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

### RECORD OF PROCEEDINGS

**IN THE MATTER OF:****DOCKET NUMBER:** BC-2024-03496

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**COUNSEL**

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**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

1. His under other than honorable conditions (UOTHC) discharge be upgraded.
2. The narrative reason and associated separation program designator (SPD) code be changed to accurately reflect the totality of the circumstances of his service.
3. His reentry (RE) code be changed to "1."

### APPLICANT'S CONTENTIONS

He was wrongfully convicted of a heinous accusation. He is confident the Board will agree he should never have been convicted of Article 120 of the uniform code of military justice (UCMJ). His attorney failed to spot blatantly obvious problems with the court-martial; the military judge failed to take action to rectify them on his own; the prosecution was derelict in their duty to avoid a miscarriage of justice; and the top Judge Advocate General (TJAG) failed to seek further review from the Air Force court of criminal appeals (AFCCA). Multiple people let him down to his extreme detriment and the stigma associated with his conviction has continued to plague him well after his discharge. Additionally, he suffered a traumatic injury due to a 2,000 pound bomb dropping on his foot in service, and it continues to plague him today. Due to his characterization, he cannot pursue relief or disability through the Department of Veterans Affairs (DVA) for this injury.

Errors and injustices existed in his court-martial and his eventual discharge. There was no DNA evidence linking him to the Article 120 allegation, and in fact, there was DNA which exonerated him. Someone else's DNA was found inside the victim's vagina, on her underwear and on her cheek. The prosecution was derelict in their duty to investigate further to find the true perpetrator, seek justice for the victim, and avoid a false conviction. Additionally, the panel drafted a handwritten note, which contradicted its findings and signaled they did not truly believe he was guilty of Article 120. Furthermore, his counsel and the military judge were derelict in their duties to inquire further into the panel's state of mind and instruct them on reasonable mistake of fact.

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Finally, the TJAG should have sought a higher review, but instead concluded there was no need to forward the matter to the AFCCA, despite the blatant errors.

Post service, he has been a driven member of society. After discharge, he has supported his family by maintaining employment as a union sheet metal worker and has helped the less fortunate as a welcome center supervisor for a Seattle mission. Furthermore, he has steadily improved his skills and achievements and has earned a wide variety of certifications.

In support of his request for a discharge upgrade, the applicant provides a legal brief, his record of trial, medical records, a personal statement, post service certificates of achievement, and numerous character references highlighting his compassion for others and high moral character.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 30 Mar 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*, paragraph 5.50.2 for a pattern of misconduct, conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 22 Oct 02, a Letter of Reprimand (LOR) was issued for violating the instructions for being placed on quarters by attending a social gathering at the enlisted club on or about 11 Oct 02.
- b. On 16 Dec 03, a Record of Individual Counseling (RIC) was issued for operating a vehicle in a reckless manner on or about 8 Dec 03.
- c. On 19 May 04, a Letter of Counseling (LOC) was issued for violating Air Force occupational safety and health (AFOSH) standards by standing on a wheeled hand cart while straddling a toolbox on or about 13 May 04.
- d. On 4 Nov 04, an LOC was issued for failing to update a report on or about 3 Nov 04.
- e. On 15 Nov 04, an LOR was issued for failure to go at the time prescribed to his appointed place of duty on or about 8 Nov 04. Additionally, he failed to update a report and enter data into the maintenance system.
- f. On 19 Aug 05, the convening authority published General Court-Martial Order Number 24. The Order stated the applicant pled not guilty and was found guilty of one charge and one specification of raping a person, who had not attained the age of 16 years (Article 120). Additionally, he pled guilty to one charge and four specifications of dereliction of duty by

consuming alcohol while under the age of 21; providing alcohol to a person under the age of 21; failing to obtain a visitors pass; and having a guest under the age of 18 during curfew hours (Article 92). The applicant was sentenced to confinement for six months and a reduction to the grade of airman (E-2). On 3 Oct 05 the record of trial was examined by the Air Force legal services agency (AFLSA) in accordance with Article 69, and the findings and sentence were found to be supported by law.

g. On 16 Feb 06, an LOR was issued for negligently discharging a handgun in a private residence, inflicting a gunshot wound to another person's leg on or about 7 Jan 06.

On 21 Feb 06, the applicant offered an unconditional waiver, waiving his rights to a hearing before the administrative discharge board.

On 14 Apr 06, the applicant received a UOTHC discharge. His SPD code is "GKM" with the associated narrative reason for separation of "Misconduct," and his RE code is "4F" which denotes five or more days lost time during current enlistment and is not eligible to reenlist unless they receive an approved waiver. He was credited with 4 years, 4 months, and 25 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 25 Apr 25, 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 D). The applicant replied on 23 May 25 and provided an FBI report. According to the report, he was arrested on several occasions since discharge. Specifically, on 16 Jun 07 for crimes against a person; on 6 Aug 10 for failure to appear; on 30 Aug 10 for a weapon offense; on 15 Jan 11 for robbery; on 28 Jan 11 for a fugitive arrest without a warrant; on 26 Oct 14 for assault-domestic violence; and on 2 Aug 16 for assault-domestic violence and malicious mischief-domestic violence. Furthermore, a warrant was issued for his failure to register as a sex offender on 27 Jan 11. He subsequently registered as a sex offender on 5 Jul 11. The applicant also provided a legal brief explaining the charges listed on his FBI report. Counsel explains, although the report shows several arrests since discharge, there has been no law enforcement interactions since 2016. The record also appears to list only one conviction aside from the court-martial. Addressing specific charges, the robbery was a misunderstanding: he was retrieving his car from a cousin and sister so he could drive across country, but since they did not want him to go, he was locked out of their house, and he subsequently pushed the door open. The authorities were called, and it was assumed he was committing a robbery. Charges were later dropped, and his cousin also provided a statement clarifying the incident. Additionally, the fugitive arrest refers to the state of Colorado mistakenly assuming he had absconded without notifying the sex offender registry. Once it was

discovered he had registered in the state of Washington, the charges were dropped. Furthermore, as to the domestic violence charges, he held her wrists down after she threw dishes at his head during an argument. His ex-wife had an affinity for methamphetamine, which ultimately led to him gaining full custody of their son. Lastly, the weapons charge was a roommate's firearm, but law enforcement wrongfully attributed it to him. This charge was also dropped. In support of his request for clemency, counsel also addresses various factors from the Wilkie Memo.

The applicant's complete response is at Exhibit G.

#### **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.
- 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 insufficient evidence to recommend relief on the basis of a legal error. Because the applicant has the burden of providing evidence in support of their allegations of an error or injustice, the AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision for an abuse of discretion.

A rational factfinder could conclude the administrative discharge with a UOTHC was appropriate in this case under the applicable standards at the time. The appropriate procedures appear to have been followed, and the applicant was given an opportunity to contest his case through an administrative discharge board. The applicant forfeited this right to a hearing when he submitted his written unconditional waiver.

It is clear the AFBCMR has very limited actions when it comes to discharges resulting from court-martial findings; those cases can only be reviewed for clemency. This is not the case here, as the applicant's discharge did not result from his court-martial. Instead, he was discharged for a pattern of misconduct, more specifically, conduct prejudicial to good order and discipline, which included the misconduct from the court-martial in its basis. His administrative discharge package would have been strong enough to legally satisfy the standard for a UOTHC under AFI 36-3208, even without the court-martial findings being considered. In his arguments contesting the court-martial conviction, his counsel repeatedly claims the court-martial was wrongly decided, yet even if this were the case, the applicant's record contains ample evidence of misconduct to support the basis for discharge and the characterization of a UOTHC.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 25 Apr 25 for comment (Exhibit E), and the applicant replied on 23 May 25. In his response, the applicant contends, through counsel, the advisory is written in a manner which unreasonably duplicates the minor administrative actions in an effort to justify the character of service. The advisor is indisputably negative towards him, and it is misleading to list his minor transgressions during his career on multiple occasions in an effort to mask the egregious legal error in the court-martial, which are

only discussed in a footnote. Additionally, the advisor fails to provide analysis to support the recommendation and instead makes an unsupported conclusion, indicating a UOTHC is appropriate in the case under the applicable standards at the time. Lastly, the advisor is inappropriately adversarial.

The applicant's complete response is at Exhibit F.

## **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 waived his right to an administrative discharge board, which would have given him the opportunity to contest the basis for discharge. Furthermore, the applicant was discharged for a pattern of misconduct, which included the misconduct he was tried for at the general court-martial as a basis. However, the applicant's misconduct outside of the court-martial was sufficient to discharge him with a UOTHC. The Board finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has 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, 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 applicant did not provide sufficient evidence to show he has made a successful post-service transition. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision. Should the applicant provide additional 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**

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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-2024-03496 in Executive Session on 11 Jul 25

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, Panel Chair

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, Panel Member

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, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 2 Oct 24.

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

Exhibit C: Advisory Opinion, AF/JAJI, w/atchs, dated 25 Apr 25

Exhibit D: Letter, SAF/MRBC, w/atchs (Post-Service Request + Clemency Guidance), dated 25 Apr 25.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Apr 25.

Exhibit F: Applicant's Response to Advisory, 23 May 25

Exhibit G: Applicant's Response and FBI Report, 23 May 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.

7/22/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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