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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01360

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to general.

### APPLICANT'S CONTENTIONS

His pattern of misconduct was attributable to minor offenses. Due to the noncriminal nature of his offenses, his youth and inexperience of life at the time, his characterization was unduly harsh and has been impactful to his life since. In all other aspects, he had been a good and skillful airman and an asset to his unit. Since discharge, he has conducted himself in an exemplary manner.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 10 May 91, the applicant's commander recommended the applicant be discharged from the Air Force, for Minor Disciplinary Infractions, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-46. The specific reasons for the action were:

- a. On or about 27 Jun 90, the applicant received a Letter of Counseling (LOC) for his NCO Club bill being 60 days past due.
- b. On 29 Jun 90, the applicant received a LOC for his dormitory room being in non-inspection order.
- c. On 23 Jul 90, the applicant received a LOC for his dormitory room being in an unacceptable condition.
- d. On 23 Oct 90, the applicant received a Letter of Reprimand (LOR) for his dormitory room being severely out of standards.

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- e. On 21 Dec 90, the applicant received a LOR for drinking while underage.
- f. On 29 Apr 91, the applicant received an article 15 for failing to go at the time prescribed to his appointed place of duty. As a result, he was ordered 45 days of extra duty.

On 22 May 91, the staff judge advocate found the discharge action legally sufficient.

On 14 Jun 91, the applicant's commander amended the basis of the applicant's discharge recommendation after discovering the applicant wrote approximately \$800.00 worth of bad checks just before he was due to separate. She recommended the applicant receive an under other than honorable conditions discharge, for misconduct, specifically, discreditable involvement with military or civil authorities, under the provisions of AFR 39-10, paragraph 5-47a.

On 17 Jun 91, the applicant unconditionally waived his right to a discharge board hearing and chose not to submit statements to be considered by the administrative discharge board or separation authority.

On 19 Jul 91, the Staff Judge Advocate found the discharge action and unconditional waiver of a discharge hearing board legally sufficient.

On 29 Jul 91, the discharge authority approved the applicant's unconditional waiver of an administrative discharge board hearing. The discharge authority directed the applicant be discharged under the provisions of AFR 39-10, with an UOTHC service characterization without the offer of probation and rehabilitation.

On 1 Aug 91, the applicant received an UOTHC discharge. His narrative reason for separation is "Misconduct - Pattern Discreditable Involvement with Military or Civil Authorities." He was credited with three years and six days of total active service.

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

## **POST-SERVICE INFORMATION**

On 1 Aug 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 12 May 22 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided three character statements.

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 1 Aug 22, the Board staff provided the applicant a copy of the liberal consideration 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.

## 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 such 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 majority recommends relief based on fundamental fairness. 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 and three character references. The applicant admits to making poor financial decisions however, felt his discharge characterization was unduly harsh. The Board contemplated the many principles included in the Wilkie Memorandum to determine whether to grant relief based on an injustice or fundamental fairness. Furthermore, the Board considered the applicant's post-service conduct and achievements, length of time since the misconduct and his character and reputation. The applicant has presented some supporting statements indicating he has apparently made a successful post-service transition with service to his community through homeless outreach programs as well as neighborhood clean-up projects and teaching self-defense to youths and senior citizens. Additionally, his FBI report shows no criminal activity since his discharge over 30 years ago. Given the evidence presented, the Board majority finds the applicant's post-service accomplishments sufficient to warrant a discharge upgrade. Therefore, the Board majority recommends the applicant's records be corrected as indicated below.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 1 August 1991, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

## 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-2022-01360 in Executive Session on 21 Jun 23:

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, Panel Chair

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, Panel Member

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, Panel Member

A majority of the panel voted to correct the record. Mr. Tompkins voted not to correct the record. Mr. Tompkins did not provide a minority opinion. The panel considered the following:

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- Exhibit A: Application, DD Form 149, w/atchs, dated 12 May 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 1 Aug 22.  
Exhibit D: FBI Report, dated, 23 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.

3/1/2024

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Board Operations Manager, AFBCMR

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