



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01482

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

His incarceration was neither in error nor unjust. He is requesting an upgrade based on his time served on active duty during the time of the civilian arrest and incarceration. His civilian incarceration was the reason why he could not complete the required time for an honorable discharge. His tour of duty during the Work-Product conflict had an influence as to why he made a bad moral and ethical mistake.

In support of his request for a discharge upgrade, the applicant provides a personal statement, numerous post service certificates, a degree diploma, numerous character letters, and his Military Human Resources record (MHRR) related to his request for an upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 25 Nov 75, according to the Air Force Discharge Review Board (AFDRB) brief, docket FD-REDACTED, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, section C, chapter 2. The specific reason for the action was Conviction by Civil Court – Delivery of Controlled Substance-Narcotic. While in Work-Product on a temporary duty (TDY) assignment, the applicant purchased one kilo of high-grade heroin. He secreted the heroin on the aircraft and brought it back to his base in the United States with the intent to sell.

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On 16 Jan 76, according to the AFDRB brief, docket FD-REDACTED, the legal review recommended the findings be approved and to discharge the applicant with an undesirable characterization without probation and rehabilitation (P&R).

On 22 Jan 76, according to the AFDRB brief, docket FD-REDACTED, the discharge authority approved the undesirable discharge without P&R.

On 29 Jan 76, the applicant received an UOTHC discharge. His narrative reason for separation is not annotated. He was credited with 3 years, 11 months, and 22 days of total active service.

On 21 Aug 78, according to the AFDRB brief, docket FD-REDACTED, the applicant submitted a request to the AFDRB for an upgrade to his discharge. He requested an upgrade based on his belief his overall record of service justifies a higher characterization. His service record was outstanding aside from the conduct which led to his civilian conviction and discharge.

On 11 Jul 79, 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. The board further concluded the discharge should not be changed.

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

POST-SERVICE INFORMATION

On 9 Jul 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 30 Mar 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a Department of Veterans Affairs (DVA) rating decision in support of his request.

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.

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 10 U.S.C. § 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 finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Furthermore, the Board finds no evidence the applicant's time serving during the **Work-Product** conflict had any impact on his behavior, obtaining with the intent to distribute heroin, which is considered egregious misconduct.

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. The Board finds the evidence presented by the applicant does not outweigh the severity of his offense during service. Specifically, while on TDY overseas, he purchased one kilogram of high-grade heroin, which he secreted on the aircraft back to his base in the United States, with the intent to sell. 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 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-2021-01482 in Executive Session on 15 Jan 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:

- Exhibit A: Application, DD Form 149, w/atchs, dated 12 Jan 17.
- 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 9 Jul 21.
- Exhibit D: FBI Report and applicant's Response, dated, 30 Mar 24.

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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.

1/22/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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