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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01787

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He received a general discharge after receiving an Article 15 and failing to meet physical fitness standards. The Article 15 was related to forging the results of his fitness test. He takes complete responsibility for his actions and has grown as a person since his time in the Air Force. He has two degrees and is currently enrolled for fall 2024 to start his master's degree. Being able to access his Department of Veterans Affairs (DVA) education benefits would be incredibly valuable in completing this degree. He has accepted responsibility for his actions and the consequences of those actions. He also feels continuing his education and responsibilities are a credit to his time in the Air Force.

In support of his request for a discharge upgrade, the applicant provides college graduation certificates.

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 16 Oct 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraphs 5.49 and 5.26.6 for misconduct: minor disciplinary infractions and unsatisfactory performance: failure to meet minimum fitness standards. The specific reasons for the action were:

- a. On or about 14 Apr 05, he received a poor fitness assessment with a score of 44.60, which was his first poor fitness assessment within a twenty-four-month period.

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- b. On 19 Aug 05, a LOC was issued for receiving a poor fitness assessment with a score of 44.60, which was his second poor fitness assessment within a twenty-four-month period on or about 15 Jul 05.
- c. On or about 21 Oct 05, he received a poor fitness assessment with a score of 55.30, which was his third poor fitness assessment within a twenty-four-month period.
- d. On 23 Dec 05, a Record of Individual Counseling (RIC) was issued for failing a quality assurance follow-up inspection on a tire and brake gauge on or about 13 Dec 05.
- e. On 24 Jan 06, a LOR was issued for receiving a poor fitness assessment with a score of 55.20, which was the fourth poor fitness assessment within a twenty-four-month period on or about 13 Jan 06.
- f. On or about 10 Apr 06, he received a poor fitness assessment with a score of 40.20, which was his fifth poor assessment within a twenty-four-month period.
- g. On 28 Apr 06, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for signing official records, with the intent to deceive, to wit: fitness program scorecards, which records were false, in that he changed the abdominal measurements from 46 inches, which was known to be false, on divers occasions between on or about 12 Oct 05 to on or about 7 Apr 06. He was reduced to the grade of airman, suspended through 27 Oct 06 and sentenced to thirty-days correctional custody.
- h. On 26 Jul 06, a Letter of Reprimand (LOR) was issued for receiving a poor fitness assessment with a score of 40.20 on or about 13 Jul 06.
- i. On 9 Aug 06, a Letter of Counseling (LOC) was issued for being inside a restricted area without an area badge. In addition, he failed to follow proper protocol for checking for restricted area badges and for failing to notify his truck driver he was decertified and did not have a restricted area badge on 1 Aug 06.

On 23 Oct 06, the Staff Judge Advocate found the discharge action legally sufficient.

On 30 Oct 06, the discharge authority directed the applicant be discharged for misconduct: minor disciplinary infractions and unsatisfactory performance: failure to meet minimum fitness standards, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 2 Nov 06, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with two years, four months, and three days of total active service.

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

## POST-SERVICE INFORMATION

On 15 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 6 Nov 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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.

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).

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 fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. 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 evidence he provides lacks references that demonstrate his character, post-service rehabilitation, or service to the community. While the applicant provided some evidence showing he has apparently made a successful post-service transition, his college graduation certificates and an FBI report showing no arrests since discharge, and expressed a degree of remorse, the Board does not find the documentation sufficient to conclude the applicant's discharge should be upgraded at this time. The Board considered the applicant's post service conduct and achievements, length of time since the misconduct, his character and reputation, job history and degree of contrition; however, given the evidence presented, the Board determined relief is not warranted. Therefore, the Board recommends against correcting the applicant's record. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, 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.

## 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-2024-01787 in Executive Session on 19 Feb 25:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

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Exhibit A: Application, DD Form 149, w/atchs, dated 13 May 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request/Liberal Consideration Guidance), dated 22 Oct 24.

Exhibit D: FBI Report, dated 6 Nov 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.

2/25/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

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