



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00493

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His separation code and corresponding narrative reason for separation be changed to reflect JFF, *Secretarial Authority*.

APPLICANT'S CONTENTIONS

His application must be considered according to the principles and factors outlined in Sections 6 and 7 of the Wilkie Memorandum dated 25 Jul 18. While it is within the "sound discretion" of the Board to determine the "relative weight" of each principle and factor on a case-by-case basis, many, if not most, of the principles and factors of the Wilkie Memorandum overwhelmingly favor relief here. In particular, his post-discharge conduct, including rehabilitation and atonement for past misconduct, supports the requested upgrade. Furthermore, while he accepts responsibility for his past actions that occurred during military service over 20 years ago, such minor, infrequent, and nonviolent actions do not preclude relief. For these reasons, supported by facts and arguments contained in the attached memorandum and exhibits, he respectfully requests the Board upgrade his discharge characterization and replace the existing narrative reason and separation code on his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

In support of his request for a discharge upgrade, the applicant provides a personal statement from himself and his spouse, copies of his military records relevant to his case, and several character references.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

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Controlled by: SAF/MRB
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On 26 May 00, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for underage drinking. He received a reduction in grade to airman (E-2), suspended until 25 Nov 00 and 45 days of extra duty.

On 2 May 02, the convening authority published Special Court-Martial Order Number [REDACTED]. The Order stated the applicant pled not guilty but was found guilty of one charge, and two specifications of wrongfully possessing and introducing psilocin, a controlled substance commonly known as psychedelic mushrooms, on or about 21 May 01 onto an overseas military installation, [REDACTED] *Work-Product* and on or about 18 May 01 at or near [REDACTED] *Work-Product* in violation of Article 112a, Uniform Code of Military Justice. The applicant pled not guilty and was found not guilty to an additional charge of wrongful distribution of psilocin. The applicant was sentenced to confinement for 45 days, forfeiture \$550 of pay per month for three months, and a reduction to the grade of airman basic (E-1).

On 6 Jun 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 3 years, 4 months, and 17 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 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. 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 4 Aug 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a new application and brief from counsel with the same evidence presented with his original application.

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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 13 May 22, the Board staff provided the applicant a copy of the clemency guidance based on fundamental fairness (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 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.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests 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 that 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 discharge. In support of his request for an upgrade, the applicant has provided a personal statement from himself and his spouse, an FBI report with no evidence of arrests since his discharge, and three-character reference letters from his friends. He states he completed his associate degree and completed various certifications for career advancement. He also states he volunteers at his church and at his children's school along with coaching little league baseball. The Board contemplated the many principles included in the Wilkie 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

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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 supporting statements 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, the supporting statements from the applicant's friends indicate their admiration for the applicant; however, these statements do not provide 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. Additionally, in his personal statement, he shows no degree of remorse pertaining to his illicit drug possession which he continues to deny although he states he accepts full responsibility for his past behavior. Therefore, given the evidence presented and the seriousness of his misconduct, wrongfully possessing and introducing psychedelic mushrooms onto an overseas military installation, the Board determined relief is not warranted and recommends against correcting the applicant's record.

The applicant retains the right to request reconsideration of this decision, which could be in the form of 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-03018 in Executive Session on 6 Mar 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 8 Nov 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 13 May 22.

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Exhibit D: Applicant's Response, w/atchs, dated 4 Aug 22.

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.

3/13/2024

X *Work-Product*

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Board Operations Manager, AFBCMR
Signed by: USAF