



# UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03073

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His entry level separation (ELS) be amended to an honorable discharge.

### APPLICANT'S CONTENTIONS

He was discriminated against due to sexual orientation and race. He was held back from rank promotions and other individuals with similar or worse behaviors were promoted to the next rank.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 28 Jan 99, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the Regular Air Force for a period of six years.

On 29 Jun 99, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section D, paragraph 5.22.2. The specific reasons for the action were:

- a. On 18 Jun 99, [the applicant] received a Letter of Reprimand (LOR) for failing to sign the shift change log in a timely manner on 17 Jun 99, for which he was also placed back to Phase I on that date.
- b. On 9 Jun 99, [the applicant] was counseled for sleeping in class on 27 May 99.
- c. On 8 Jun 99, [the applicant] received an LOR for violating 2nd Air Force Phase Program by driving a privately owned vehicle during duty hours, for which he was also placed back into Phase I on that date.
- d. On 11 May 99, [the applicant] was counseled for failing to update his locator card on 10 May 99.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

e. On 10 May 99, [the applicant] was issued an LOR for making derogatory comments about a Military Training Leader following a counseling session, for which he was also placed back in Phase I and assigned to the Correctional Custody Marginal Airman Program.

On 6 Jul 99, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, Chapter 5, Section D, paragraph 5.22.2, with an ELS. Probation and rehabilitation were considered, but not offered.

On 7 Jul 99, the applicant received an ELS. His narrative reason for separation is "Entry Level Performance and Conduct" and he was credited with 5 months 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 18 Jan 23, 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 7 Feb 24 and provided an FBI report. According to the report, the applicant was arrested on:

- 11 Aug 99 for (1) Forgery – 2nd Degree; and (2) False Identification Documents
- 30 Jan 02 for (1) Theft by Receiving Property Stolen in Another State; and (2) Buy, Sell, Etc. Motor Vehicle, or Part Which Serial Numbers Have Been Altered to Conceal Identity
- 26 Apr 06 for (1) Marijuana – Possess Less Than 1 oz; (2) Carrying a Concealed Weapon; and (3) Possession of Firearm or Knife During Commission of or Attempt to Commit Certain Felonies
- 19 Jan 13 for Driving While License Suspended or Revoked

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 issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 18 Jan 23, Board staff provided the applicant a copy of the clemency guidance (Exhibit C).

AFI 36-3208, dated 14 Oct 94, Chapter 1 – *General Procedures*:

1.19. *Separation Without Service Characterization*:

1.19.1. *Entry Level Separation*. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

1.19.1.1. A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or

1.19.1.2. The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty. The separation authority will forward a recommendation for an honorable characterization to HQ AFMPC/DPMARS2, 550 C Street West, Ste 11, Randolph AFB TX 78150-4713, for review and further processing. Use this characterization if the reason for separation is:

- A change in military status according to chapter 2; or
- For the convenience of the government according to chapter 3; or
- For disability according to AFI 36-2902 (formerly AFR 35-4); or
- Directed by the Secretary of the Air Force according to paragraph 1.2.

AFI 36-2502, *Airman Promotion Program*, dated 1 Jul 99, Chapter 2 – *Active Duty Airmen Promotions to Grades Amn through CMSgt*:

2.1. *Airman and A1C Promotions*:

2.1.1. An Airman Basic (AB) is eligible for promotion at 6 months TIG for promotion to Amn. An Amn is eligible for promotion to A1C at 10 months (see Table 1.3.).

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.

## AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

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 27 Jun 24 for comment (Exhibit F) but has received no response.

## FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests under fundamental fairness or clemency 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 Title 10, United States Code § 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. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The characterization of the applicant's service was in accordance with AFI 36-3208. Despite the applicant's contentions regarding discrimination based on sexual orientation and race, no evidence was presented to support these allegations. Further, the applicant was not eligible for promotion in accordance with AFI 36-2502. Additionally, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and the applicant's multiple arrests post-service, the Board finds no basis to do so. 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 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-2022-03073 in Executive Session on 12 Nov 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, dated 7 Feb 24.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

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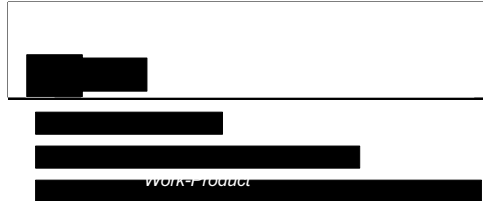
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 18 Jan 23.

Exhibit D: FBI Report, dated, 7 Feb 24.

Exhibit E: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Jun 24.

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.



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