



Work-Product
Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-03847-2

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to restore his grade to staff sergeant (E-5) and correct the grade reflected on his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

RESUME OF THE CASE

The applicant is a former Air Force senior airman (E-4).

On 9 Nov 09, the applicant was offered non-judicial punishment (NJP) action pursuant to Article 15, Uniform Code of Military Justice (UCMJ), in violation of Article 107; for making a false official statement. His punishment consisted of a reduction from E-5 to E-4, forfeiture of \$250 pay per month for two months (suspended), 15 days extra duty (suspended), and a reprimand. The applicant applied for a voluntary separation citing his demotion and its ramifications concerning High Year Tenure. He also noted his promotion ineligibility, the loss of his supervisory position and the financial burden the demotion had caused his family. His request was approved, and he was furnished an honorable discharge on 25 Jan 10 and credited with 13 years and 4 days of active service.

On 28 Sep 11, the applicant submitted DD Form 149, *Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552*, and requested the Board: 1) remove his Article 15, Unfavorable Information File, and final enlisted performance report from his records, and 2) restore his grade to E-5 with all back pay and allowances, to include recomputation of his separation pay at the grade of E-5. The applicant contended he did not receive adequate representation, and his false official statement was not intentional but rather a misunderstanding. The Board denied his request and agreed with the opinions and recommendations of the Air Force offices of primary responsibility and adopted their rationales as the basis for their decision finding the applicant had failed to sustain his burden of proof of having suffered either an error or injustice. The Board noted that other than the applicant's own personal statement and affidavit, no evidence was presented, such as police or incidence reports or other pertinent evidence, that substantiated his contentions.

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 G.

AFBCMR Docket Number BC-2011-03847-2

Work-Product

Work-Product

CUI

On 13 May 24, the applicant requested reconsideration of his request. Through counsel, the applicant again contends he initiated an investigation because he was the victim of a crime after discovering unauthorized transactions were made on his government travel card. He did not intend to make a false official statement during the investigation, it was made due to a lack of recollection at the time, and it led to his demotion. Additionally, the applicant references the Wilkie Memo and that it encourages the AFBCMR to give deserving veterans a second chance. The applicant believes his request should be considered under the Wilkie Memo and in the interest of fairness and justice, he is entitled to restoration to the grade of E-5. Specifically, 1) his punishment was disproportionately harsh because there was nothing in the record that indicated his false statement was intentional; 2) rehabilitation and personal growth to include his job history, character references, and letters of recommendation; and 3) mitigating factors and the passage of time as his demotion occurred over a decade ago. In support of his reconsideration request, the applicant submitted the following new evidence: (1) letters of support and (2) Under Secretary of Defense Supplemental Guidance (Wilkie Memo).

The applicant's complete submission is at Exhibit H.

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 30 Dec 24, the Board staff provided the applicant a copy of the supplemental guidance (Exhibit I).

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 remains unconvinced the evidence presented demonstrates an error or injustice. The applicant contends that the punishment he received was unduly harsh given the lack of evidence demonstrating culpability and further asserts the passage of time, his subsequent rehabilitation, and personal professional growth support restoration of his grade to E-5. In accordance with the supplemental guidance issued by the USD P&R, dated 25 Jul 18 (Wilkie Memorandum), the board carefully considered the applicant's request for relief on the basis of equity, injustice, or clemency; however, there is insufficient evidence to warrant relief for an error or impropriety. The Board notes that the record reflects the applicant's misconduct was determined to be intentional and while there is no conclusive documentation

outlining the degree of fault, the absence of such information does not establish a clear error or misapplication of law or regulation in the imposition of the original punishment. After weighing these factors, the Board does not find sufficient justification the applicant's grade to E-5 should be restored. 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 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-2011-03847-2 in Executive Session on 27 Feb 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 G: Record of Proceedings, w/ Exhibits A-F, dated 24 Apr 12.
Exhibit H: Application, DD Form 149, w/atchs, dated 10 & 13 May 24.
Exhibit I: Letter, SAF/MRBC, w/atch (Wilkie Memorandum), dated 7 Dec 21.

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.

5/12/2025

X Work-Product

Work-Product, AFBCMR
Signed by: Work-Product