



**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:**

**DOCKET NUMBER:** BC-2023-00080

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

Two of his co-workers were arrested for drug use after they failed a urinalysis test. When questioned, they told the police he also used drugs. He was then asked to provide a urine sample. He was not notified of the urine sample results but was placed on an administrative assignment. He contacted his congressman who was advised he had refused to provide a urine sample and that was the grounds for separation.

The discharge was unjust. There is no documentation he refused a drug test. During the time of his discharge, the Air Force was getting rid of the 70's era airmen who were using drugs. At the time, he was in the grade of staff sergeant (E-5) and was performing duties as the noncommissioned officer in charge (NCOIC) of the travel section. All of his performance reports were excellent. His commander took the word of two people who would say anything to stay in.

He is 62 years old. He has spent his life with the general discharge. He served eight years and would likely have made the military a career had he not been discharged.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force senior airman (E-4).

The Security Forces Incident/Complaint Report, dated 23 Mar 84, reflects an investigation was conducted based on information provided by a reliable source naming three subjects, to include the applicant, as users of marijuana and/or other dangerous drugs, to include cocaine. On interview, two of the subjects stated the applicant provided them with marijuana. One of the subjects also stated they witnessed the applicant inhale white powder and that he talked about using cocaine. On 7 Mar 84, the Air Force Office of Special Investigations (AFOSI) conducted tests on the seized white powder for the presence of cocaine or other drugs, which netted negative results. The applicant was interviewed on 16 Mar 84. He requested legal counsel and declined to make a statement.

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AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, dated 29 Mar 84, shows the applicant received an Article 15 for wrongfully using marijuana on or about Oct 83. The applicant was reduced to the grade of sergeant (E-4) and ordered to forfeit \$215.00. On 4 Apr 84, the applicant acknowledged the Article 15 and declined to submit matters in his own behalf or appeal the Article 15.

On 4 Apr 84, per the AF Form 418, *Selective Reenlistment/Noncommissioned Officer Status Consideration*, the applicant's NCO status was vacated due to non-duty performance resulting in an Article 15.

On 10 May 84, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reason was he used marijuana in Oct 83.

In an undated letter, the applicant acknowledged the recommendation for discharge and his right to an administrative board. He offered a conditional waiver for his right to a discharge board contingent on his receipt of no less than a general discharge.

On 14 Jun 84, the applicant's conditional waiver request for no less than a general discharge in lieu of a hearing was approved.

In a letter dated 19 Jun 84, the Congressional Inquiry Division, Office of Legislative Liaison, informed the applicant's congressman, the applicant was being discharged for drug abuse. It was reported during the course of the investigation, the applicant refused to submit a specimen. The specimen mentioned was submitted as a result of a later commander directed unit sweep and was determined to be negative. In Oct 81, the Air Force drug abuse policy was changed. Since the change, NCOs involved in drug abuse were generally not retained.

On 9 Jul 84, the acting staff judge advocate found the recommendation for discharge legally sufficient.

On 12 Jul 84, the discharge authority approved the applicant's discharge with his conditional waiver to an administrative discharge board. The applicant would be discharged with a general discharge for drug abuse. Probation and rehabilitation were considered but deemed not appropriate.

On 18 Jul 84, the applicant received an under honorable conditions discharge. His narrative reason for separation is "Misconduct-Drug Abuse," with corresponding separation code of "HKK" and his reentry code is "2B" (Separated with a general or under other than honorable conditions discharge). He was credited with 8 years of total active service.

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

**POST-SERVICE INFORMATION**

On 2 Jan 24, the Board staff 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 (Exhibit C). The applicant provided an FBI report dated 3 Feb 24. According to the report, the applicant has had no arrests since his discharge. The applicant also provided an undated personal statement, which shows his employment history from 1984 to 2022. He states he recently retired from the State University where he finished his career as the chief, information officer. His community service

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includes serving on the city council, establishing a men's homeless shelter and serving on the board of directors for the community land trust. He has been married for 29 years. He has a daughter, stepdaughter and three grandchildren and is very involved in their lives. He was young when discharged in 1984 and unaware of any help available to him.

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 2 Jan 24, the Board staff provided the applicant a copy of the 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.

**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 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. 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, the Board finds insufficient evidence to upgrade the applicant's discharge on this basis. In this respect, the

Board notes the applicant's FBI report reveals no arrest history since his discharge and he provides a compelling personal statement. However, he did not provide any evidence of corroboration of his post-service accomplishments and activities, such as character references or letters of support from employers, colleagues or family members. The character letters provided are from 1984 and prior to his discharge. On 2 Jan 24, the Board staff sent the applicant a request for post-service information and guidance outlining examples of post-service information, such as educational accomplishments, employment history, community contributions and current character references. Although the Wilkie Memorandum, paragraph 6e, states a veteran's sworn statement alone, oral or written may establish the existence of a fact supporting relief, the relative weight and whether the principles support relief are within the discretion of the Board. In this case, due to the absence of corroboration and confirmation of his post-service activities and accomplishments, other than the FBI report, the Board does not recommend granting the applicant's request for upgrade of his discharge on the basis of clemency or fundamental fairness at this time. However, the Board would be willing to reconsider the applicant's request should he provide corroborating evidence regarding his post-service accomplishments and activities. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00080 in Executive Session on 30 May 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 30 Sep 19.
- 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 2 Jan 24.
- Exhibit D: Applicant's Response, w/atchs, undated.
- Exhibit E: FBI Report, dated, 3 Feb 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.

7/19/2024

*Work-Product*

Board Operations Manager, AFBCMR  
Signed by: USAF