



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00665

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded.

APPLICANT'S CONTENTIONS

At the time of the incident in which he failed a urinalysis (UA), he was extremely embarrassed and all he wanted to do was accept his punishment and move forward. He was young and had no idea this was going to affect him the way it has, in so many situations of his life. This was almost 30 years ago, and he thinks about it almost every day, and to this day, it still follows him. He made a very bad decision but feels what the court punished him with was very extreme. He was very involved with his unit and his future in the Air Force. He always volunteered for every event, he was in the color guard, and he respected and looked up to his superiors. This destroyed him, he disappointed his unit, superiors, and family, and he let himself down.

In support of his request for a discharge upgrade, the applicant provides references and a post-service certificate of achievement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Aug 96, the convening authority published General Court-Martial Order Number [REDACTED]. The Order stated the applicant pled guilty (although under the specification it is noted he pled not guilty) and was found guilty (except for the words "amphetamine and") to one charge and one specification of wrongful use of methamphetamine between on or about 21 Jan 96 and on or about 30 Jan 96 (Article 112a). The applicant was sentenced to confinement for seven months, a reduction to the grade of airman basic, and discharge from the service with a BCD.

On 26 Mar 99 the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a BCD. His narrative reason for separation is "Court Martial" and he was credited with 5 years, 11 months, and 11 days of total active service.

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[REDACTED]

[REDACTED]

[REDACTED]

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

POST-SERVICE INFORMATION

On 9 Apr 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI), which the applicant provided on 27 Jun 24 (Exhibit D). According to the report, the applicant was arrested on 10 Oct 08 for controlled substance/narcotics and was found guilty of drug paraphernalia in a public place. Additionally, on 16 Dec 10 he was arrested for driving under the influence (DUI) and was found guilty of extreme DUI with a blood alcohol content (BAC) of .15- .020. Additionally, in support of the applicant's request for clemency, he included a narrative detailing his quality of service, the nature of his misconduct, a personal statement, and post-service information.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code (U.S.C.), Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 9 Apr 24, the Board staff provided the applicant a copy of the clarifying guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

[REDACTED]

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.

AIR FORCE EVALUATION

After a thorough review of the available documents, AF/JAJI finds no additional information has been provided by the applicant to suggest clemency in the form of a discharge upgrade is warranted. The FBI report contained in the file indicates, besides his court-martial related offense, there was an arrest on 10 Oct 08 for drug paraphernalia in a public place, for which he was found guilty and fined. He also had an arrest on 12 Dec 10 for driving under the influence, for which he was found guilty and fined. Because this application pertains to a court-martial sentence, any AFBCMR relief must only be based on clemency rather than an error or injustice per 10 U.S.C. Section 1552(f).

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 4 Oct 24 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

[REDACTED]

1. The application is timely. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency 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 limitations period established by 10 U.S.C. § 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 injustice. The Board finds no evidence the sentence of the military court was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. The Board considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense(s) committed, and the applicant's post-service conduct. While the applicant has presented some post-service evidence indicating 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. In this respect, the supporting statements provided by the applicant do not indicate 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 provided an FBI report indicating he has had some criminal activity since his discharge. While occurring 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 a personal statement, character statements, and/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 clemency.

4. The applicant has not shown that a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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-2022-00481 in Executive Session 19 Mar 25:

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

[REDACTED]

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

Exhibit A: Application, DD Form 149, w/atchs, dated 14 Feb 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 9 Apr 24.

Exhibit D: Applicant's Response, w/atchs, dated 27 Jun 24.

Exhibit E: Advisory opinion, AF/JAJI, dated 15 Aug 24.

Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 4 Oct 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.

4/7/2025

X [REDACTED]

[REDACTED]
Board Operations Manager, AFBCMR
Signed by: USAF