

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-02846

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable and his rank restored.

### APPLICANT'S CONTENTIONS

He was being harassed by the base Security Police because he went to a base lawyer and had a traffic citation overturned. The applicant believes his discharge from military service was unjust, erroneous, and warrants an upgrade to honorable with restoration of rank. The reason for the applicant's delay was because race, ethnicity, and the culture of that period would have prevented a favorable outcome, causing only further reprisal.

In support of his request for a discharge upgrade, the applicant provided a personal statement.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 23 May 79, according to AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, the applicant received nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ) for possession of marijuana. There was insufficient evidence to warrant punishment for the offense of operating a vehicle while drunk; therefore, that charge was dismissed. The applicant was reduced to the grade of airman (E-2), suspended, and ordered to forfeit \$100.00.

On 31 May 79, according to SAC Form 12, *Notification of Intent to Vacate Suspended Nonjudicial Punishment*, the applicant's previously suspended NJP was vacated for being disorderly on station on or about 26 May 79. The applicant's previously suspended reduction in grade to airman (E-2) was executed.

On 6 Jun 79, the applicant's commander recommended the applicant be discharged from the Air Force, for failure to maintain prescribed standards of military deportment, under the provisions of Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Unfitness, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section A, paragraph 2-4c. The specific reason for the action was:

- An Article 15 on 23 May 79 for violation of Article 134, UCMJ, for involvement with cannabis on or about 12 May 79, which resulted in a suspended reduction to the grade of airman (E-2) and a forfeiture of \$100.00. The suspended reduction was vacated on 31 May 79 for making provoking speeches and gestures on or about 26 May 79.

On 18 Jun 79, according to a XXX CSG/DPMQS memorandum, Subject: Appointment of Evaluation Officer, re: [applicant], an evaluation officer was appointed for the purpose of reviewing, evaluating, and submitting a recommendation on the applicant's discharge case, as prescribed by AFM 39-12, paragraph 2-7c(2). On this same date, according to an *Airman's Statement*, the applicant was advised of his rights and elected not to submit a statement or rebuttal concerning the action being taken or to the charges made.

On 20 Jun 79, according to the Evaluation Officer's memorandum (incomplete/signature page not provided), Subject: AFM 39-12 Evaluation, the evaluation officer recommended the applicant be discharged from the Air Force with a general discharge.

On 25 Jun 79, the Staff Judge Advocate found the discharge action legally sufficient.

On 3 Jul 79, the applicant received a general (under honorable conditions) discharge. He was credited with 1 year, 9 months, and 28 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 14 Mar 24, the Board staff sent the applicant a request for post-service information and advised the applicant he should 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 28 Aug 24 and provided a personal statement which included a chronological personal and professional resume, three character reference letters, and an FBI report. According to the FBI report, the applicant was arrested on 23 Feb 00 for: Charge Literal: Prostitution; Charge Description: Solicit for Prostitution.

The applicant's complete response is at Exhibit D.

## **APPLICABLE AUTHORITY/GUIDANCE**

*Manual for Courts-Martial, United States, 1969 (Revised Edition)*, Chapter XXVI – *Nonjudicial Punishment*:

### *131. Punishments.*

b. *Authorized maximum punishments.* In addition to or in lieu of admonition or reprimand, one or more of the following disciplinary punishments may, subject to the limitations of 131d, be imposed upon military personnel of their commands by the categories of commanding officers designated herein:

(2) Upon other military personnel of his command;

(a) By any commanding officer;

4. Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, or any officer subordinate to the one who imposes the reduction.

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 Mar 24, 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 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 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 not the victim of an error or injustice. The applicant's reduction in grade resulting from NJP was within the commander's authority, the applicant was afforded due process, and he accepted the NJP. 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, and the criminal history provided by the applicant, 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-2023-02846 in Executive Session on 6 Jun 25:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atch, dated 31 Jul 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 14 Mar 24.  
Exhibit D: Applicant's Response, w/atchs, dated 28 Aug 24.  
Exhibit D: FBI Report, dated 31 Jul 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