



Work-Product

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

**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2018-02409-3

Work-Product

**COUNSEL:** Work-Product

**HEARING REQUESTED:** YES

**APPLICANT’S REQUEST**

The Board reconsider his request for the following:

1. His under other than honorable conditions (UOTHC) discharge be upgraded to honorable or general (under honorable conditions).
2. His narrative reason for separation of “Misconduct” be changed to “Secretarial Authority” or something less derogatory.
3. His separation program designator (SPD) code be changed to reflect the new narrative reason for separation.

**RESUME OF THE CASE**

The applicant is a former Air Force airman first class (E-3).

On 10 Jun 74, the applicant was found guilty by a special court-martial for wrongful appropriation of \$721.00. He was sentenced to a reduction in grade to airman basic (E-1) (suspended) and forfeiture of \$75.00 per month for six months.

On 25 Feb 76, he was discharged in the grade of airman first class with a UOTHC discharge. He served 3 years and 17 days of active duty service.

On 7 Mar 19, the Board considered and denied his request for upgrade of his UOTHC discharge to an honorable discharge. The Board concluded the applicant’s discharge was consistent with the substantive requirements of the discharge regulation and was not unduly harsh or disproportionate to the offenses committed. The Board also found there was insufficient evidence to upgrade the discharge on the basis of clemency. The applicant provided a Federal Bureau of Investigation (FBI) report dated 14 Aug 18, which showed the applicant had no arrests since his discharge.

On 9 Sep 19, the AFBCMR denied the applicant’s request for reconsideration dated 7 May 19, finding the applicant had provided no new or relevant evidence.

For an accounting of the applicant’s requests and the rationale of the earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit H.

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On 18 Oct 22, counsel, on behalf of the applicant, requested reconsideration. He contends he has taken significant steps to turn his life around and become a productive and well-respected member of society. He has made great strides in his professional and personal life and has contributed substantially to his local community. He has volunteered countless hours in his community raising funds for special needs children. He supports local youth sports teams and veterans' organizations. He graduated from culinary school, raised a family, assisted in cleanup efforts following Hurricane Irma and has progressed up the corporate ladder in the recreation industry managing a multi-million dollar recreational vehicle company. His actions over the past four decades justify granting relief. This is his second petition to the AFBCMR for upgrade of his discharge. He has spent the last 48 years of his life trying to make amends for his foolish decisions as a young adult.

The Board in his prior case gave no consideration and failed to apply the guidance issued to it in 2018 by the Department of Defense (DoD) with respect to applications for discharge upgrades predicated upon equity, injustice or clemency as grounds for relief. The guidance states relief is generally more appropriate for nonviolent offenses and recognizes that many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct. He was found guilty of a nonviolent offense and discharged. Accordingly, the matter must be considered on its merits.

Counsel cites the following AFBCMR cases as precedent to grant the applicant's request.

a. **Work-Product**: The applicant in this case was dismissed on 6 Apr 90. He was convicted by a general court-martial on 24 Jan 90 for shoplifting a knife sharpener worth \$11.95. On 18 Dec 16, the applicant was granted a full and unconditional presidential pardon. On 16 Oct 18, the Board majority recommended the applicant's discharge be upgraded to reflect a general (under honorable conditions) discharge. The Board minority voted to upgrade the applicant's discharge to an honorable discharge. On 7 Dec 18, SAF/MRB directed the applicant's discharge be upgraded to general (under honorable conditions).

b. **Work-Product**: The applicant in this case was discharged on 24 Oct 69 with an undesirable discharge for counselings and letters of reprimand (LOR) for his performance, bearing and behavior. The applicant also admitted to marijuana use. On 30 Jun 20, the Board upgraded the applicant's discharge to an honorable discharge. The Board was persuaded the applicant developed into a productive member of society since leaving the service as evident by the character reference letters and a clean FBI record.

c. **Work-Product**: The applicant in this case was discharged on 27 Mar 91 with a bad conduct discharge (BCD). The applicant pled guilty and was found guilty by a general court-martial of conspiring with another staff sergeant (E-5) to violate a lawful general regulation. On 28 Jul 20, the Board, on the basis of clemency, upgraded his discharge to general (under honorable conditions), changed his narrative reason for separation to "Secretarial Authority" and SPD code to "JFF."

## POST-SERVICE INFORMATION

On 16 Aug 23, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide an FBI Identity History Summary Check, which would indicate whether or not he had an arrest record (Exhibit K). The applicant provided an FBI report dated 18 Sep 23. According to the report, the applicant has had no arrests since his discharge. The applicant also provided a personal statement and character statements on his behalf (Exhibit L).

## 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 16 Aug 23, Board staff provided the applicant a copy of the guidance (Exhibit K).

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.

## FINDINGS AND CONCLUSION

1. The application was timely filed.
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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on clemency and fundamental fairness (Wilkie Memo). In particular, the Board finds the

applicant's commendable 50-year post service conduct warrants upgrade of his discharge. The Board noted the applicant's FBI history shows no arrests since his court-martial and discharge. He has provided numerous letters of support from colleagues, relatives and friends. The Board also noted the applicant's long and successful career in the hospitality industry and that he has demonstrated his rehabilitation and contributions to his community. The applicant also admitted to his failings and took responsibility for his crime, a crime that was nonviolent. In view of the above, the Board Majority recommends the applicant's discharge be upgraded to general (under honorable conditions). The Board Majority did not find the evidence sufficient to warrant upgrade of his discharge to honorable at this time. However, the Board Minority recommends the applicant's UOTHC discharge be upgraded to honorable. The Board Minority finds the Board has an interest in granting an honorable discharge. The applicant was guilty of a nonviolent misdemeanor and has shown remorse and penitence. He has borne the penalty of a UOTHC discharge for almost all of his adult life (47 years). Regardless of the UOTHC discharge, he made contributions to his community in accordance with his interests and abilities and has no recent criminal record. Granting an honorable discharge to the applicant for the few years of life he has remaining will not incentivize young airmen to indulge in larceny or discredit airmen who served honorably. Clemency is an act of mercy and the applicant has met the reasonable requirement for it. Therefore, the Board recommends the applicant's records be corrected as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 9 Feb 73, he was discharged with service characterized as general (under honorable conditions), a narrative reason for separation of "Secretarial Authority" and separation code "JFF" (Secretarial Authority).

**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-2018-02409-3 in Executive Session on 14 Dec 23:

- Work-Product**, Panel Chair
- Work-Product**, Panel Member
- Work-Product**, Panel Member

A majority of the panel voted to upgrade the applicant's discharge to general (under honorable conditions). **Work-Product** voted to upgrade the applicant's discharge to honorable and did provide a minority opinion (Exhibit N). The panel considered the following:

- Exhibit H: Record of Proceedings, w/ Exhibits A-G, dated 5 Apr 19.
- Exhibit I: Application, DD Form 149, w/atchs, dated 18 Oct 22.
- Exhibit J: Documentary evidence, including relevant excerpts from official records.
- Exhibit K: Letter, SAF/MRBC, w/atchs, dated 16 Aug 23.
- Exhibit L: Applicant's Response, FBI report, dated 18 Sep 23.
- Exhibit M: Minority Report, dated 14 Dec 23.

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.

4/16/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF