

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXX

DOCKET NUMBER: BC-2013-01362

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider her request to upgrade her under other than honorable conditions (UOTHC) discharge. In this instance, she requests a general (under honorable conditions) discharge.

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1).

On 13 May 15, the Board considered and denied her request to change her discharge from UOTHC to a medical discharge finding the applicant had provided insufficient evidence of an error or injustice to justify relief. Additionally, while the medical consultant stated the applicant's 24 May 99 nonjudicial punishment (NJP) action appeared in part to be mitigated by sleep impairment and suggested upgrading the applicant's discharge to honorable, the applicant did not provide any evidence which led the Board to believe the characterization of her service 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 her discharge based on clemency; however, in the absence of any evidence related to her post-service activities, there was no way for the Board to determine if the applicant's accomplishments since leaving the service warranted such an action.

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 K.

On 23 Dec 22, the applicant requested reconsideration of her request to upgrade her UOTHC discharge. While she is not specifically requesting a medical discharge, the applicant is requesting access to immediate financial and medical care. She contends she has been wondering for the past 23 years what she did that was so bad that she received the UOTHC discharge, and she is ready to have this injustice investigated so she can get the medical and financial help she needs. On 28 Dec 10, after hospitalization for Myasthenia Gravis, she filed a claim for her illness, but was denied due to her discharge type. Her previous request for upgrade to the Air Force Board for Correction of Military Records was denied, so she requested her military records to prove her illness started while she was on active duty. After receiving her record, she saw lots of inconsistencies, lies, and covering up of her medical appointments. What was a cry for help was labeled as misconduct according to the service records.

The applicant provided detailed accounts of the incidents that resulted in disciplinary actions against her. She contended she received a letter of reprimand (LOR) for intentionally misrepresenting her involvement in a major incident which occurred off base, to the Services commander, the Combat Support Flight commander, and the first sergeant on 8 Jan 99, and the accusation is false. She was going to an off-base restaurant with other airmen and was still in the

parking lot when a group of people in a truck drove up, and one of the passengers tried to flirt with her. The airman she was with said, "You don't want to talk to her because she is too young for you." She, however, did not say anything while the truck sped away, then returned, and the passengers started shooting at them. The airman she was with shot back to defend them, pulled her into their car, and sped away. Just seven months prior, she had returned from the Persian Gulf war in Saudi Arabia, and she was immediately taken back to a time when sirens were blaring, and she had to grab her M-16, helmet, and take cover. She was notified by the Air Force Office of Special Investigations (AFOSI) that they needed to speak with her, and the local police department was investigating a shooting. They were going to contact her command and she was instructed not to discuss the incident with anyone.

When members of her command called her in, they told her to explain what happened. She provided the information, except for the names of those involved, and was immediately accused of lying. She was told it was her fault the incident happened, and as the higher-ranking airman, she would be receiving an LOR. She would also be restricted to base for her safety as there was a concern for threatened gang reprisal. She was never charged by the AFOSI or the local police for this incident, because she was the victim, but the accusations and the punishment stood. She did not fight the LOR because they had already made up their minds that she was the cause of the shooting. There were also inconsistencies and false information in the record, which she contests.

On 1 Apr 99, she received NJP for striking an individual in the face with her hands. The NJP included reduction in grade to airman and 30 days extra duty. While visiting a friend, the individual knocked on his door. When he answered, the individual started arguing and attempted to push her way in while he tried to keep her out. The applicant tried to intervene, and while she was standing in the doorway, the individual pulled the door with all her force and slammed the applicant's right wrist in the door jamb. As the individual tried to run away, the applicant reacted immediately and started hitting her. The applicant blacked out, but when she realized she was hitting the individual, she stopped. She did not know this individual and had never met her before this incident. The base police were called and took the applicant to the first sergeant's office. She tried to explain what happened, but the first sergeant made it seem as though she started the fight without being assaulted, when in fact, she was only defending herself and another airman. The following day, she was seen in the emergency room for a right wrist sprain from having her wrist slammed in the door. During this time, she was working in the dining facility with people of different color, origin, and ethnicity and had no trouble. Her manager kept warning her to be careful because she would not be able to protect the applicant if she were moved from under her authority. Soon after, the applicant was moved to the flight kitchen, and everything went downhill.

On 7 Apr 99, she was counseled for dereliction of duty for not completing tasks and going home without permission. However, she had been given permission to be away from her place of duty for a couple of appointments and prepare for her appeal to her NJP. When she returned to work, she was told she had been gone for five hours, which was incorrect.

On 7 May 99, she was issued an LOR for being derelict for not returning to work after dropping a friend at the hospital. She was given permission to take a sick friend to the hospital as he had no other transportation. She was asked if she would be back by 5:00 pm and she concurred. However, the hospital visit was extended, and no other transportation arrangements could be made, so the applicant returned to work between 5:30 pm and 5:45 pm. The statement in the LOR made it appear that she never returned to work when she did. The LOR also mentioned an incident where the applicant was accused of being late to work, but she had been seen at the dental clinic for wisdom tooth pain.

On 24 May 99, she was again issued NJP, with a reduction to the grade of airman basic and 15 days extra duty for failure to go to her appointed place of duty. The NJP reflected a range of dates during which time she was suffering from the flu. She was also seen at dental sick call on 15 Apr 99, and the emergency room on 12 Apr 99 and 22 Apr 99. She had to return to the emergency room on 25 Apr 99 for nausea, dizziness, hyperventilating, neuropathy in fingers and toes, and lightheadedness. On 26 Apr 99, she had oral surgery to remove teeth. With all the medications, illnesses, and insomnia, she was not functioning at a level where she could perform well. Most of the time, she did not know what she was signing and the entire [NJP] process was rushed. She did not understand and did not have time to defend herself. She was advised if she did not accept the NJP, she would receive an other than honorable discharge then go to jail.

She felt mistreated, used, and abused because no one took her medical conditions seriously and made it look like she was always missing work and used it as misconduct. It appeared they were trying to hurry up and put her out of the Air Force while she was incapacitated from being sick, working all those long days and hours, and before anything about her illnesses could be discovered.

For the last 23 years, she has struggled because of the false accusations, feeling like a failure and a bad person. Good employment was hard to find, and she has been homeless many times, been hungry, and declared disabled by Social Security. She had a myasthenic crisis which caused her lungs to collapse, and she was hospitalized for 22 days, accumulating over \$200,000 in medical bills. The best care she received was through the Veterans Administration (VA) medical center for a year. After that year, she was told she could no longer be seen due to her discharge type. She could not understand why approximately \$45,000 of her medical bills were paid by VA, but she could not be seen anymore. She believes she should be compensated for all that was taken from her financially and medically. Her goal was to do 20 years active duty service in the Air Force and then retire, but that dream was stolen from her.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) medical appointment and treatment documentation; (2) Flight Kitchen Duty Schedule; (3) character references; and (4) post-service certificates.

The applicant's complete submission is at Exhibit L.

POST-SERVICE INFORMATION

On 6 Feb 23, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 M). The applicant replied on 23 Mar 23 and provided an FBI report. According to the report, the applicant was arrested on 2 Jul 01 for possession of marijuana.

The applicant's complete response is at Exhibit N.

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense issued supplemental guidance (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 the supplemental guidance, paragraphs 6 and 7.

On 6 Feb 23, Board staff provided the applicant a copy of the clemency guidance (Exhibit M).

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.

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. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. In particular, the applicant provided evidence of continuing education post-service, receipt of her real estate license, multiple letters of support, and her FBI report reflects no criminal incidents since 2001. In accordance with paragraph 7 of the Wilkie Memo, the Board considered the applicant's age at the time of the misconduct that resulted in her administrative discharge, as well as the severity of the misconduct, length of time since discharge, and evidence of rehabilitation. While the nature and pattern of her misconduct may be attributed to youth and immaturity, the applicant's continued pursuit of training to acquire skills and attainment of employment in the field of real estate sales post-service, coupled with positive character references, are evidence of her efforts to leave the misconduct of 24 years ago

in the past. Finally, the absence of reported criminal activity in the last 20 years supports her intent to be a law-abiding member of her community. 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 APPLICANT be corrected to show on 18 Aug 99, she was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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-2013-01362 in Executive Session on 18 Jan 24:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit K: Record of Proceedings, w/ Exhibits A-J, dated 19 May 15.
- Exhibit L: Application, DD Form 149, w/atchs, dated 23 Dec 22.
- Exhibit M: Letter, SAF/MRBC (Clemency Guidance), w/atchs, 6 Feb 23.
- Exhibit N: Applicant's Response, FBI Record, 23 Mar 23.
- Exhibit O: Documentary evidence, including relevant excerpts from official records.

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.

X

Board Operations Manager, AFBCMR