

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00129

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable, and his Narrative Reason for Separation be amended to reflect "Administrative."

APPLICANT'S CONTENTIONS

He was made aware of this process only a short time ago and was informed by multiple prior-service members the nature of a discharge (in his case) is not a life sentence and to continue to have that impact his life negatively is an injustice. Additionally, he is working to enhance his abilities and education with the intention of applying them in support of his country through a position in the Department of Homeland Security. If his request is granted, it will allow him to move forward not only in his contributions, but also his commitment to earning his redemption. The information he provided will contain more reference material with specific data. He apologizes that he has been unsuccessful in getting his medical records, as all responses being the department does not have the records requested.

He was 18-years old at the time of his enlistment into the Air Force. He was training as an aircraft loadmaster on the MC-130. He had some health issues and concerns with air sickness while completing training but managed to make it through with the help of his instructors and noncommissioned officers (NCO) on the flightline. He transferred bases to complete his specialization training. His Training Leader at the time would single him out and punish, humiliate, and ridicule him in private and in front of his colleagues. At one point, the Training Leader openly mocked the applicant after one of the Training Leader's friends and an airman in training assaulted the applicant while drunk. The friend hit the applicant in the face and cracked his sinus. The applicant's nose started bleeding down the side of his face. Another person witnessed the entire altercation, and the other airman was punished with a loss of pay. The Training Leader allowed certain airmen to drink, chew tobacco, and bully other airmen and would not correct that behavior.

During this time, the applicant's air sickness had grown worse, and he would have constant painful dry heaves for the duration of the training flight, usually 6 to 10 hours. He was not prepared to deal with the combination of continual harassment and illness that he was experiencing. He did not want to seek medical treatment only to be harassed more than he already was. The applicant had been successful in his short career up to that point and did not know how to handle the constant harassment and humiliation along with being constantly ill, and he made decisions at that point based upon fear of more of those issues. He was unable to trust his leadership and chose to lie to get away from the leadership and prevent the constant illness he was experiencing. The applicant would also indicate falsely, or state lies, to get away from standard flying duties or to avoid scrutiny during details, usually dorm cleaning or van driving to pick up other trainees. He was trying to avoid these so he would not be close to the NCO previously mentioned.

The applicant's first sergeant did everything he could to help, as much or even more than the Training Leader did to drag him down. The first sergeant had multiple counseling sessions with

the applicant, trying to motivate him to find a better path, and at one point was trying to get the applicant another opportunity through transfer to the Army. The applicant did not fully appreciate the effort at the time and did not make good choices with the opportunity provided. He will always be sorry for that, and he was lucky to have them in his leadership structure. Since that time, the applicant has made efforts to show that person no longer exists. Firstly, for his own development, he is currently attending college. Secondly, in his occupational development, he has been working as an information technology contractor.

The applicant understands he did not serve long enough to qualify for the GI Bill and other benefits. His goal is not to see what benefits he can get for free. He is submitting this request because there are opportunities in the future that will be easier or require an honorable discharge to obtain. The applicant is working to advance his career as well as find a way he can serve with distinction, maybe someday making up for his shortcomings. The facts that preceded his Article 15 and separation from the Air Force make the characterization of discharge inconsistent with the disciplinary standards at the time of discharge. He served honorably and was faced with difficult situations. The applicant was in a new environment and not being able to rely on leadership placed him at a disadvantage and a lack of experience to know what to do. His age and education were limited during that period, and he had to adjust to military service prior to being assigned with his last leadership team. The air sickness intensified during that period in conjunction with the constant harassment.

The applicant understands the gravity of his past actions and the importance of accountability. However, he believes his subsequent achievements, ethical conduct, and ongoing dedication to personal improvement demonstrate he is no longer the person defined by these youthful indiscretions. Lastly, the applicant states regardless of the Board's decision, the choices he made and lessons he learned during that time in his life will remain ingrained in his mind for the purpose of never making those decisions again.

In support of his request for clemency, the applicant provides a personal statement, excerpts from his military personnel record, certificates of achievement, an unofficial college transcript, character references, and copies of correspondence related to his requests for copies of his military records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 15 Oct 08, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The specific reasons for the action were:

- a. On 21 Mar 08, [the applicant] failed to obey orders and lied to NCOs. As a result, he received an Article 15, under the Uniform Code of Military Justice (UCMJ), dated 19 Apr 08.
- b. On 10 Jun 08, [the applicant], by failing to follow orders, violated Article 92, UCMJ. As a result, he received a Letter of Reprimand (LOR), dated 19 Jun 08.
- c. On 15 May 08, [the applicant] failed to complete security checks for Charge of Quarters duty. As a result, he received an LOR, dated 16 May 08.

d. On 18 Apr 08, [the applicant] did not show up to mandatory formation. This was a direct violation of Article 86, UCMJ. As a result, he received a Letter of Counseling (LOC), dated 24 Apr 08

e. On 26 Jan 08, [the applicant] was involved in a verbal and physical altercation involving his fellow non-prior service students. His lack of judgment caused animosity among his peers. As a result, he received an LOC, dated 1 Feb 08.

f. On 27 Nov 07, [the applicant] did not show up to mandatory formation. This was a direct violation of Article 86, UCMJ. As a result, he received an LOC, dated 27 Nov 07.

g. On 12 Oct 07, [the applicant] threatened a civilian employee of the United States Marshals Service. As a result, he received an LOC, dated 24 Oct 07.

h. On 4 Mar 08 and 5 Mar 08, [the applicant] failed to obey a direct order from an NCO by leaving his squadron without permission. As a result, he received a Letter of Admonishment, dated 6 Mar 08.

On 24 Oct 08, the Staff Judge Advocate found the discharge action legally sufficient.

On 27 Oct 08, the discharge authority directed the applicant be discharged for Minor Disciplinary Infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 3 Nov 08, the applicant received a general (under honorable conditions) discharge. His Narrative Reason for Separation is "Misconduct (Minor Infractions)", and he was credited with two years, three 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 28 Mar 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 3 May 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided copies of his resume.

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 28 Mar 24, 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 Title 10, United States Code § 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. Despite the applicant's contention that his discharge was inequitable due to being inconsistent with disciplinary standards at the time, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Further, the applicant's contentions relating to ongoing harassment and illness are unsupported by evidence, and therefore, are not persuasive. His conflicting narrative regarding leadership intervention and support is also not compelling. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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-2024-00129 in Executive Session on 8 Oct 24:

, Panel Chair
, Panel Member

, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 28 Dec 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 28 Mar 24.

Exhibit D: Applicant's Response and FBI Report, w/atchs, dated 3 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.

X

Board Operations Manager, AFBCMR