



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

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-02916

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

In recent years, he has been having difficulty getting certain jobs and more recently he is being denied state licenses. He holds three state licenses which have to do with his livelihood. When he was charged, he went straight to his base legal team. After deliberation amongst themselves, they came to him and told him he would plead guilty, serve 30 days in jail and receive a general discharge. He said he was not guilty and wanted to fight the charges, but he was threatened with one year in jail, a dishonorable discharge, and a felony if he fought it in court. He could not have a felony as he carries state licenses, and he made this fact clear to his legal team. His legal team made the decision to request a discharge in lieu of trial by court-martial so as to not affect his state licenses. Now his licenses are in jeopardy of being lost. In recent years, his charges have begun showing up in records. He has been told he has pending charges. When he explains he does not have pending charges and they should search better, they tell him to prove it with his DD Form 214, *Certificate of Release or Discharge from Active Duty*, showing his character of service. Because of his discharge, they automatically assume he is guilty, and he is denied renewal of his license, and denied job opportunities.

In support of his request for a discharge upgrade, the applicant provides a personal statement, his military personnel file, an FBI criminal history report, and a character statement from his current spouse.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force senior airman (E-4).

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[REDACTED]

On 27 May 15, the applicant requested to be discharged in lieu of trial by court-martial. The applicant understood he may be discharged with a UOTHC and was aware of the adverse nature of such a discharge and the consequences thereof.

On 10 Jun 15, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, chapter 4 for misconduct: commission of a serious offense. The specific reason for the action was assault consummated by battery of his then-spouse.

On 16 Jun 15, the discharge authority approved the chapter 4 request and directed the applicant be discharged for misconduct: commission of a serious offense, with a UOTHC service characterization.

On 26 Jun 15, the applicant received a UOTHC discharge. His narrative reason for separation is "In Lieu of Trial by Court-Martial" and he was credited with two years and seven months of total active service.

On 22 Oct 15, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge. He contended the discharge was improper as he was forced into agreeing to a chapter 4 discharge in lieu of trial by court-martial and was unaware of the ramifications.

On 14 Apr 16, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process. The board noted the applicant indicated an understanding he may receive a UOTHC and was aware of the adverse nature of such a discharge on his request. It was concluded the applicant had made an informed decision and there was no inequity or impropriety which would warrant an upgrade of his discharge.

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

## **POST-SERVICE INFORMATION**

On 5 Sep 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 4 Oct 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement and character statements. In these statements, his friends and colleagues attest to his professionalism, integrity, and reliability. In his personal statement he highlights the accomplishments he achieved during his military career, the situation with his former spouse

[REDACTED]

which led to his discharge, his post-service success, and the ongoing impact his discharge continues to have on his personal life.

The applicant's complete response is at Exhibit E.

## **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.

**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.

- [REDACTED]
- 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**

AF/JAJI recommends denying the application, finding no legal error or injustice with the discharge process. Because the applicant has the burden of providing evidence in support of their allegations of an error or injustice, DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, dated 4 Oct 22, paragraph 3.4.4, the AFBCMR is bound to draw every reasonable inference from the evidence in favor of the presumption of regularity in the conduct of governmental affairs, unless there is substantial evidence to the contrary. Every reasonable inference from the evidence in this case supports the presumption of regularity. All procedural and due process requirements were complied with. There is no evidence the applicant was coerced by his defense counsel to submit a chapter 4 request or he was not apprised of the adverse nature and possible consequences of a UOTHC. He signed the chapter 4 request affirming his acknowledgement of said matters.

The complete advisory opinion is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 16 Oct 24 for comment (Exhibit F) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. 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. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant acknowledged the possibility of a UOTHC discharge and the adverse nature of this discharge characterization. Additionally, the Board finds his discharge was consistent with the substantive requirements of the discharge regulation and finds no evidence he was coerced by counsel to accept the discharge. Except for his personal statement and that of his current spouse maintaining his innocence, the applicant provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness. However, the Board does not

[REDACTED]

find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant has presented some supporting statements 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 from the applicant's friends and family indicate their admiration for the applicant and the way he has lived his life since his separation. However, these statements do not indicate he has made a significant impact in his 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. Furthermore, the applicant maintains his innocence and alleges his former spouse wrongfully accused him because they were going through a divorce. However, the Board finds the applicant does not take any responsibility for his actions nor does he show any remorse. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of additional 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.

4. The applicant has not shown 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-02916 in Executive Session on 21 May 25:

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

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

[REDACTED]

Exhibit A: Application, DD Form 149, w/atchs, dated 14 Aug 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 5 Sep 24.  
Exhibit D: Advisory Opinion, AF/JAJI, dated 26 Sep 24.  
Exhibit E: Applicant's Response, w/ FBI Report, dated 4 Oct 24  
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 16 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.

6/9/2025

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Board Operations Manager, AFBCMR  
Signed by: USAF

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