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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02402

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COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His time served in Operations DESERT SHIELD/DESERT STORM be listed on his DD Form 214, *Certificate of Release or Discharge from Active Duty*.
2. His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

He requested his time serving in Operations DESERT SHIELD/DESERT STORM be listed on his DD Form 214, as he served in country from Aug 90 to Mar 91. He also requests his discharge be upgraded. He was young, involved with alcohol, and made some mistakes. He has grown over the last 20 years and has had no problems since.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Jun 91, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-47 for misconduct, consisting of a pattern of misconduct. The specific reasons for the action were:

- a. On 28 Nov 88, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for consuming alcoholic beverages while under the age of 21, on or about 12 Nov 88. The applicant was ordered to forfeit \$150.00 pay and was sentenced to 15 days of correctional custody.

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- b. On 25 Jan 89, an AF Form 3070 indicates the applicant received NJP, Article 15 for wearing civilian clothes in phase I of technical training on or about 15 Jan 89. The applicant was ordered to forfeit \$50.00 pay.
- c. On 10 May 91, an AF Form 3070, indicates the applicant received NJP, Article 15 for unlawfully striking another on 4 May 91. On the same day, he was drunk and disorderly. The applicant received reduction to the grade of airman and sentenced to 30-days extra duty.
- d. On 21 May 91, a Letter of Reprimand (LOR) was issued for firing a pellet gun in a dormitory room on or about 30 Apr 91.

On 11 Jun 91, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 Jun 91, the discharge authority directed the applicant be discharged for misconduct, consisting of a pattern of misconduct, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 14 Jun 91, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Conduct Prejudicial to Good Order and Discipline" and he was credited with 2 years, 10 months, and 16 days of total active service.

On 16 Aug 24, AFPC/DP3AM provided a letter to the applicant in response to his request to add Operations DESERT SHIELD/DESERT STORM to his DD Form 214. After a complete review of the applicant's official military record and the documentation provided, AFPC/DP3AM was able to verify and confirm the applicant's boots on ground Foreign Service time in support of Operations DESERT SHIELD/DESERT STORM from 11 Aug 90 to 23 Mar 91, for 7 months and 13 days. The exact location of this deployment was unable to be determined; however, the amount of Foreign Service time reflected on the applicant's DD Form 214 is correct. Since specific locations are not annotated on the DD Form 214, the letter serves as proof of "boots on ground" for his deployment.

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

POST-SERVICE INFORMATION

On 9 Dec 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 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 replied on 25 Jun 24 and provided an FBI report. According to the report, the applicant was arrested on 1 Oct 92 for retail theft. Additionally, he was arrested

on 27 May 96 for simple assault. The applicant also provided character statements in support of his request.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

Per AFR 35-6, *Separation Documents*, dated 1 Jan 90, Table 4, *How to Prepare DD Form 214*, Rules 29 thru 39, *Remarks*, Department of Defense (DoD) named military operations are not an authorized entry on a member's DD Form 214.

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.

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. Section 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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of his request. While the Board finds no error in the original discharge process, the Board recommends partial relief based on fundamental fairness. The Board contemplated the many principles included in the Wilkie Memorandum to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct, seriousness of the offenses which led to his discharge, his character and reputation, job history, and degree of contrition. While the Board notes the applicant had two post-service arrests (92 & 96); however, as indicated on his FBI background check reflecting no criminal activity for 28 years and numerous character references written on his behalf, demonstrate his strong leadership skills and successful post-service transition. Given the evidence presented, the Board finds the applicant's post-service accomplishments and the nature of his misconduct sufficient to warrant a discharge upgrade. Therefore, the Board recommends the applicant's records be corrected as indicated below. However, for the remainder of the applicant's request, a "boots on the ground" letter has been provided to the applicant by AFPC/DP3AM as proof of participation in Operations DESERT SHIELD/DESERT STORM, and the Board therefore finds no basis to recommend granting that portion of the applicant's request as specific military operations or Foreign Service locations are not annotated on the DD Form 214. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 14 Jun 91, he was discharged with service characterized as honorable with a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2023-02402 in Executive Session on 11 Mar 25:

Work-Product [REDACTED], Panel Chair, AFBCMR

Work-Product [REDACTED], Panel Member

Work-Product [REDACTED], Panel Member

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

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Exhibit A: Application, DD Form 149, dated 1 Jun 23.

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

Exhibit C: Advisory Opinion, AFPC/DM2SSR, dated 6 Nov 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 24.

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

Signed by: Work-Product

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