



Work-Product

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-1993-06869-2

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his under other than honorable conditions (UOTHC) discharge to honorable and his narrative reason for discharge be changed to Secretarial Authority.

RESUME OF THE CASE

On 15 Mar 94, the Board considered and denied the applicant's request for a discharge upgrade, finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board concluded the facts and opinions stated in the Air Force Discharge Review Board (AFDRB) brief appeared to be based on the evidence of record and were not rebutted by the applicant. In the absence of persuasive evidence the applicant was denied due process, appropriate regulations were not followed, or appropriate standards were not applied, the Board found no basis to disturb the record.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 3 Feb 23, the applicant requested reconsideration of his request for a discharge upgrade. Through counsel, he again contends the courts have recognized the punitive nature of negative service characterizations and its stigmatization. His post-service accomplishments have been remarkable. He earned a Master of Science degree specializing in Counseling Psychology and graduated Magna Cum Laude. He continued his education in respiratory medicine earning his Doctor of Philosophy (PhD) degree in General Psychology. He worked for the Department of Veterans Affairs (DVA) for nearly ten years and is currently a licensed therapist for the United States Department of Agriculture (USDA) National Forest Services working with economically disadvantaged or dysfunctional households, rehabilitated from illegal substance abuse and juvenile delinquencies. At the time of his discharge, he was young and was amid a crumbling marriage. His discharge was based on a total amount of \$193.92 and instead of receiving counseling, he was discharged without any apparent concrete evidence of willful wrongdoing. He was also subjected to false allegations his marriage was fraudulent due to his status as a Nigerian immigrant. He has gone on to achieve his citizenship and has become a dedicated civil servant.

AFBCMR Docket Number BC-1993-06869-2

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CUI Categories: *Work-Product*
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

In support of his reconsideration request for a discharge upgrade based on fundamental fairness, the applicant submitted the following new evidence: (1) a personal statement; (2) his resume; (3) copies of his degrees, professional certifications, and college transcripts; and (3) a character reference letter.

The applicant's complete submission is at Exhibit F.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 5 Mar 90, according to DD Form 458, *Charge Sheet*, the applicant was charged with one specification of defrauding the government by submitting a false travel voucher for his dependents in the amount of \$193.92 in violation of Article 132 of the Uniform Code of Military Justice. He was also charged with one specification of defrauding the government by falsifying Basic Housing and Variable Housing Allowance (BHA/VHA) documents; however, this charge was withdrawn.

On 12 Apr 90, the applicant submitted a request for discharge in lieu of trial by court-martial with the understanding, if approved, he may be discharged with a UOTHC service characterization.

On 16 Apr 90, the applicant's commander recommended the applicant be discharged from the Air Force in lieu of trial by court-martial with a UOTHC discharge for filing a false travel voucher. The commander noted the applicant had served in a satisfactory manner with no other disciplinary problems. Charges against the applicant were referred for trial and the trial convened on 29 Mar 90; however, due to the dismissal of a court member for misconduct, the court panel fell below the quorum, and the court was indefinitely recessed. On the same date, the wing Staff Judge Advocate (SJA) found the discharge request legally sufficient and recommended forwarding the UOTHC discharge recommendation to the numbered air force (NAF) SJA.

On 17 Apr 90, the wing commander recommended approval of the UOTHC discharge.

On 25 Apr 90, the NAF SJA found the action legally sufficient and concurred with the recommendation for a UOTHC discharge. He noted that although the applicant's misconduct was serious enough to warrant disposition by court-martial, misconduct by one of the court members vitiated the first attempt to try him. Commanders argued that immediate discharge, with probable deportation would serve the interests of justice better than starting over with the trial.

In an undated letter, the discharge authority approved the request for discharge in lieu of trial by court-martial and directed the applicant be issued a UOTHC discharge.

On 7 May 90, the applicant received a UOTHC discharge with a separation code and corresponding narrative reason for separation of KFS, Request for Discharge In Lieu Of Trial by Court-Martial, and a reentry code of 2B, *Involuntarily separated with a general or under other than honorable conditions discharge*. He was credited with 2 years and 3 days of total active service.

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

POST-SERVICE INFORMATION

On 15 Feb 23, the Board sent the applicant a request for additional 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 H). On 2 Feb 24, the applicant provided an FBI report which indicates he has had no arrests since discharge (Exhibit I). The applicant submitted additional post-service evidence on 10 Mar 24 (Exhibit L), which includes an appeal for clemency, academic transcripts, two character reference letters, his divorce decree, resume, and a copy of his SF 50, *Notification of Personnel Action*. In his appeal for clemency, he states he has devoted 14 years of public service to the Federal government continually finding ways to help service men and women, retired veterans, and individuals from disadvantaged populations. His states he did not intend to defraud the government as he believed his wife would be joining him and his ignorance of military procedures and naivety at the time contributed to the wrongful decisions that led to his discharge.

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) 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 paragraphs 6 and 7 of the Wilkie memorandum.

On 2 Jan 24, the Board staff provided the applicant a copy of the guidance (Exhibit G).

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.

AIR FORCE EVALUATION

AF/JAJI (Clemency and Parole) recommends denying the application finding no evidence that would undermine the applicant's voluntary request for discharge in lieu of trial and no evidence to support the applicant's allegation of material injustice. The applicant makes three allegations of injustice: 1) there was zero evidence to support the fraudulent marriage accusation; 2) the United States Air Force conceded there were no investigations pending against him; and 3) the discharge was based on a total amount of \$193.92, and instead of counseling a promising young man on the matter, it decided simply to separate him with an UOTHC discharge, without any apparent concrete evidence of willful wrongdoing. AF/JAJI finds these contentions to be without merit. First, the suspicion of fraudulent marriage was communicated to the Air Force by the Department of Immigration and Naturalization Services (INS) and was not one of the grounds for the applicant's court-martial charges. Second, the supposed "concession" of no pending investigation is immaterial. In the staff judge advocate's letter to the commander recommending approval of the applicant's discharge request, it states the applicant is not currently pending investigation. This merely informs the commander there are no other potential disciplinary actions that would require withholding his decision and does not mean the applicant was never investigated. On the contrary, the applicant was investigated by the Air Force Office of Special Investigation (AFOSI), and his court-martial charges resulted from that investigation. Third, the applicant's contentions the discharge was solely for a \$193.92 travel voucher, and the Air Force discharged him without evidence are false. In addition to the fraudulent \$193.92 travel voucher in Sep 88, the applicant also wrongfully lived in base family housing for six months after falsely claiming his family lived with him in Nov 88, and also submitted a false recertification letter for allowances in Sep 89. Furthermore, the Air Force did not simply separate him without any apparent concrete evidence. There was sufficient evidence to refer the applicant's crimes to a court-martial. Moreover, and most saliently, it was the applicant who voluntarily requested to be discharged. After consulting with his defense counsel and with full knowledge that an UOTHC was a possible outcome, he requested to be administratively separated in lieu of trial rather than risk a court-martial conviction.

Under the claim of injustice, the applicant also argues his post-discharge conduct supports his request for a discharge upgrade. AF/JAJI interprets this to be a request for clemency, not an allegation of injustice. Nevertheless, AF/JAJI finds no basis to support this request. The applicant entered active duty on 5 May 88, and almost immediately began defrauding the government on 26 Sep 88. In consideration of the seriousness of the applicant's pending court-martial and his very short period (four months) of misconduct-free service, we find an UOTHC is an appropriate service characterization, and no upgrade is warranted on the basis of clemency.

The complete advisory opinion is at Exhibit J.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 14 Feb 24 for comment (Exhibit K), and the applicant replied on 21 Mar 24. In his response, through counsel, the applicant contends the advisory opinion states there is no evidence to undermine the voluntary request for discharge in lieu of court-martial or that there was an injustice with his discharge; however, he does not deny he was not entitled to the funds he received, and he took accountability for the misconduct. The receipt of the funds was due to his misunderstanding of a notoriously complex travel voucher system. He has been duly punished since 1990 and had his character, integrity, and moral fortitude questioned every day for more than 30 years and he seeks to remove this stain from his records so he can reclaim his honor and restore his good name.

The applicant's complete response is at Exhibit M.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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 notes AF/JAJI's recommendation against correcting the applicant's record on the basis of clemency. While the Board finds no error in the original discharge process, the Board contemplated the many principles included in the Wilke Memo and unanimously recommends granting relief based on clemency and fundamental fairness. The Wilkie Memo advises the Board to favor second changes in situations in which individuals have paid for their misconduct. In this respect, the Board finds the applicant's 33-year post-service conduct commendable. The Board noted the applicant's FBI history shows no arrests since his discharge. The Board also noted the applicant's lengthy career as a Federal civil servant and his contributions assisting veterans and youths from disadvantaged communities. Furthermore, the Board considered the applicant's post-service achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition. The applicant was discharged for nonviolent misconduct and has borne the penalty of a UOTHC discharge for 33 years. Regardless of the UOTHC discharge, he made significant contributions to society in accordance with his interests and abilities and has no recent criminal record. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 7 May 90, he was discharged with service characterized as honorable, a separation code and corresponding narrative reason for separation of JFF, Secretarial Authority, and a reentry code of IJ.

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-1993-06869-2 in Executive Session on 28 Mar 24:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

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

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 15 Mar 94.
- Exhibit F: Application, DD Form 149, w/atchs, dated 3 Feb 23.
- Exhibit G: Documentary evidence, including relevant excerpts from official records.
- Exhibit H: Letter, SAF/MRBC, w/atchs (Post-Service Request and OSD Guidance), dated 2 Jan 24.
- Exhibit I: FBI Report, dated 2 Feb 24.
- Exhibit J: Advisory Opinion, AF/JAJI, dated 13 Feb 24.
- Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Feb 24.
- Exhibit L: Applicant’s Response, w/atchs, dated 10 Mar 24.
- Exhibit M: Applicant’s Response to Advisory, dated 21 Mar 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.

9/15/2025

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF