

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01775

XXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

His bad conduct discharge (BCD) be upgraded to an honorable discharge and his narrative reason for separation be changed from "Conviction by Court-Martial (Other Than Desertion)" to "Secretarial Authority" with corresponding separation code.

### **APPLICANT'S CONTENTIONS**

Counsel, on behalf of the applicant, presented a summary of the applicant's military service. Despite the applicant's continued success within the Air Force, his personal life and his marriage began to deteriorate. He would celebrate his personal and unit achievements with his unit, which often involved alcohol. The applicant did not realize it at the time, but his alcohol consumption was creating a void between him and his family. His marital difficulties continued to fester, and he and his first wife divorced. The applicant then married his second wife. He did not see himself as having an alcohol problem even though he was placed in a 10-day alcohol treatment program on two occasions.

While in transit to a new duty station, he was provided with cocaine and instantly knew he had a problem. The applicant requested he be taken to the nearest military hospital, where he disclosed his depression, drinking habits, and his recent cocaine use. The physician contacted the applicant's gaining unit and alerted them of the situation. Upon arrival at his new base, the applicant was immediately stripped of his clearance and was assigned dormitory cleanup duties. The applicant performed his new duties but was also introduced to another airman who was also awaiting legal action for substance abuse. The other airman introduced the applicant to other sources, which the applicant then began to seek out on his own. His use continued to drag him down until he was no longer arriving for work and was providing urine samples on a regular basis. The applicant's positive urinalysis resulted in his reduction to airman basic before being recommended for a general court-martial.

The applicant was court-martialed and pled guilty to one specification of violating Article 112a, UCMJ. He was sentenced to two years confinement, forfeiture of all pay for 24 months, and a BCD. The applicant was discharged from the Air Force on 8 Jun 90.

Counsel referenced Title 10, United States Code § 1552 (10 USC § 1552) and Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, regarding jurisdiction and timeliness. The applicant submitted the application for discharge upgrade based on clemency, in accordance with the Under Secretary of Defense for Personnel and Readiness (USD P&R) memorandum, Subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determination, dated 25 Jul 18 (Wilkie Memorandum). Per counsel, the applicant's BCD was overly severe, and the applicant has suffered a continued injustice resulting from his service characterization.

Prior to his court-martial, the applicant was an outstanding airman, leader, and mentor. Counsel provided examples in support. He participated in military-sponsored events and did not believe his drinking was a problem and was even considered to be socially accepted. This ultimately led to the applicant's relationship problems and divorce from his first wife. The applicant was introduced to cocaine upon returning to the continental United States and his military career was placed in jeopardy. The applicant realized he had an addiction and attempted to seek help through official military channels. Rather than receiving treatment, the applicant was referred to his command and reprimanded. His career continued to suffer as he succumbed to his addiction and the applicant was subsequently court-martialed.

Since his discharge, the applicant worked diligently to put his life back together. The applicant's journey to sobriety was met with numerous challenges along the way. He faced challenges upon his parole, engaging with different support groups and rehabilitation clinics, but relapsed several times. The applicant persevered and overcame his addiction, and at the time of this petition, has lived sober for 27 years. He has demonstrated his remorse for his actions, which he deeply regrets, and requests the Board views his recovery in a positive light. The applicant had established himself as a licensed insurance broker, working a variety of positions as he accepted positions of greater responsibility, and continues to earn the respect of those around him through his unparalleled dedication and attention to detail. Counsel provided an example of the applicant's community work and excerpts from a character reference in support.

The applicant has demonstrated he has rehabilitated himself from the person he was at the time of his discharge. He was always dedicated to service, but an unfortunate addiction to illicit substances prematurely ended what would have been a long, honorable career. Since his discharge, the applicant has maintained 27 years of sobriety, established himself professionally, and positively impacted his community. The applicant contends his punishment has been duly served, and requests the Board provide him with an upgraded discharge so he may receive the proper recognition for his years of honorable service.

In support of his request for a discharge upgrade, the applicant provides a personal statement, excerpts from his military human resources record, his post-service resume, a copy of his insurance provider's license and award, a character reference, a letter of appreciation, and documents related to his request for upgrade.

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 Dec 81, according to AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, the applicant was issued nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for:

- Violation of Article 108, UCMJ:

- [The applicant] did, at **Work-Product** Air Force Base (AFB), **Work-Pr...** Carolina (SC), on or about 19 Nov 81, without proper authority, willfully destroy by kicking a door, of a value of about \$126.00 military property of the United States.

The applicant was reduced to the grade of airman first class and ordered to forfeit \$150.00, but the execution of that portion of the punishment which provides for reduction to airman first class was suspended until 14 Jun 82, at which time, unless this suspension was sooner vacated, it would be remitted without further action.

On 27 Mar 89, according to AF Form 1058, *Unfavorable Information File Action*, the applicant was notified of his commander's intent to establish an Unfavorable Information File (UIF).

On 29 Mar 89, the applicant was issued a Letter of Reprimand (LOR) for on or about 6 Mar 89, submitting a urine sample that was returned on 22 Mar 89 with positive results for cocaine. On this same date, the applicant's commander notified him, via AF Form 1058, of their intent to file the LOR in the applicant's UIF.

On 31 Mar 89, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Article 86, UCMJ:

- [The applicant] did, on or about 21 Mar 89, without authority, absent himself from his organization, to wit: [unit], located at [Work-Pr...] AFB, SC, and did remain so absent until on or about 22 Mar 89.

- [The applicant] did, at [Work-Pr...] AFB, SC, on or about 23, 24, and 27 Mar 89, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: [Work-Product Work-P...].

The applicant was reduced to the grade of sergeant (E-4) with a new date of rank of 31 Mar 89.

On 1 May 89, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Article 134, UCMJ:

- [The applicant] did, at [Work-Pr...] AFB, [Work-Product Work-F Work-Product], SC from on or about 17 Mar 89 to on or about 4 Apr 89 make and utter to the [Work-Pr...] AFB Noncommissioned Officers (NCO) Club, [individual], who subsequently endorsed the check to [Work-Product] Seafood, and Safe Federal Credit Union, certain checks, in words and figures as follows, to wit: check numbers [Work-Product], respectively, made payable to the order of [Work-Pr...] AFB NCO Club, [individual], and Safe Federal Credit Union, drawn upon Central Bank of the [Work-Pr...], [Work-Product], Alabama, dated 17 Mar 89, 21 Mar 89, 31 Mar 89, 3 Apr 89, and 4 Apr 89, respectively, in the amounts of \$100.00, \$117.40, \$150.00, \$50.00, and \$100.00, signed by [applicant], for the purpose of purchasing certain things or obtaining cash, and did thereafter dishonorably fail to maintain sufficient funds in the Central Bank of the [Work-Pr...] for payment of such checks in full upon their presentment for payment.

The applicant was reduced in grade to airman first class (E-3) with a new date of rank of 1 May 89, and restricted to the limits of [Work-Pr...] AFB, SC for 60 days.

On 8 Jun 89, according to AF Form 2098, *Duty Status Change*, the applicant's duty status changed from Present for Duty to Pre-Trial Confinement, while awaiting court-martial.

On 13 Jun 89, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Articles 128 and 134, UCMJ:

- [The applicant] did, in [Work-Product], SC, on or about 4 Jun 89, assault [individual] by striking her.

- Further investigation disclosed: [The applicant], having been restricted to the limits of [Work-Pr...] AFB by a person authorized to do so, did, at [Work-Pr...] AFB, SC, on or about 4 Jun 89, break said restriction.

The applicant was reduced in grade to airman basic (E-1) with a new date of rank of 13 Jun 89, forfeited \$200.00 of pay, and was restricted to the limits of Work-Pr... AFB, SC for 60 days.

On 29 Jun 89, according to General Court-Martial Order (GCMO) Number XX, dated 8 Aug 89, the applicant was arraigned at court-martial for the following offenses:

- Charge: Article 112a. Plea: G. Finding: G.
  - Specification: On divers occasions from 20 Mar 89 to 6 Apr 89 used cocaine.
- Plea: G. Finding: G.

The applicant was sentenced to a BCD, confinement for two years, and forfeiture of \$592.00 pay per month for 24 months. The sentence was approved, and except for the BCD, was executed.

On 29 Jun 89, according to AF Form 2098, the applicant's duty status changed from Pre-Trial Confinement to Military Confinement.

On 23 Feb 90, according to AF Form 2098, the applicant's duty status changed from Military Confinement to Parole.

On 30 May 90, according to GCMO Number XX, the sentence to a BCD, confinement for two years, and forfeiture of \$592.00 pay per month for 24 months, as promulgated in GCMO Number XX, dated 8 Aug 89, has been finally affirmed. Article 71(c) having been complied with, the BCD will be executed. The sentence was adjudged on 29 Jun 89.

On 8 Jun 90, the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial (Other Than Desertion)" with separation code "JJD" [Court-Martial (Other)]. The applicant was credited with 10 years and 3 months of total active service. Dates of Lost Time During This Period: 8 Jun 89 through 8 Jun 90.

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

## **POST-SERVICE INFORMATION**

On 23 Oct 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 12 Nov 24 and provided an FBI report. According to the report, the applicant was arrested on:

- 19 Dec 90 for Use of Cocaine
- 30 May 92 for Theft of Property, First Degree (Convicted of lesser offense – Unauthorized Use of Vehicle)
- 21 Dec 03 for Failure to Appear, Domestic Violence

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 23 Oct 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.

**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.

10 USC § 1552 - *Correction of military records: claims incident thereto*

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to:

- (1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or;
- (2) action on the sentence of a court-martial for purposes of clemency.

## **AIR FORCE EVALUATION**

AF/JAJI recommends denying the application finding insufficient evidence for relief on the basis of legal error.

The applicant entered active duty in Feb or Mar 79 and served at least one honorable period of enlistment. In Jun 89, the applicant was court-martialed for using cocaine. Consistent with his conditional plea, the applicant was convicted of divers use of cocaine between 20 Mar 89 and 6 Apr 89, in violation of Article 112a, UCMJ. On 29 Jun 89, the applicant was sentenced to a BCD, confinement for two years, and forfeiture of \$592.00 pay per month for 24 months. He appealed his conviction, arguing for relief in-part due to regulations limiting UCMJ actions for those who self-identify for drug abuse.

The United States Air Force Court of Military Review issued an opinion on 15 Dec 89. Although the court recognized the applicant's self-identification for drug use, and even noted the trial judge erred in admitting one of the urinalysis tests at issue, the court ultimately upheld the court-martial's finding and sentence, denying the applicant's appeal, and denying relief. *United States v. [applicant]*. The applicant's petition for review by the United States Court of Military Appeals was subsequently denied. *United States v. [applicant]* (27 Mar 90).

The applicant notes he has maintained his sobriety and been a good citizen since his court-martial. There is a current FBI background check in his case file, showing the applicant has not been convicted of any offenses since the early 1990s. However, he did have a charge of failure to appear for what looks like a domestic violence court appearance in 2003, but there are no related convictions reflected on the FBI record.

In accordance with 10 USC § 1552(f), because the applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and sentence, the Air Force Board for Correction of Military Records can only take two types of action: (1) correction of a record to reflect an action taken by reviewing authorities under the UCMJ (e.g. convening authority clemency or appellate corrections); or (2) action on the sentence of a court-martial for purposes of clemency. The applicant provided no evidence of an error in any record of action taken by a reviewing authority of his court-martial. Therefore, the only correction for consideration is action on the applicant's court-martial sentence for purposes of clemency. The applicant's request focuses on equitable considerations, and not any alleged violations of law. AF/JAJI finds no legal errors apparent from review of the case file provided.

The complete advisory opinion is at Exhibit E.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 29 Jan 25 for comment (Exhibit F), and the applicant replied on 25 Feb 25. In his response, counsel cited an excerpt from the advisory opinion where the author found insufficient evidence to recommend relief based on legal error, leaving the applicant to request relief based on clemency grounds. In this instance, the applicant was discharged by general court-martial for a sole specification of violating Article 112a, UCMJ, for use of cocaine on divers occasions between 20 Mar 89 and 6 Apr 89. Counsel then cites the Wilkie Memorandum in support. In determining whether to grant relief based on equity, an injustice, or clemency grounds, the Board should also consider the severity of misconduct, length of time since misconduct, character and reputation of the applicant, meritorious service in government or other endeavors, job history, and character references.

Here, the applicant's discharge from the Air Force was the result of his addiction to cocaine and its continued use, which he self-reported. His court-martial was adjudicated over 35 years ago. Since that time, the applicant has taken great strides to address his addiction and has maintained his sobriety for over 27 years. The applicant provided the Board with an FBI background check to demonstrate his individual rehabilitation and clear criminal history.

The applicant's personal successes have positively influenced his career; he earned his insurance brokerage license and was recognized as New York Life Agent of the Year in 2014. His personal drive toward rehabilitation has allowed him to achieve his personal goals and positively impact others. Pursuant to the Wilkie Memorandum, the applicant clearly meets the requirements for review under clemency and now seeks to have his records amended to upgrade his discharge to reflect his years of honorable service prior to his illicit substance abuse and subsequent court-martial.

The applicant's complete response is at Exhibit G.

## **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 USC § 1552(b).

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AF/JAJI and finds no evidence the sentence of the military court was improper or that it exceeded the limitations set forth in the UCMJ. The only correction for consideration by the Board is action on the applicant's court-martial sentence for the purposes of clemency.

The Board considered the passage of time, the overall quality of the applicant's service, the seriousness of the offense committed, and the applicant's post-service conduct and criminal history. However, the Board finds no basis for clemency in the case. Therefore, the Board recommends against correcting the applicant's records.

## **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-2024-01775 in Executive Session on 5 Mar 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 1 May 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 23 Oct 24.

Exhibit D: FBI Report, dated, 12 Nov 24.

Exhibit E: Advisory Opinion, AF/JAJI, dated 27 Jan 25.

Exhibit F: Notification of Advisory, SAF/MRBC to Counsel, dated 29 Jan 25.

Exhibit G: Counsel's Response, w/atchs, dated 25 Feb 25.

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.

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Board Operations Manager, AFBCMR