



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

*Work-Product*

**DOCKET NUMBER:** BC-2022-03018

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

While in the Air Force, he tested positive for marijuana through a random urinalysis test. He was not in possession or involved in any distribution; it was strictly for recreational use. This was a big mistake and he has learned his lesson. He is now a retiree after a distinguished career in the fire service. He regrets his lack of judgement in losing his military career.

In support of his request for clemency, the applicant provides copies of military kudos, numerous post-service awards and certificates of achievement, photos, and his college graduation certificate.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force airman (E-2).

On 23 Apr 84, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-49c for misconduct. The specific reasons for the action were:

a. Dated 29 Nov 83, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongful use of marijuana. He received a reduction in grade from E-4 to E-3 and forfeiture of pay of \$250 for two months. Forfeiture of pay in excess of \$175 per month and reduction in grade was suspended until 2 Jun 84.

b. Dated 14 Mar 84, AF Form 366, *Notification of Intent to Vacate Suspended Nonjudicial Punishment*, indicates the applicant violated Article 134 for wrongful use of marijuana. The applicant was reduced to the grade of E-3 with a new date of rank of 5 Jan 84 and received a forfeiture of pay of \$75 for two months.

c. Dated 14 Mar 84, AF Form 3070, indicates the applicant received NJP, Article 15 for wrongful use of marijuana. He received a reduction in grade to E-2.

On 16 May 84, the Staff Judge Advocate found the discharge action legally sufficient.

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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
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On 5 Jun 84, the discharge authority directed the applicant be discharged for drug abuse, with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 8 Jun 84, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Drug Abuse" and he was credited with one year, six months, and nine days of total active service.

On 24 Oct 91, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 16 Nov 92, 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 27 Oct 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 2 Nov 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 the supplemental guidance, paragraphs 6 and 7.

On 27 Oct 22, the Board staff provided the applicant a copy of the clemency/fundamental fairness 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 requests are technically untimely. However, it would be illogical to deny a clemency 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 recommends relief. The Board contemplated the many principles included in the Wilke Memo 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, his character and reputation, service to the community, job history and degree of contrition. Given the evidence presented, the Board finds the applicant's post-service accomplishments sufficient to warrant a discharge upgrade. Therefore, the Board 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 8 Jun 84, he was discharged with service characterized as honorable and a separation code and corresponding narrative reason for separation of JFF, *Secretarial Authority*.

**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 2 Feb 23:

<i>Work-Product</i>	Chair, AFBCMR
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 19 Jan 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 27 Oct 22.
- Exhibit D: FBI Report, dated, 2 Nov 22.

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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.

3/28/2023

*Work-Product*

Board Operations Manager, AFBCMR

Signed by: *Work-Product*

**AFBCMR Docket Number BC-1993-00750**

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