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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00203

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to change:

- a. Block 24, *Character of Service*, from General (Under Honorable Conditions) to Honorable.
- b. Block 26, *Separation Code*, from JHJ to a code appropriate to the upgraded discharge.
- c. Block 27, *Reenlistment Code*, from 2B to 1.
- d. Block 28, *Narrative Reason for Separation*, from Unsatisfactory Performance to Secretarial Authority.

APPLICANT'S CONTENTIONS

According to counsel, the applicant suffered from improper treatment during his career. While at Keesler Air Force Base, the applicant's Training Leader expressed dislike for the applicant and recorded every minor infraction against him. An example of this occurred during a weather emergency on base. His squadron scheduled a meeting; however, this was changed due to Tropical Storm Bertha. Tropical Storm Bertha caused the winds on base to increase, and local weather experts predicted the storm would make landfall on the base. As a result, the applicant's squadron ordered all airmen to remain in their dorms until further notice. Approximately two hours later, the applicant received a knock on his door and was informed he supposedly missed the cancelled meeting. Upon arriving at the meeting, he was greeted by his Training Leader who belittled and yelled at him, informing the applicant he would not be receiving an honorable discharge from the Air Force and would personally see to the applicant receiving an adverse discharge.

The incidents with his Training Leader did not stop there. The applicant was slated for discharge from the Air Force, and during his out-processing his Training Leader told him a person of his kind would only ever amount to flipping burgers. The applicant served in the Air Force from Aug 01 through Nov 02 until his discharge for unsatisfactory performance.

The applicant's character was under attack by the Training Leader after receiving administrative approval of an honorable discharge status and beginning his separation out-processing after his superiors conducted a thorough review of his military performance. The Training Leader privately made it known to the applicant he would personally see that he did not receive an honorable discharge which led to the Training Leader ultimately overruling the thoughtful and careful review

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of multiple command members. Halfway through the applicant's out-processing, the Training Leader used a minor misconduct incident to eventually have the applicant's discharge downgraded to a general rather than the fully honorable conditions.

On the date of this incident, there was a warning for Tropical Storm Bertha. The applicant's squadron had a meeting scheduled, but local weather experts projected landfall on the base. The dorm chief, and two other personnel knocked on his room door, and informed the applicant command had directed everyone to remain in their dorms until further notice due to the threat of the tropical storm. The applicant stayed in his room, and two hours later, he was informed he missed the same, supposedly cancelled meeting. The Training Leader yelled at and belittled him, and he was not permitted to speak or defend himself during the entire exchange. He left the office feeling attacked, cornered, and defeated.

The applicant felt he received an injustice, and no one was in his corner. Because of his command's action and abuse of discretion, he requested an upgrade for propriety purposes. The applicant had strong reasons to indicate the attack on his character was racially and immorally motivated, and the downgraded discharge was unwarranted. The Training Leader's statement that a person of the applicant's kind would only ever amount to flipping burgers provides evidence he suffered from racial animus during his service. Being a young adolescent with minimal experience or interaction with people in the real world, the Training Leader's remark and subsequent action affected the applicant in a way he did not realize for many years to come, and still affects him today.

The applicant experienced improper treatment and racial animus from his leadership. The discharge for unsatisfactory performance, especially considering the applicant's official military personnel file has no written evidence of how his performance was unsatisfactory, was in error. His command never counseled him, nor offered the applicant the opportunity for rehabilitation. Rather, he was tossed aside without any due regard.

The applicant should also receive an upgrade under the theory of material injustice. He has led a successful life since his discharge and risen above it. During his time, he demonstrated exceptional competency and never having any prior incidents to this one. Since his discharge, he has been employed and is a contributing member of society. Counsel provided examples of his post-service employment. Additionally, counsel details character letters provided in support of the applicant's request.

Finally, counsel contended the applicant's case is an example of a case in which the Wilkie Memo applies. The Department of Defense published guidance for the Board for cases deserving of second chances, such as those where an applicant exhibits positive character and rehabilitation. Assuming for the sake of argument, the applicant was in the wrong, he was a young man at the time of his discharge. Instead of allowing his discharge to define him, he has been consistently employed and sought education. These attributes are those of an applicant deserving of a records correction for actions that occurred over a decade ago. Because of this, it is respectfully requested that he receive an upgrade based on equity.

In support of his request for clemency, the applicant provides a personal statement, professional resume, and character references.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 21 Oct 02, 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 E, paragraph 5.26. and Section H, paragraph 5.49. The specific reasons for the action were:

- a. On or about 25 Mar 02, [the applicant] did not update the shift change log, as noted on AETC Form 341, *Excellence/Discrepancy Report*, dated 25 Mar 02, for which he was counseled.
- b. On or about 3 Apr 02, [the applicant] failed his Block 1 test with a score of 64 percent, minimum passing score is 70 percent, for which he was counseled.
- c. On or about 9 Apr 02, [the applicant] failed to complete his assigned homework, as noted on AETC Form 341, dated 20 Mar 02.
- d. On or about 19 Apr 02, [the applicant] reported to open ranks with a wrinkled and dirty uniform, as noted on AETC Form 341, dated 19 Apr 02, for which he was counseled.
- e. On or about 24 Apr 02, [the applicant] failed to go to a mandatory appointment without prior approval, for which he was counseled.
- f. On or about 2 May 02, [the applicant] had a security violation by leaving his room door open and no one was in the room, for which he was counseled.
- g. On or about 8 May 02, [the applicant] was a no-show for his weekend detail briefing, for which he received a Letter of Reprimand, dated 17 May 02.
- h. On 17 Jul 02, [the applicant] failed his Block 3 test with a score of 65 percent, minimum passing score is 70 percent, for which he was counseled.
- i. On or about 21 Jul 02, [the applicant] failed to follow a direct order by reporting late for curfew, then failing to report to CQ. For these infractions, he received a record of counseling, dated 30 Jul 02.
- j. On or about 20 Aug 02, [the applicant] was sleeping in class, as noted on AETC Form 341, dated 20 Aug 02.
- k. On or about 21 Aug 02, [the applicant] was a no-show for the weekend detail briefing. In addition, on 8 Aug 02, during a routine dormitory room inspection his locker was observed open. For these infractions, he received a Letter of Counseling, dated 22 Aug 02.
- l. On or about 22 Aug 02, [the applicant] failed to complete his assigned work, as noted on AETC Form 341, dated 22 Aug 02.
- m. On or about 26 Aug 02, [the applicant] was observed sleeping in class and told several times to wake up, as noted on AETC Form 341, dated 26 Aug 02.
- n. On or about 26 Aug 02, [the applicant] failed to complete RMT self-assessment, as noted on AETC Form 341, dated 26 Aug 02.

- o. On 5 Sep 02, [the applicant] failed his Block 5 test with a score of 57 percent; minimum-passing score is 70 percent, for which he was counseled.
- p. On 6 Sep 02, [the applicant] was instructed to carry his reclassification paperwork back to the Military Training Facility (MTF). He left at approximately 1000 hours but did not show up at the MTF until 1630 hours as documented in a memorandum for the record, dated 6 Sep 02. In addition, on 4 Sep 02, he was late for a detail briefing as noted on AETC Form 341.

On 21 Oct 02, the applicant acknowledged receipt of notification of discharge, waived his option to consult counsel, and waived his right to submit statements.

On 24 Oct 02, the Staff Judge Advocate found the discharge action legally sufficient.

On 4 Nov 02, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, Chapter 5, Section E, paragraph 5.26. and Section H, paragraph 5.49. with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 6 Nov 02, the applicant received a General (Under Honorable Conditions) discharge. His Narrative Reason for Separation is "Unsatisfactory Performance," Separation Code is JHJ [Unsatisfactory Performance], Reentry Code is 2B [General (Under Honorable Conditions) discharge] and he was credited with one year, two months, and seven days of total active service.

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

POST-SERVICE INFORMATION

On 12 Jul 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 17 Aug 23 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant provided a personal statement, character statements, and a copy of his professional resume with his original application.

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, 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 12 Jul 23, 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 clemency and discharge upgrade 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 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 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00203 in Executive Session on 14 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 16 Jan 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance, dated 12 Jul 23.

Exhibit D: FBI Report, dated 17 Aug 23.

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.

7/29/2024

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