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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01550

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He had a random drug test in 1983, and it was positive for cannabis, but he did not use any drug. While driving in an Air Force truck from the shop to base housing on the way to work, two other airmen smoked weed and would not roll down the window. They thought it was funny and bullied him. He never told anyone what happened. He asked to be released from the Air Force, it was not a mandatory discharge. The discharge was not that important until a few years ago. He has never done any drugs and has no record. He has worked as an aircraft mechanic for thirty-five years, has had many random drug tests, and has never tested positive. Last year, he worked for Boeing and those drug tests were also negative.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 18 Mar 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Discharge-Expiration of Enlistment or Required Service and General Provisions*, Section H, Paragraph 5-49c. The specific reasons for the action were:

- a. On 26 Jan 83, he was given a random sweep urinalysis. On 15 Feb 83, the test results were positive for cannabinoids.
- b. On 17 Feb 83, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongful use of marijuana between on or about 19 Jan 83 and 26 Jan 83. He was reduced to the grade of airman effective 24 Feb 83 and ordered to forfeit \$150.00 of pay for one month.

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- c. On 12 Oct 82, a Memorandum for Record (MFR) was issued for having his dormitory in unacceptable condition.
- d. On 25 Aug 82, an Administrative Reprimand was issued for being disrespectful to a Non-Commissioned Officer (NCO).
- e. On 9 Jul 82, a MFR was issued for missing an appointment.
- f. On 19 May 82, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received NJP, Article 15 for damaging government property. He was ordered to forfeit \$50.00 of pay for one month.
- g. On 29 Apr 82, an Administrative Reprimand was issued for violating AFR 35-10, *Dress and Appearance of Air Force Personnel*.
- h. On 7 Apr 82, an Administrative Reprimand was issued for prejudicial statements made to another military member.
- i. On 8 March 82, a Record of Individual Counseling (RIC) was issued for returning late from lunch.

On 28 Mar 83, the Staff Judge Advocate found the discharge action legally sufficient.

On 1 Apr 83, the discharge authority accepted a conditional waiver request and directed he be discharged for drug abuse with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 5 Apr 83, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received an under honorable conditions discharge. His narrative reason for separation is "Misconduct – Drug Abuse" with a reentry (RE) code of "2C" which denotes "involuntarily separated with an honorable discharge; or entry level separation without characterization of service." He was credited with 1 year, 8 months, and 15 days of total active service. It is noted an administrative correction was performed on 6 Oct 88 to reflect a characterization of "general (under honorable conditions)" with a RE code of "2B" which denotes "separated with a general or under-other-than-honorable-conditions (UOTHHC) discharge".

On 2 July 88, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge and narrative reason.

On 7 Oct 88, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 6 Dec 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 19 Mar 24 and provided an FBI report. According to the report, the applicant was arrested on 1 Oct 02 for disclosure of contents of wire/oral/electronic communication.

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 6 Dec 23, the Board staff provided the applicant a copy of the clemency/fundamental fairness 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 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. The Board finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence which 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 discharge based on fundamental fairness; however, given the evidence presented, which was an FBI report showing an arrest on 1 Oct 02, the Board finds no basis to do so. 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 applicant did not provide sufficient evidence to show he has made a successful post-service transition. The evidence he provides lacks references that demonstrate his character, remorse for his actions, or service to the community. 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 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-01550 in Executive Session on 15 Jan 25:

Work-Product	, Panel Chair
Work-Product	, Panel Member
Work-Product	, Panel Member

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

Exhibit A: Application, DD Form 149, dated 26 Apr 23.

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

Exhibit C: Letter, SAF/MRBC, (Post-Service Request and Liberal Consideration Guidance), dated 6 Dec 23.

Exhibit D: FBI Report, dated 19 Mar 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.

1/22/2025

X

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Board Operations Manager, AFBCMR
Signed by: USAF