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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03876

[REDACTED]

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

He was young and immature, fresh out of high school. He made irresponsible decisions and was reprimanded. He wishes he could go back in time and do things differently.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 3 Aug 05, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 9 Jun 03, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates on or about 3 May 03 he was derelict in the performance of his duties, in that he willfully failed to refrain from wearing civilian clothes outside of [REDACTED] Air Force Base (AFB). Also, he failed to be in his dormitory room between the hours of 2400 and 0400, as it was his duty to do. Finally, he failed to refrain from traveling outside of a 25-mile radius of [REDACTED] AFB. As a result, he received punishment under Article 15, consisting of a forfeiture of \$248.00 in pay.
- b. On 14 Apr 05, he received a Letter of Counseling (LOC) for failing to go to his scheduled appointment.

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c. On 3 May 05, he received a Letter of Reprimand (LOR), because he was observed in a relaxed position giving the impression he was sleeping on post. Furthermore, he was previously instructed to be outside of the entry control point at all times.

d. On 16 May 05, AF Form 3070, indicates on or about 23 Nov 04 he failed to obey a lawful general instruction by wrongfully using his government provided computer hardware and software to view and distribute pornography via electronic mail. As a result, he received punishment under Article 15, consisting of a forfeiture of \$728.00 in pay for 2 months, with 1 month suspended, 10 days extra duty, and a reprimand.

e. On 14 Jul 05, AF Form 366 *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates on or about 28 Jun 05, he was derelict in the performance of his duties in that he negligently failed to refrain from sleeping on duty. As a result, he received vacation action on a suspended punishment under Article 15, consisting of a forfeiture of \$150.00 in pay.

On 17 Aug 05, the Staff Judge Advocate found the discharge action legally sufficient.

On 17 Aug 05, the discharge authority directed the applicant be discharged for misconduct with a general service characterization. Probation and rehabilitation were considered but not offered.

On 19 Aug 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with two years, six months, and nine days of total active service.

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

POST-SERVICE INFORMATION

On 17 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 16 Jul 24 and provided an FBI report. According to the report, the applicant was arrested on 11 Jun 08 for criminal mischief to a vehicle and hindering apprehension. He was arrested on 6 May 10 for driving while under the influence of alcohol as a misdemeanor, and the case was closed 1 May 14. He was arrested on 28 Dec 10 for assault and criminal mischief. He was arrested on 25 Aug 11 for illegal possession of a controlled substance. He was arrested on 25 Mar 15 for reckless driving, eluding a peace officer, open container, improper storage, and drinking in a motor vehicle. The applicant also provided two personal statements showing remorse for his past behavior and stating he has undergone significant personal growth by taking steps to contribute positively to society, a letter from the Superior Court of [REDACTED] dated 27 Feb 12 stating his case should be dismissed without prejudice and closed. A letter from the Superior Court of [REDACTED] dated 2 May 14 informing the applicant his case is closed. A letter

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from the Judiciary of [REDACTED] dated 5 May 14, stating his probationary period is terminated. A letter from the Judiciary of [REDACTED] dated 21 Mar 17, stating his probationary period is terminated. A letter from the Superior Court of [REDACTED] dated 24 Mar 17 informing the applicant his probationary period had expired, and the case is closed.

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.

On 17 Apr 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

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 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).

[REDACTED]

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. Based on the available evidence of record, it appears the 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 applicant's discharge. In support of his request for an upgrade, the applicant provided an FBI report and two personal statements. The applicant admits to making some mistakes showing remorse for his actions and how he has undergone significant personal growth by taking steps to contribute positively to society. 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 Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant's personal statements indicate he has apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. No evidence was submitted to attest to his impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. In addition, the applicant has provided an FBI report indicating he has had some criminal activity since his discharge. While the incidents occurred approximately 15 years ago, and given the evidence presented, the Board does not find the applicant's submission sufficient to grant the requested relief. The applicant retains the right to request reconsideration of this decision, which could be in the form of 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. Therefore, the Board recommends against correcting the applicant's record.

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

[REDACTED]

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-2023-03876 in Executive Session on 16 Apr 25:

[REDACTED], Panel Chair
[REDACTED], Panel Member
[REDACTED], Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, dated 27 Nov 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 17 Apr 24.
- Exhibit D: Applicant's Response, w/atchs, dated 16 Jul 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.

	4/30/2025
X [REDACTED]	
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[REDACTED] Board Operations Manager, AFBCMR Signed by: USAF	