



[REDACTED]

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2019-00934

COUNSEL: [REDACTED]

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He recognizes that his actions as a young airman were not in accordance with the expected behavior of service members and is truly apologetic for his actions that brought discredit upon himself and his fellow airmen. However, he has suffered the consequences of his actions for two decades. He has since become a pillar of his community and has provided numerous individuals across the country the opportunity to work for his business and provide for their families. He simply wishes to remove this stain from his military records so he can speak proudly of his military service without the twinge of dishonor and regret that befalls him whenever the topic of his Air Force service is broached.

In support of his application, he provided a resume and excerpts from his service record.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 23 Jul 98, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 1 Nov 96, the applicant received a Letter of Reprimand (LOR) for unprofessional actions, violating Article 92 of the Uniformed Code of Military Justice (UCMJ), specifically, failing to participate in physical training on designated dates and times.
- b. On 16 Jun 97, the applicant received a Letter of Counseling (LOC) for unprofessional actions, violating Article 92 of the UCMJ, specifically, departing on leave without proper authorization.
- c. On 4 Aug 97, the applicant received an LOR for unprofessional actions, violating Article 92 of the UCMJ, specifically, displaying expired automobile tags and having expired automobile insurance.

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Controlled by: SAF/MRB

Limited Dissemination Control: N/A
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- [REDACTED]
- d. On 2 Jan 98, the applicant received an LOC for illegally parking his vehicle and tearing up the lawn at the dormitory.
 - e. On 11 Mar 98, according to the AF Form 3080, *Record of Nonjudicial Punishment Proceedings*, the applicant was punished under Article 15 of the UCMJ for violating Article 86, for failure to go to his appointed place of duty on 27 Jan 98 and 10 Feb 98. He received a reduction in grade to airman (E-2) and 30 days extra duty.
 - f. On 23 Mar 98, according to the AF Form 3080, the applicant was punished under Article 15 of the UCMJ for violating Article 112a for wrongful use of marijuana on or about 17 May 97 and on or about 16 Jun 97 and for violating Article 92 for dereliction of duty for failure to keep his dorm up to cleanliness standards. He received a reduction in grade to airman basic (E-1) and 30 days extra duty (suspended).
 - g. On 15 Jul 98, according to the AF Form 3080, the applicant was punished under Article 15 of the UCMJ for violating Article 112a for wrongfully using ecstasy between on or about 1 Jan 97 and on or about 1 Mar 97, wrongfully distributing ecstasy to another airman between on or about 1 May 97 and on or about 30 Jun 97, and wrongfully using marijuana, cocaine, and lysergic acid diethylamide (LSD) between on or about 1 Feb 97 and on or about 30 Sep 97. He received 30 days extra duty.

On 20 Aug 98, the applicant received a UOTHC discharge. His narrative reason for separation is "Misconduct" and he was credited with three years, 1 month, and 2 days of total active service.

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

POST-SERVICE INFORMATION

On 13 May 21, 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 Jan 23 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. With the initial application, he also provided a resume.

The applicant's FBI Report 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

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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 13 May 21, 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.

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 Title 10, United States Code § 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, and associated narrative reason for separation, were consistent with the substantive requirements of the discharge regulation and were 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 serious nature of the repeated misconduct, and the limited post-service information provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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CERTIFICATION

Panel Chair
 , Panel Member
 , Panel Member

Exhibit A: Application, DD Form 149, w/atchs, dated 5 Mar 19.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 13 May 21.
Exhibit D: FBI Report, dated, 6 Jan 23.

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