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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02780

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COUNSEL:

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HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded to honorable.

### APPLICANT'S CONTENTIONS

The discharge was back in 2002, and he has shown to be a positive member of society. He feels it is time to get this corrected. It has been over three years because he did not know this was available to him. He spoke with someone about what went on, and they instructed him to file for an upgrade of his discharge.

In support of his request for a discharge upgrade, the applicant provides numerous post service certificates of achievement.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 1 Dec 00, the convening authority published Special Court-Martial Order Number [REDACTED]. The Order stated the applicant pled guilty to one charge and two specifications of failure to go (Article 86); one charge and one specification of dereliction of duty by having a female under the age of 18 in his dorm room (Article 92); and one charge and two specifications of possession and use of marijuana (Article 112a). The applicant was sentenced to 45 days confinement, reduction to the grade of airman basic (E-1), and discharge from the service with a BCD.

On 16 May 02, the applicant received a BCD. His narrative reason for separation is "Court Martial" and he was credited with 3 years, 3 months, and 26 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

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On 26 Mar 24, 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 22 Aug 24 (Exhibit D). According to the report, the applicant was arrested on 29 Dec 08 for assault, property damage and crimes against a person; on 3 Apr 09 for felony menacing-real/simulated weapon; on 1 May 09 for driving under the influence (DUI), contempt of court, and a traffic offense; and on 31 Jul 09 for crimes against a person.

## 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 26 Mar 24, 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.

**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.

## AIR FORCE EVALUATION

AF/JAJI recommends denying the application, finding insufficient evidence has been presented to warrant clemency. The applicant claims he has shown to be a positive member of society since his discharge occurred in 2002 and feels it is time to get this corrected. The applicant attached a copy of several Americans with disabilities act (ADA) training certificates with his application. The FBI report contained in the file indicates, beside his court-martial related offense, an arrest in on 29 Dec 08 for assault and property damage which was later dismissed by the district attorney, and in 2009, charges for DUI, traffic violations and contempt of court and violating a protection order for which he was found guilty, placed on probation, and performed community service.

Because this application pertains to a court-martial sentence, any AFBCMR relief must only be based on clemency rather than an error or injustice per 10 U.S.C. Section 1552(f). After a thorough review of the available documents, the advisor concludes no additional information has been provided by the applicant to suggest clemency in the form of a discharge upgrade is warranted.

The complete advisory opinion is at Exhibit E.

## APPLICANT'S REVIEW OF EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 Oct 24 for comment (Exhibit F) but has received no response.

## 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).

**W.** 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 injustice. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds no evidence the

sentence of the military court was improper, or it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). Further, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the court-martial authority'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, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the misconduct for which he was discharged. Particularly, an FBI report shows multiple arrests as late as 2009. 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 overcame 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. Therefore, the Board recommends against correcting the applicant's records. 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.

4. The applicant has not shown that a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## 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 1, considered Docket Number BC-2022-00481 in Executive Session on 29 May 25:

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, Panel Chair

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, Panel Member

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, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 28 Jul 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 26 Mar 24.

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Exhibit D: FBI Report, dated 22 Aug 24.

Exhibit E: Advisory opinion, AF/JAJI, dated 18 Oct 24.

Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 22 Oct 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.1 9.

10/23/2025

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Associate Director, AFBCMR

Signed by: USAF

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