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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02486

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded.

APPLICANT'S CONTENTIONS

He would like for himself and his wife to be able to be buried at the Department of Veterans Affairs (DVA) cemetery. He is aware he has \$20,000 in servicemen's group life insurance on his DD Form 214, *Report of Separation from Active Duty*. He had a drug problem at Work-Product Air Force Base (AFB), Work-Product over 50 years ago and has led a prominent life working for and retiring from Work-Product for the last w years. He is also still contracting with them on their projects. He admits his past and has gone to great lengths to recover from his addiction back then, including becoming a responsible member of his community.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 27 Jan 77, an AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for wrongfully possessing some amount of marijuana on or about 8 Dec 76. The applicant received a reduction to the grade of airman first class, suspended until 3 Jul 77 and forfeiture of \$50.00 of pay.

On 28 Sep 77, an AF Form 3072, *Article 15 Information Sheet*, indicates the applicant received previous NJP, Article 15 for being absent without leave (AWOL) on 7 Sep 77. He received 60 days base restriction. On that same date, an AF Form 3070 indicates the applicant received NJP, Article 15 for breaking his base restriction limits on or about 17 Sep 77. Additionally, he wrongfully possessed some amount of marijuana in hashish form on or about 17 Sep 77. He received correctional custody for 30 consecutive days, which was to run concurrently with punishment imposed upon him on 7 Sep 77, pursuant to Article 15 consisting of base restriction for a period of 60 consecutive days.

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On 3 Oct 77, the convening authority published Special Court Martial Order (SPCMO) Number [REDACTED]. The Order stated the applicant pled not guilty and was found guilty of one charge and one specification of wrongfully using amphetamines on or about 21 Jan 77 and plead not guilty and was found not guilty of a second specification of wrongfully possessing some amount of amphetamine on or about 3 Mar 77 (Article 92). The applicant was sentence to a reduction to the grade of E-1 and sentenced to a Bad Conduct Discharge (BCD). The sentence was adjudged on 26 Jul 77.

On 11 Jul 78, SPCMO Number [REDACTED], indicates the sentence to a BCD, and reduction to airman basic was affirmed. The provisions of Article 71(c) having been complied with; the sentence was duly executed.

On 13 Dec 78, the applicant received a UOTHC discharge. His narrative reason for separation is "Conviction by Court-Martial (Other Than Desertion)" and he was credited with 5 years, 4 months, and 27 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

On 20 Mar 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 20 May 24 and provided an FBI report. According to the report, the applicant was arrested on 11 Jan 79 for driving while intoxicated (DWI). Additionally, he was arrested on 7 Mar 91 for substance possession.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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.

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 completed a review of all available records and finds insufficient evidence to support the applicant's request. Available personnel records show the applicant engaged in a series of misconduct while in the Air Force. According to the DVA website, the applicant would be eligible to be buried at a DVA cemetery if he received an under honorable conditions (general) discharge. He was sentenced to a bad conduct discharge at a court-martial; however, according to the DD Form 214, he was ultimately given a UOTHC. Therefore, in essence, the applicant is requesting his service characterization be upgraded to a general discharge. After a thorough review of the

available documents, AF/JAJI concludes there is insufficient information to support clemency in the form of a discharge upgrade.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 Jul 24 for comment (Exhibit F), and the applicant replied on the same date. In his response, the applicant provided a personal statement indicating his reasons as to why he is asking for an upgrade to a general (under honorable conditions) discharge. He indicated he was born into a military family and admired the Air Force and his father's career, so he joined right out of high school. He explained his history with methamphetamines, his addiction to them, and his eventual sobriety post-service. He detailed his post-service employment success and his desire to be buried at the DVA cemetery.

The applicant's complete response is at Exhibit G.

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. Section 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 concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the available evidence of record, the Board finds 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 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 applicant's discharge. In support of his request for an upgrade, the applicant provided an FBI report showing he had two arrests post-service. He expresses remorse for his behavior and outlines his struggles with overcoming his addiction. He further goes on to explain his success in his civilian career and his support for his community but provides no further evidence of his post-service achievements. 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 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. 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. While the applicant indicates he apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement and 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 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-2023-02486 in Executive Session on 5 Mar 24:

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, dated 1 Aug 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 20 Mar 24.

Exhibit D: FBI Report, dated, 20 May 24.

Exhibit E: Advisory Opinion, AF/JAJI, dated 13 Jun 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Jul 24.

Exhibit G: Applicant's Response, w/atchs, dated 3 Jul 24.

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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.

3/7/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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