

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01772

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He is requesting this change because he believes that while the mistake was his, he learned invaluable lessons from the consequences and would like to settle this for the sake of his family. He is proud of his decision to enlist in the United States Air Force and was proud to wear the uniform of a Security Forces airman. In basic military training, he graduated with honors and was the dorm chief for his flight. His time in the Security Forces school was similarly exemplary. He was simply too immature to avoid making stupid mistakes and bad decisions once he was on the job. Since his discharge in 2005, he got married (going on 13 years), completed a Bachelor of Science (2009), a Master of Science (2012), and a PhD (2022). He has been in his current position with a large company for over 10 years. Recently, he welcomed a son into the world. He would like to once again feel proud of his service and to be able to tell his son the truth if, or when, he asks if he has an honorable discharge from the Air Force.

In support of his request for clemency, the applicant provides copies of his Bachelor of Science diploma, Master of Science diploma, and PhD certificate.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 Feb 05, the applicant's commander recommended the applicant be discharged from the Air Force for Misconduct: Drug Abuse, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.54. The specific reason for the action was:

- Pursuant to an Air Force Office of Special Investigations investigation, [the applicant] confessed to investigators during the summer of 2004, he knowingly and wrongfully used marijuana, a Schedule I controlled substance, on several occasions. For these incidents, he received a Letter of Reprimand, dated 14 Dec 04.

According to an undated memorandum, the Staff Judge Advocate found the discharge action legally sufficient.

According to an undated memorandum, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.54: Drug Abuse, with a general (under honorable conditions) service characterization. Probation and rehabilitation were not authorized under AFI 36-3208, Chapter 7, paragraph 7.2.6.7.

On 4 Mar 05, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with one year, six months, and two days of total active service.

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

POST-SERVICE INFORMATION

On 20 Sep 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 6 Feb 24 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 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 20 Sep 23, the Board staff provided the applicant a copy of the clemency 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 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 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 the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on fundamental fairness. In particular, the applicant provided evidence of continuing education post-service, and his FBI report reflects no criminal incidents since discharge. In accordance with paragraph 7 of the Wilkie Memo, the Board considered the applicant's age at the time of the misconduct that resulted in his administrative discharge, as well as the severity of the misconduct, length of time since discharge, and evidence of rehabilitation. While the nature of his misconduct may be attributed to youth and immaturity, his pursuit of higher education post-service reflects his efforts to leave this misconduct in the past. Finally, the absence of any reported criminal activity since his discharge supports his intent to be a law-abiding member of his community. 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 4 Mar 05, 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-2023-01772 in Executive Session on 12 Nov 24:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 May 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 20 Sep 23.
Exhibit D: FBI Report, dated, 6 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.

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Board Operations Manager, AFBCMR