



Work-Product

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

---

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01485

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

---

### APPLICANT'S REQUEST

His general under honorable conditions discharge be upgraded to honorable.

### APPLICANT'S CONTENTIONS

Since his discharge he has proven himself to be an upstanding citizen in many ways. He has maintained full time employment and progressed to owning a business while becoming well-respected in the field. Additionally, he began employment with the Postal Service in 2007 while maintaining his business. He also spent years volunteering with the Civic League and Optimist Park League as a coach. He feels he has proven himself worthy of an honorable discharge through his life actions.

In support of his request for a discharge upgrade, the applicant provides copies of employment kudos, numerous post service awards, civilian memberships, and other documents related to his request for upgrade.

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 Oct 80, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, paragraph 2-4c, for apathy and defective attitude. The specific reasons for the action were:

- a. On 27 Jun 80, a Letter of Counselling (LOC) was issued for the importance of Career Development Course training.
- b. On 1 Jul 80, a Memo for Record (MFR) was issued for failure to comply with AFR 35-10, *Dress & Personal Appearance of Air Force Personnel*.

AFBCMR Docket Number BC-2023-01485

Work-Product

Work-Product

- c. On 7 Jul 80, a LOC was issued for his failure to remain in a place where he could be contacted when assigned standby duty.
- d. On 7 Jul 80, a MFR was issued for his attitude and his desires to get out of the Air Force.
- e. On 8 Jul 80, a MFR was issued for arriving to work at 0900 hours for a 0745 shift.
- f. On 9 Jul 80, a Letter of Reprimand (LOR) was issued for dereliction in the performance of duty where he reported for duty 65 minutes late.
- g. On 15 Jul 80, he was placed on a control roster because of his continued dereliction in the performance of his duty.
- h. On 21 Aug 80, a MFR was issued for his dereliction in the performance of his duty. He reported for duty late on the 18th, 19th, 20th and 21st of Aug 80.
- i. On 27 Aug 80, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP) Article 15 for failure to go at the time prescribed to his appointed place of duty. He received a reduction in grade to airman basic (E-1), suspended until 25 Feb 81, and forfeiture of \$75.00 pay for 2 months and 7 consecutive days extra duty.
- j. On 12 Sep 80, a MFR was issued for reporting for duty needing a haircut, in violation of AFR 35- 10.
- k. On 24 Sep 80, a MFR was issued for instructing him not to take classified burn down to the Special Destruction Activity Facility (SDA). Knowing he was unauthorized; he proceeded to deliver the classified burn to the SDA.
- l. On 26 Sep 80 a LOR was issued for dereliction in the performance of his duty.
- m. On 29 Sep 80 a MFR was issued for willfully damaging the door to his barracks room.
- n. On 2 Oct 80 a MFR was issued for reporting for duty 35 minutes late.
- o. On 3 Oct 80, AF Form 366, *Notification of Intent to Vacate Suspended Nonjudicial Punishment*, indicates on or about 28 Sep 80, the applicant willfully damaged the door to his barracks, which is property of the United States, in violation of the Uniform Code of Military Justice, Article 108 (Military property of United States-Loss, damage, destruction, or wrongful disposition). The suspension of so much of the punishment as provides for the reduction to the grade of airman basic (E-1) was vacated on 3 Oct 80. His new date of rank is 29 Aug 80.
- p. On 21 Oct 80, a MFR was issued for arrived to duty 17 minutes late.
- q. On 22 Oct 80, a Civil Court found the applicant guilty of operating a motor vehicle while under the influence, and was sentenced to 30 days in county jail, 28 days suspended, and placed

on probation for one year. Restitution was ordered to be made due to condition of probation, and also condition is sentence to be served by 29 Nov 80. He was fined \$100.00 and costs, to be paid by 1 Jan 81. Appeal bond was set at \$1000.00.

On 5 Dec 80, the Staff Judge Advocate found the discharge action legally sufficient.

On 11 Dec 80, the discharge authority directed the applicant be discharged for apathy with a general service characterization. Probation and rehabilitation were considered, but not offered because all previous attempts at counseling and remotivating were ineffective.

On 16 Dec 80, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitability: Apathy - Evaluation Officer" and he was credited with 11 months and 21 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 14 Dec 23, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI), which the applicant provided on 29 Apr 24 (Exhibit D). According to the report, the applicant has had no arrests since his discharge.

## **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 14 Dec 23, the Board staff provided the applicant a copy of the clarifying 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 is timely. 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 limitations 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. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence that would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed.

Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. In support of his request for an upgrade, the applicant has provided copies of employment kudos, numerous post service awards, civilian memberships, and an FBI report with no evidence of arrests since his discharge. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness. However, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcome the numerous misconduct incidents for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcome the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. The evidence he provides does indicate he has apparently made a successful post-service transition; however, this evidence does not provide his impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service.

The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his

request based on fundamental fairness. 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-2023-01485 in Executive Session on 15 Jan 25:

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 27 Apr 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 14 Dec 23.

Exhibit D: Applicant's Response, w/atch, dated 29 Apr 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.

6/25/2025

Work-Product