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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00631

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

Her discharge was based on an isolated event, and she has been trying to get an upgrade for years. She had a relationship with another airman who subsequently married another person to which she continued to see. She let her personal life and issues interfere with her professional life. She learned a lot from her mistakes; she was young and confused and did not think about the consequences of her actions until after the damage was already done. Since being discharged, she became a single mother, worked fulltime, and went to school. She maintained a B average but left school to pursue another job in a different state. She is now working on going back to school to obtain her Bachelor's degree so she can better herself and get back on track. She regrets all the actions she took; if she could, she would reenlist and become an asset to the Air Force.

In support of her request for clemency, the applicant provides a personal statement, copies of military kudos, and numerous character reference letters.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 18 Jan 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2 for conduct prejudicial to good order and discipline. The specific reasons for the action were:

- a. On 25 Jun 02, a Letter of Counseling (LOC) was issued for being a passenger in a government vehicle that was being driven beyond distance limits for which she was briefed.

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- b. On 8 Nov 02, a LOC was issued for several dormitory infractions.
- c. On 13 Jun 05, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for having sexual relations with a married man. She received a reduction in grade to airman first class (E-3), suspended until 12 Dec 05, and forfeiture of \$400.00 pay for 2 months.
- d. On 1 Nov 05, AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, indicates the applicant violated Article 109 by wrongfully damaging private property. The applicant was reduced to the grade of airman first class (E-3) with a new date of rank (DOR) of 13 Jun 05.
- e. On 16 Nov 05, AF Form 3070, indicates the applicant received NJP, Article 15 for willfully damaging government property, wrongfully damaging private property, and assaulting another airman. She received a reduction in grade to airman (E-2), suspended until 15 May 06, and was restricted to the limits of the industrial side of base for 30 days, deferred until 21 Nov 05.
- f. On 19 Dec 05, AF Form 366, indicates the applicant violated Article 92 by failing to obey a lawful order. The applicant was reduced to the grade of airman (E-2) with a new DOR of 20 Dec 05.
- g. On 23 Dec 05, AF Form 3070, indicates the applicant received NJP, Article 15 for disobeying a lawful order and operating a vehicle in a wanton manner. She received a reduction in grade to airman basic (E-1), 14 days of extra duty and restricted to the limits of the industrial side of base for 60 days, both of which were deferred until 27 Dec 05.
- h. On 4 Jan 06, a Letter of Reprimand (LOR) was issued for failing to obey a lawful order.

On 19 Jan 06, the Chief of Adverse Actions found the discharge action legally sufficient.

On 20 Jan 06, the discharge authority directed the applicant be discharged for a pattern of misconduct prejudicial to good order and discipline, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 25 Jan 06, the applicant received a general (under honorable conditions) discharge. Her narrative reason for separation is "Misconduct" and she was credited with 4 years, 5 months, and 25 days of total active service.

On 22 Aug 06, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to her discharge.

On 6 Feb 07, 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.

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

POST-SERVICE INFORMATION

On 14 Apr 22, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she 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 2 May 22 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 (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 14 Apr 22, the Board staff provided the applicant a copy of the liberal consideration 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.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such

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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 her 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 her request for an upgrade, the applicant has provided a personal statement, an FBI report with no evidence of arrests since her discharge, and character statements. She shows remorse for her actions and states she is going back to school to obtain her degree to better herself and get her life back on track. While the applicant has presented some supporting statements indicating she 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 co-workers and friends indicate their admiration for the applicant and the way she has lived her life; however, these statements do not provide her impact in the community and if the impact is so admirable the Board could conclude an upgrade of her discharge would not constitute an injustice to those who have earned this characterization of service. 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 she was discharged. Therefore, given the evidence presented, the Board determined relief is not warranted.

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 her efforts in the community have impacted others. Should the applicant provide additional documentation pertaining to her post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of her request based on fundamental fairness. 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

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The following quorum of the Board, as defined in the Department the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00631 in Executive Session on 30 Nov 22:

Work-Product [Redacted] Panel Chair
Work-Product [Redacted], Panel Member
Work-Product [Redacted] Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 3 Feb 22.
- 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 14 Apr 22.
- Exhibit D: Applicant’s Response, w/atchs, dated 2 May 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.

9/12/2024

Work-Product [Redacted] _____
Board Operations Manager, AFBCMR
Signed by: *Work-Product* [Redacted]