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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03074

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His discharge be upgraded to honorable.
2. His narrative reason for separation of "Misconduct-Drug Abuse" be removed from his record.

APPLICANT'S CONTENTIONS

His statements concerning drug use were taken out of context. He did not admit to drug use while on active duty, his admission was to marijuana use as a teenager prior to enlistment. He was advised by counsel at the time to just admit it and take the discharge rather than fight it and end up in Leavenworth. He has an outstanding record serving the United States of America as a civilian flight crew member in the Civil Reserve Air Fleet (CRAF) program during both Gulf wars and the Bosnian conflict.

In support of his request for a discharge upgrade, the applicant provides a Certificate of Appreciation for CRAF support, copies of his Federal Aviation Administration (FAA) Flight Engineer, and Airframe and Powerplant certificates, and a Department of Defense Turbojet Flight Engineer Certificate.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Oct 82, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for the following offenses: on or about 4 Sep 82, willfully failed to comply with the requirement to wear seatbelts while operating a motor vehicle on base and on or about 4 Sep 82, failed to obey a lawful order issued by a security policeman, to park the vehicle he was driving and return to the gatehouse with his military identification card and driver's license, both in violation of the Uniform Code of Military Justice (UCMJ), Article 92. He received a reduction in grade to airman basic (E-1), suspended through

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23 Mar 83, at which time will be remitted, unless sooner vacated, and 14 days of correctional custody.

On 3 Jun 85, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct – Drug Abuse" and he was credited with three years, six months, and three days of total active service.

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

POST-SERVICE INFORMATION

On 3 Mar 22, 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. The applicant replied on 27 Dec 23 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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.

On 3 Mar 22, the Board staff provided the applicant a copy of the Clemency/Fundamental Fairness 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.

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. Based on the available evidence of record, it appears the 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 applicant's discharge. In support of his request for an upgrade, the applicant has provided an FBI report and various documents regarding his membership as a civilian flight crew member in the Civil Reserve Air Fleet (CRAF) program. The Board notes the applicant's contentions he was discharged for a misunderstanding regarding his drug use but provides no other explanation regarding his other misconduct or shows any remorse regarding such. Nevertheless, the Board contemplated the many principles included in the Wilke Memo to determine whether to grant relief based on an injustice or fundamental fairness. However, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant has presented some post-service documents indicating he has apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, he provides no character references or evidence of how his post-service actions have impacted his community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. Therefore, the Board does not find the applicant's submission sufficient to grant the requested relief. The applicant retains the right to request reconsideration of this decision. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, 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, 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

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-2021-03074 in Executive Session on 20 Nov 24:

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 Apr 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency/Fundamental Fairness Guidance), dated 3 Mar 22.
- Exhibit D: FBI Report, dated, 27 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.

12/10/2024

X

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Board Operations Manager, AFBCMR
Signed by: USAF

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