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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03038

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under honorable conditions discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

The Special Court Martial found him guilty of possession and sale of marijuana. He was advised by the Area Defense Counselor to plead guilty because a witness saw him giving a friend a joint of marijuana. The applicant believes he was entrapped so that when a known dealer in his barracks was apprehended, they could take him from confinement to parade him in front of the dealer at his General Court Martial and make the dealer think he was there to testify against him. Additionally, he did not agree to testify, nor was he asked to. The applicant believes it was designed to get him to plead guilty and he was used as a pawn for a larger case.

In support of his request for a discharge upgrade, the applicant provides post service certificates, Graduation Certificates, 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 (E-2).

On 27 Jun 80, the convening authority published Special Court-Martial Order Number [REDACTED]. The Order stated the applicant pled not guilty but was found guilty of one charge and two specifications of possession of marijuana, one specification of use of marijuana on numerous occasions, and one specification of sale of marijuana, (Article 134). The applicant was sentenced to confinement at hard labor for four months, forfeiture of \$200.00 per month for two months, and reduction to the grade of airman (E-2).

On 27 Jun 80, the convening authority published Special Court-Martial Order Number [REDACTED]. The Order stated the unexecuted portion of the sentence to confinement at hard labor for four months of Special Martial Order Number [REDACTED] dated 27 Jun 80 be remitted.

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On 5 Aug 80, the discharge authority directed the applicant be discharged for wrongful use, possession, and sale of marijuana with a general service characterization. The incidents on which the discharge action was based on was the result of a long investigation. Therefore, rehabilitation efforts were not taken prior to the results of the investigation being released.

On 21 Aug 80, the Staff Judge Advocate found the discharge action legally sufficient.

On 25 Aug 80, the applicant received an under honorable conditions discharge. His narrative reason for separation was “Misconduct – Drug Abuse – Evaluation Officer” and he was credited with 2 years, 11 months, and 9 days of total active service.

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

POST-SERVICE INFORMATION

On 29 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 29 Apr 24 (Exhibit D). According to the report, the applicant has had no arrests since his discharge. Additionally, the applicant provided a personal statement.

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 29 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.

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. Nor does the Board find any evidence the applicant was a victim of entrapment.

Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. The Board considered the applicant's post service conduct and achievements, length of time since the misconduct, his character and reputation, service to the community, job history and degree of contrition. In support of his request for an upgrade, the applicant provided post service certificates, Graduation Certificates, and an FBI report with no evidence of arrests since his discharge. However, the evidence he provides lacks references that demonstrate his character, post-service rehabilitation, and service to the community. 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, finds the post-service evidence the applicant submitted 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.

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 2.1, considered Docket Number BC-2023-03038 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 16 Aug 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 29 Mar 24.

Exhibit D: Applicant's Response, w/atchs, 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

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