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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03019

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

When he was young, he made a mistake in the military. He served his country proudly up until then, as you can see from his military record. He worked for 20 years as a machine operator until he had a stroke. He was a team leader during his time and used a lot of the skills he learned in the Air Force during his career. He has grown so much since he was that young kid.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 14 Sep 84, the Staff Judge Advocate found the discharge action legally sufficient. This document indicates 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 5-48 for a civilian conviction. The specific reason for the action was on 19 Aug 83, the applicant was convicted of assault with a deadly weapon. The jury found he personally used a firearm and inflicted great bodily harm upon the victim. The punishment consisted of six years of confinement in [State] prison.

On an unknown date, the discharge authority directed the applicant be discharged with a UOTHC service characterization. Probation and rehabilitation were considered but not offered.

On 18 Oct 84, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a UOTHC discharge with a separation code and corresponding narrative reason for separation of GKB, *Misconduct – Civilian Conviction*. He was credited with 1 year, 9 months, and 26 days of net active service this period and 3 years, 6 months, and 19 days of prior active service.

AFBCMR Docket Number BC-2023-03019

Work-Product

Work-Product

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

POST-SERVICE INFORMATION

On 19 Apr 24, 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 6 May 24 and provided an FBI report. According to the report, the applicant was arrested on 3 Sep 90 for disorderly conduct and on 20 Jul 05 for writing a fraudulent check under \$500.

The applicant's complete response is at Exhibit D.

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.

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. 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 available non-judicial relief 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 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. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, including an FBI report showing an arrest on 3 Sep 90 and 20 Jul 05, 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 sufficient evidence to show he has made a successful post-service transition. The evidence he provides lacks references that demonstrate his character, remorse for his actions, or service to the community. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness.

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-2023-03019 in Executive Session on 6 Feb 25:

Work-Product, Panel Chair, AFBCMR

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 22 Aug 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 19 Apr 24.

Exhibit D: FBI Report, dated, 6 May 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.

5/24/2025

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Board Operations Manager, AFBCMR

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AFBCMR Docket Number BC-2023-03019

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