



Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03187

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His dismissal from the Air Force be upgraded to a general (under honorable conditions) discharge.

APPLICANT'S CONTENTIONS

His punitive discharge was excessive and should be upgraded based on clemency. When the minor nature of the offenses is balanced against his overall record of outstanding performance that spans 14 years of service as a doctor and officer, his request should be granted. The false accusation of rape which led to his court-martial conviction for adultery and disobeying an order by having an unauthorized guest in his room along with a sentence of dismissal from the military has left an indelible stain on his family, personality, and ability to lead a normal life. The Air Force Office of Special Investigations (AFOSI) reported the false accusation of rape to the Federal Bureau of Investigations (FBI) and it haunts him to this day. He has taken responsibility for his poor decisions and his wife has forgiven him for his indiscretion. The conviction alone will handicap his future; there is no purpose in having a punitive discharge added to the burden he already carries, particularly when it does not fairly characterize his entire Air Force service record.

Since leaving the military, he works as a critically needed physician for the Department of Corrections in Work-Prod... He and his wife are officers for the Work-Product and organize youth sailing events. He volunteers as a coach for children's Judo and is also a physician for the Work-Pro... National Olympic Committee. He began consulting for a company flying helicopters off tuna boats throughout the world ensuring the health and safety of their pilots and mechanics living aboard fishing vessels for a year at a time.

In support of his request for clemency, the applicant provides a personal statement, copies of military kudos, his military performance evaluations, his biography, and other documents related to his court-martial and clemency hearing.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS

The applicant is a former Air Force lieutenant colonel (O-5).

On 6 Nov 15, a memorandum, provided by the applicant, for a request of clemency was submitted by his defense counsel asking to set aside the findings of guilty and dispose of the charges via Article 15 proceedings, after which he would resign stating this would be a more appropriate punishment for the misconduct.

On 17 Dec 15, the convening authority published General Court-Martial Order (GCMO) Number [redacted] provided by the applicant. The Order stated the applicant pled guilty to one charge and one specification of disobeying a lawful order by having an unauthorized guest in billeting (Article 92), and one charge and one specification of adultery (Article 134). The charge of rape (Article 120) was dismissed subsequent to arraignment before entry of pleas. The applicant was sentenced to dismissal and a reprimand.

On 11 Jun 18, the convening authority published GCMO Number [redacted]. The Order stated the sentence promulgated in GCMO Number [redacted] as pertaining to dismissal and reprimand was affirmed and the Secretary of the Air Force approved the sentence and ordered the dismissal to be executed.

On 17 Aug 18, the applicant received a dismissal from the Air Force. His narrative reason for separation is "Court-Martial (Other)" and he was credited with 14 years, 1 month, and 10 days of total active service.

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

POST-SERVICE INFORMATION

On 22 Apr 22, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a 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 24 Mar 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

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force

record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 22 Apr 22, the 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.

AIR FORCE EVALUATION

AF/JAJI recommends denying the application. Based on a review of the total record available, AF/JAJI finds no grounds to grant clemency in the form of a discharge upgrade. The applicant acknowledged his guilt of the offenses for which he was charged and sentenced accordingly by a panel of members. The fact finders had the benefit of listening to the testimony of witnesses presented during the sentencing phase of the court-martial as well as the ability to review all other evidence presented by the government and defense counsel. This includes, but is not limited to, service data, evidence of aggravation, rehabilitative potential, and matters in extenuation and mitigation. Based on those fact finders, the panel of members were in the best position to determine the appropriate sentence for the applicant based on the facts and circumstances of the offenses and evidence before them. As the Air Force Court of Criminal Appeals (AFCCA) emphasized, the applicant was the flight commander on a foreign-exchange deployment. He knowingly violated his mission commander's orders not to bring guests into the hotel in which his subordinates were also staying, and his disobedience was solely to satisfy his personal desires. His disobedience became known to his subordinates and jeopardized the interests of the United States. Additionally, the applicant also received a letter of reprimand and had an unfavorable information file established for prior misconduct, specifically for creating or contributing to a hostile work environment by being absent during the duty day without taking leave, intentionally scheduling himself and selected noncommissioned officers for desirable temporary duty assignments and failing to fulfill his obligations relating to the medical provider credentialing process. No additional information has been provided by the applicant to suggest clemency in the form of a discharge upgrade is warranted.

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 6 Oct 23 for comment (Exhibit F), but has received no response.

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 not the victim of an error or injustice and concurs with the rationale of AF/JAJI. 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 provided an FBI report, a personal statement,

and a copy of his biography. The applicant states he works as a critically needed physician for the Department of Corrections in [Work-Pro...] he and his wife are officers for the [Work-Product] and organize youth sailing events; he volunteers as a coach for children's Judo; and is a physician for the [Work-Prod...] National Olympic Committee; however, he did not submit any supporting documentation to verify this.

The Board contemplated the many principles included in the Wilke Memorandum 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 claims he 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. His personal statement and biography lack supporting evidence which shows his impact in the 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.

The applicant retains the right to request reconsideration of this decision, which could be in the form of evidence pertaining to his community service/volunteer work, 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 clemency. Therefore, the Board recommends against correcting the applicant's record.

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-2021-03187 in Executive Session on 9 Jan 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:

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- Exhibit A: Application, DD Form 149, w/atchs, dated 24 Sep 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 22 Apr 22.
- Exhibit D: Applicant's Response, w/FBI report, dated 24 Mar 23.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 5 Oct 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Oct 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.

3/7/2024

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Board Operations Manager, AFBCMR
Signed by: *Work-Product*