

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-00477

XXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

His general (under honorable conditions) discharge be upgraded to honorable and his narrative reason for separation be changed from "Misconduct (Minor Infractions)" to "Secretarial Authority."

### **APPLICANT'S CONTENTIONS**

Applicant's counsel provided a brief summary of the applicant's military service. His minor infractions began on 14 Mar 05 when the applicant was unable to attend two separate medical appointments. He received a Record of Individual Counseling (RIC) and a Letter of Reprimand (LOR) for the second instance. Following these, the applicant faced financial hardship and was given an RIC, an LOR, and nonjudicial punishment (NJP) for financial irresponsibility between the time period of 23 Jun 06 and when he was discharged. Furthermore, there was a misunderstanding over motorcycles and the sale of them to another airman, and the applicant was awarded another LOR. The applicant then received a DUI [Driving Under the Influence], pled no-contest, and received another LOR on 19 Jan 07. Following all of these minor infractions, the unit commander recommended the applicant be separated from the Air Force. He was separated on 29 Jun 07 with a general (under honorable conditions) discharge for misconduct (minor infractions).

Per counsel, the applicant was faced with a gross misuse of discretion from his senior leadership. For most coming to a new unit, adjustments are made and growing pains become a very normal aspect to a new environment. It is the job of unit leadership to make sure airmen do not fall behind because of a few mistakes. The applicant missed two appointments and was reprimanded accordingly. There was no need to rehabilitate and educate for this issue and it never happened again after the second missed appointment.

The error of discretion comes from a lack of care unit leadership showed for the applicant. He was reprimanded several times for being financially irresponsible and yet there is no documentation of any effort to mitigate this or educate the applicant on financial literacy. Furthermore, there seems to have been no attempt to check on the mental status or mindset of the applicant considering he had no money, was poor, and behind on every bill he had. The applicant being destitute at the time unequivocally relates to the rationale behind his continued mistakes. After being reprimanded for being financially irresponsible, the applicant attempted to sell motorcycles to pay the unpaid bills for which he was punished. After being punished instead of rehabilitated, the applicant became depressed through the neglect of his command and drove under the influence. These mistakes are directly related to the fact that the applicant was struggling financially, and leadership decided to reprimand him instead of getting the applicant the help he needed, whether it be mental health rehabilitation, financial literacy courses, or even somebody to lend a helping hand. When recommending separation, the commander noted there was no recommendation for rehabilitation because the applicant showed a disregard for Air Force standards, yet it seems the commander showed a blatant disregard for his struggling subordinate. The discharge was for misconduct (minor infractions) and many of them could have been prevented had the leadership been more

effective leaders and attempted to lift the applicant up instead of tearing him down. In this case, the applicant's chain of command made a material error of discretion regarding his discharge from the Air Force. The reasoning, misconduct through minor infractions, could have been clearly mitigated by leadership had they invested more in the eventual success of their airmen.

Although the applicant's service record does not directly stand out, he is a patriot and still continues to maintain a positive attitude and commitment to working hard. After discharge, the applicant became a communications contractor working with various clients. He then went on to work as a chemical tanker for three years where he drove vehicles across the United States. The applicant is now training as an overhead lineman apprentice where he does classroom learning and onsite training. This hard work has paid off for the applicant as he now has a credit score over 750, has become a devout Christian who donated \$8,000 in 2021 alone to his church. This church has homeless shelters and a rehabilitation farm for those in need. The applicant has taken advantage of everything his post-military life has offered, but the disdain some show toward anyone without an honorable discharge still exists. The applicant should not have to deal with the stigma that comes with a different discharge and should be eligible for benefits he earned because he still served his country proudly and willingly until the day he was separated.

The applicant has recently been dealing with injuries he suffered while in the Air Force and cannot get benefits. He still faces the stigma of not having an honorable discharge because the leadership did not use their resources to try and better the applicant. Furthermore, per counsel, the applicant has shown he is a success in his civilian life and deserves to be recognized as such for his military career.

In support of his request for clemency, the applicant provided excerpts from his administrative discharge package and a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

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 27 Jun 07, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The specific reasons for the action were:

a. [The applicant's] account with the Exchange Credit Program was overdue from 28 Feb 07 until 13 May 07 for the use of his Military Star Account. His original overdue balance was \$28.43 which increased by \$67.00 on 30 Mar 07 and by another \$67.00 on 30 Apr 07. He dishonorably failed to pay this debt until 13 May 07. As a result, [the applicant] received NJP, dated 1 Jun 07.

b. On 3 Apr 07, [the applicant's] first sergeant was notified of a returned check remitted to the base cleaners. This was the third documented occurrence of financial irresponsibility. [The applicant's] actions violated the Uniform Code of Military Justice, Article 123a, *Making, Drawing, or Uttering Check, Draft, or Order Without Sufficient Funds*. As a result, [the applicant] received an LOR, dated 4 Apr 07.

c. On or about 19 Jan 07, [the applicant] operated a motor vehicle while intoxicated [at an off-base location]. He subsequently pled no-contest to the charge and received mandatory community service and was ordered to attend DWI School, complete a DWI Screening, to attend

Victims Impact Panel, and to install the Ignition Interlock system into his vehicle. As a result, [the applicant] received an LOR, dated 15 Mar 07.

d. On or about 1 Aug 06, [the applicant] admitted to another airman that he found two motorcycles in an arroyo. He then proceeded to sell them to two different airmen not knowing if they were stolen or not. When questioned regarding this incident, [the applicant] stated the motorcycles were in his garage, but when he opened his garage door, the motorcycles were not present. As a result, [the applicant] received an LOR, dated 14 Aug 06.

e. On 19 Jun 06, [the applicant] was notified by a senior noncommissioned officer (NCO) that he failed to keep current with his bills. [The applicant] was 46 days late and \$481.37 behind on his payment obligation to City Financial Auto. Another NCO was briefed that City Financial Auto had notified the first sergeant about [the applicant's] situation because they tried to contact [the applicant] on numerous occasions and he hung up on them each time. This was [the applicant's] second instance of financial irresponsibility. On 20 Nov 05, [the applicant] also failed to pay on a STAR Card bill. As a result, [the applicant] received an RIC, dated 23 Jun 06.

f. On 15 Jun 06, [the applicant] failed to stop at a stop sign at or near Club Road and Silverberry Circle. As a result, [the applicant] received a Traffic Ticket [DD Form 1408], dated 15 Jun 06.

g. On 10 Aug 05, [the applicant] failed to report for a scheduled medical appointment at the Medical Group, at 0800 hours. [The applicant] was working a swing shift and therefore, had no excuse for missing this appointment. [The applicant] stated he was aware of the appointment and his reason for missing the appointment was that he slept in. As a result, [the applicant] received an LOR, dated 19 Aug 05.

h. On 14 Mar 05 at 0655, [the applicant] failed to report for a scheduled medical appointment at the Medical Group. [The applicant's] reason for missing the appointment was that he forgot. As a result, [the applicant] received an RIC, dated 18 Mar 05.

i. On 25 Dec 04, [the applicant] was caught speeding, 25 miles per hour (mph) in a 15 mph zone, at or near [the Air Force base]. As a result, [the applicant] received a Traffic Ticket [DD Form 1408], dated 25 Dec 04.

In an undated memorandum, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.49, for minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 29 Jun 07, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" and he was credited with 3 years and 14 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 27 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 29 Mar 24 and provided an FBI report. According to the report, the applicant was arrested on 15 Nov 07 for DUI.

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 27 Mar 24, the Board staff provided the applicant a copy of the clemency 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. 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. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, his arrest for DUI post-discharge as reflected in the FBI report provided by the applicant, and in the absence of post-service information, 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-2024-00477 in Executive Session on 14 Jan 25:

, 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 11 Oct 22.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 27 Mar 24.  
Exhibit D: FBI Report, dated, 29 Mar 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

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Board Operations Manager, AFBCMR