothing wrong while on active duty. It is 30 years later and after much conversation with former enlisted members, he is seeking retroactive pay and desires to receive DVA health benefits.

He does not understand what fraud was committed. This error was not found upon MEPS enrollment. There was no misconduct while he served his short time. He seeks to have an honorable discharge with four years of service credit. His objective is to receive DVA benefits and get a certificate of eligibility for a DVA loan.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Aug 94, 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 5-15 for fraudulent enlistment. The specific reason for the action was that he on or about 16 Aug 93

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falsified a DD Form 398-2, *Department of Defense National Agency Questionnaire*, by stating he had no prior arrests, which was then known to be false.

On 18 Aug 94, the Staff Judge Advocate found the discharge action legally sufficient.

On 26 Aug 94, the discharge authority directed the applicant be discharged for fraudulent enlistment, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 6 Sep 94, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Fraudulent Entry into Military Service" and he was credited with 1 year, 3 months, and 24 days of total active service.

On 17 May 95, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge. The applicant contended the discharge was unfair, unjust, and without merit. He requested an upgrade of the discharge to honorable and the narrative reason for separation be changed to "early separation." The applicant indicated he was never detained, arrested, or convicted of any crime, and he served his country to the best of his ability.

On 11 Sep 96, 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. After a review of the entire record, the board found that while the charges were dropped, he was in fact arrested and fingerprinted, and by stating otherwise on the DD Form 398-2, he falsified the document.

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

POST-SERVICE INFORMATION

On 9 May 24, the Board staff sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

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 9 May 24, the Board staff provided the applicant a copy of the complete 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 recommends denying the application, finding no evidence of an error or injustice with the discharge process. The applicant indicated on his MEPS processing form that he had never been arrested. However, FBI records revealed the applicant was arrested, fingerprinted and charges were forwarded to the United States attorney's office where the charges were ultimately dropped. The base separation authority (BSA) determined the applicant was required to disclose this involvement with the authorities even though the case did not go to trial. By indicating no involvement with authorities, the applicant falsified his entrance processing forms. The BSA directed discharge with a general (under honorable conditions) service characterization. The separation program designator (SPD) code for fraudulent entry is correct as indicated.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board staff sent a copy of the advisory opinion to the applicant on 24 Jul 25 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 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. Section 1552(b).

2. The applicant exhausted all other available administrative remedies 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. The Board finds the applicant has not sustained his burden of proof to find he did not commit fraudulent entry. The Board finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, the applicant did not provide any evidence of his post-service conduct or accomplishments to show he has made a successful post-service transition. Since the Board finds insufficient evidence to upgrade the applicant's discharge, the Board also finds insufficient evidence to grant the applicant four years of service credit with retroactive backpay. 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-2023-01930 in Executive Session on 12 Nov 25:

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 23 May 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (FBI Bulletin and Clemency Guidance), dated 9 May 24.

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Exhibit D: Advisory Opinion, AFPC/DPMSSR, dated 11 Jul 25.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jul 25.

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.

12/15/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

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