

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02515

XXXXXXXXXX

COUNSEL: XXXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable and his narrative reason for separation be corrected to reflect Secretarial Authority.

APPLICANT'S CONTENTIONS

The Air Force Discharge Review Board (AFDRB) failed to address the issues presented in the written brief regarding the inequity of the discharge and failed to apply the Wilkie memo. Paragraph 7 of the Wilkie Memo lists 18 different "grounds, AFDRBs and BCM/NRs should consider" when evaluating applications. The application discussed 16 factors and gave the AFDRB "grounds" to grant relief based on inequity. This is why the Wilkie Memo was issued, to close the gap. The AFDRB decisional document did not address any of the 16 factors. The AFDRB's failure to address the applicant's contentions and its resulting decision was arbitrary and capricious.

In support of his request, the applicant provides a personal statement, character statements and other post service accomplishments.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

On 11 Feb 03, the applicant enlisted in the Air Force.

On 20 Jun 06, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, for Misconduct. The specific reasons for the action were:

- a. On 20 May 05, the applicant received a Letter of Reprimand (LOR) for becoming argumentative with assigned instructor and not following his commands.
- b. On 9 Jun 05, the applicant received a LOR for leaving his place of duty early without permission from instructor.
- c. On 23 Nov 05, the applicant received an Article 15 for being absent from his place of duty without authority. The applicant was also disrespectful in language and deportment towards a noncommissioned officer. As a result, the applicant was demoted to the grade of airman with a new date of rank of 23 Nov 05, forfeiture of \$692 of pay per month for 2 months and a reprimand.

- d. On 11 May 06, the applicant received an Article 15 for wrongfully using provoking and reproachful words and gestures and refusing to comply with direction. As a result, he was demoted to the grade of basic airman and given 30 extra duty days.

On 9 Jul 06, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.50 for Pattern of Misconduct, with a general (under honorable conditions) service characterization without the offer of probation and rehabilitation.

On 13 Jul 06, the applicant was discharged in the grade of airman (E-2) with service characterized as general (under honorable conditions). His narrative reason for separation is "Pattern of Misconduct." He was credited with three years, five months, and three days of total active service.

On 18 Aug 10, the applicant submitted a request to the AFDRB for an upgrade to his discharge.

On 20 Jan 12, 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.

On 7 Dec 20, the applicant submitted a request to the AFDRB for an upgrade to his discharge. On 18 May 21, the AFDRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant any changes to the discharge. The AFDRB reviewed the Wilke memo and indicated the discharge was consistent with current Air Force policy on administrative separation and concluded the negative aspects of the applicant's service outweighed the positive contributions he made during his Air Force career. Therefore, the discharge received by the applicant was deemed to be appropriate and his request was not approved. The Board recommended the applicant exercise his right to appeal the AFDRB's decision to the Air Force Board for Correction of Military Records by requesting clemency based on post-service activities and accomplishments.

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

POST-SERVICE INFORMATION

On 3 Aug 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 provided an FBI report, dated 3 Sep 21. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, character statements and proof of employment with his initial application (Exhibit A).

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 (USD P&R) issued supplemental guidance 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 the supplemental guidance, paragraphs 6 and 7.

On 3 Aug 21, the Board staff provided the applicant a copy of the clemency guidance (Exhibit C).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met 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.

Under Honorable Conditions (General). 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 airman's military record.

AIR FORCE EVALUATION

SAF/MRBP recommends denying the application. Although each specific contention in the application is not documented in the decisional document, this alone is not a basis for relief. Additionally, this does not mean the contentions were not addressed during the board's deliberation. The board did in fact review all of the applicant's contentions in his application in accordance with the factors laid out in the Wilkie Memo. As the Wilkie memo states, the board considered the factors when determining whether to grant relief on a basis of equity, injustice, or clemency. The AFDRB is limited in its ability to use clemency as a basis to upgrade discharges. The AFDRB can rely on clemency only for punitive discharges adjudged by a Special Court Martial. In this case, clemency is not a basis for relief as the member did not receive a punitive discharge. Thus, the AFDRB appropriately identified that there was nothing improper or inequitable within the discharge process, so relief could not be supported, even when considering the factors from the Wilkie memo. Although the contested decisional document in this case does not specifically enumerate all the factors of the Wilkie memo, the underlying evidence presented in both of the applicant's appeals to the AFDRB, is insufficient to conclude that relief is warranted. The applicant did not provide evidence to substantiate that the actions taken by his leadership during his discharge process were unfair or improper. The AFDRB appropriately applied the standards of equity and propriety in the review of this case. The discharge is found to be neither inequitable nor improper.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 1 Jun 22 for comment (Exhibit F), and the applicant replied on 30 Jun 22. In his response, the applicant contends that he has been working overseas to assist the United States mission by protecting and treating US personnel. While doing so, he has received a certificate of recognition for high standard of care and professionalism. The applicant requests clemency to have his service characterization upgraded to honorable and his narrative reason changed to secretarial authority in order to

improve the outcome of his medical school application and acceptance. In further support of his request, the applicant provided a character reference from a current supervisor.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. In particular, the Board notes the character reference letters attesting to his conduct post service, his educational accomplishments, and continued employment serving those injured in war zones and caring for his fellow citizens as a paramedic and in the emergency room. Moreover, the Board finds absolutely no evidence of any derogatory involvement with any civil authorities in the over 16 years since his discharge. As such, based on a totality of the evidence, the Board believes the interest of justice can best be served by upgrading his discharge to fully honorable. Accordingly, we recommend that his records be corrected to the extent indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 13 Jul 06, he was discharged with service characterized as "Honorable", with a narrative reason for separation of "Secretarial Authority", and the corresponding separation code of "JFF".

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-02515 in Executive Session on 12 Jul 22:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 17 Jun 21.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request/Clemency Guidance), dated 3 Aug 21.
Exhibit D: FBI Report, dated, 3 Sep 21.
Exhibit E: Advisory Opinion, SAF/MRBP, dated 27 May 22.
Exhibit F: Notification of Advisory, SAF/MRBC to Counsel, dated 1 Jun 22.
Exhibit G: Applicant's Response, w/atchs, dated 30 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR