

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02711

XXXXXXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable, and his Narrative Reason for Separation be amended to reflect Secretarial Authority.

APPLICANT'S CONTENTIONS

Per applicant's counsel, he was performing his duties with exemplary remarks and had been since entering the Air Force. The applicant was young at the time of his enlistment. He admits to his wrongdoing in the instances of the criminal conduct allegations and is aware this is a violation of the Air Force's zero tolerance policy. The applicant is remorseful for his involvement in his misconduct during his Air Force career and now realizes his actions were immature and irresponsible. He has grown incredibly since the occurrence of these acts and has exhibited multiple forms of rehabilitation.

Although the applicant's acts of indiscretion were found to violate the Uniform Code of Military Justice regulations, these offenses should not be enough to prevent the applicant from obtaining an honorable discharge. He confessed to his mistake and given the opportunity, would have corrected his mistake and continued to serve honorably. The applicant's discharge took place over 17 years ago. It is unjust to continue to characterize and punish him for his discharge. He admitted his mistakes and received full punishment, both by society and by the Air Force, through his separation. The applicant has repaid his debts to society by fulfilling the terms of the nonjudicial punishment for his infraction. To this day, he is still living with the consequences of his mistake.

The applicant has demonstrated his ability to overcome his mistakes and move forward in a positive light. He takes full responsibility for his actions from that incident as this single incident does not illustrate the caliber of airman or man he has become. Since his discharge, the applicant wants to continue his career to further his life goals and knowledge. He has developed himself as a model citizen of the United States. He has no criminal record, no involvement in drugs, no type of alcohol abuse, or any run-ins with the law since his discharge. Had the applicant been allowed to correct his mistake, a strong argument could be made that no punitive discharge would have been issued.

The applicant's goals are to continue his happy home life and professional career. He has focused on his home, athletics, and professional life. He has been involved with raising his children, running, and being an investment professional. The applicant has a great support system in place today that includes a loving wife and happy children.

In consideration of the whole person concept, it is instructive to not only look at the recommendations of those who have witnessed his character and work performance first-hand but also to see what his life is outside the reasons for his discharge. He has worked very hard throughout his life. He understands his obligations and his long-term work ethic and dedication to serving his country are evidence of this.

As a financial advisor, coach, and financial consultant, the applicant prides himself on delivering great value to clients. He is organized, resourceful, ambitious, proactive, and highly adaptable to keeping multiple priorities in mind while aiming for the financial growth of his clients. His competence in the field stems from his Bachelor of Science in Global Management and 16 years of experience in the finance industry. As a result of his unprecedented work and contribution in the sector, the applicant has received the Field Licensing Coach of the year award from his employer and earned a place as a panelist at a conference where he addressed agriculture and farming questions on taxes, finances, and investments.

The reasons for discharge against the applicant do not define who he is as a person, nor do they accurately represent the strong values he has continuously lived by. The aforementioned reasons for discharge are not a threat to the United States military, nor do such reasons reflect negatively on the Air Force; therefore, the applicant respectfully requests his military discharge be upgraded. Although the applicant is still serving his country the best way possible, he has goals to advance and exceed at his job but cannot do so because of his undesirable discharge. There is no prejudice to the government allowing the applicant to be reevaluated and reconsidered by this Board. In the interest of justice, such a request for reconsideration is appropriate and warranted. The applicant was not given a reasonable opportunity to mitigate or correct his mistake/behavior, instead he was administratively separated.

In support of his request for clemency, the applicant provides copies of military kudos and certificates, a certificate of ordination as a minister, personal photographs, 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 29 Dec 04, according to Appendix A to Offer for Pretrial Agreement, the applicant agreed to plead guilty and waive his right to a hearing before an administrative discharge board in the event an administrative separation is initiated, and in consideration the Convening Authority would not approve a Bad Conduct discharge, if adjudged, and not approve confinement in excess of five months, if confinement is adjudged.

On 4 Jan 05, according to Special Court-Martial Order Number XX, dated 2 Feb 05, the applicant was arraigned at a court-martial for the following offenses:

- Charge I: Article 121. Plea: G. Finding: G.

- Specification 1: [The applicant] did, at or near Minot Air Force Base (AFB), North Dakota (ND), between on or about 15 Jul 04 to on or about 13 Sep 04, steal one M-9 pistol, military property, of a value of about \$497.00, the property of the United States Air Force. Plea: G. Finding: G.

- Specification 2: [The applicant] did, at or near Minot AFB, ND, between on or about 27 Nov 04 to on or about 3 Dec 04, steal a Wells Fargo check card and use said card, on divers occasions, between on or about 27 Nov 04 to on or about 13 Dec 04, to charge goods and/or services, of a value of about \$248.00, the property of [another airman]. Plea: G. Finding: G.

- Charge II: Article 92. Plea: G. Finding: G.

- Specification: [The applicant] who knew of his duties at or near Minot AFB, ND, on divers occasions, between on or about 27 Nov 04 to on or about 14 Dec 04, was derelict in the performance of those duties in that he willfully failed to refrain from using his Bank of America government travel card while not on official government travel, as it was his duty to do. Plea: G. Finding: G.

The applicant was sentenced by a military judge to a reduction to the grade of airman (E-2), forfeiture of \$500.00 pay per month for 6 months, and confinement for 6 months. Only so much of the sentence as provided for reduction to the grade of E-2, forfeiture of \$500.00 pay per month for 6 months, and confinement for 5 months was approved and would be executed.

On 4 Jan 05, according to AF Form 2098, *Duty Status Change*, the applicant's duty status changed from 00 [Present for Duty] to 17 [Military Confinement].

On 29 Apr 05, according to AF Form 2098, the applicant's duty status changed from 17 [Military Confinement] to 00 [Present for Duty].

On 2 Jun 05, the applicant's commander recommended the applicant be discharged from the Air Force, for a pattern of misconduct, specifically, conduct prejudicial to good order and discipline, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2.. The specific reasons for the action were:

a. Between on or about 12 Jan 05 to on or about 12 Apr 05, [the applicant] was involved in the following misconduct:

(1) [The applicant], being indebted to Bank of America in the sum of \$1,590.00 for various items purchased, which amount became due and payable on or about 12 Jan 05 to on or about 12 Apr 05, did at or near Minot AFB, ND, dishonorably fail to pay said debt.

(2) [The applicant], being indebted to Military Star in the sum of \$97.00 for various items purchased, which amount became due and payable on or about 26 Mar 05, did at or near Minot AFB, ND, dishonorably fail to pay said debt.

For this misconduct, the applicant received a Letter of Reprimand, on 25 May 05

b. Between on or about 15 Jul 04 to on or about 14 Dec 04, [the applicant], was involved in the following misconduct:

(1) [The applicant] did, at or near Minot AFB, ND, steal one M-9 pistol, military property, of a value of about \$497.00, the property of the United States Air Force.

(2) [The applicant] did, at or near Minot AFB, ND, steal a Wells Fargo check card and use said card, on divers occasions, between on or about 27 Nov 04 to on or about 13 Dec 04, to charge goods and/or services, of a value of about \$248.00, property of [another airman].

(3) [The applicant] who knew of his duties at or near Minot AFB, ND, on divers occasions, was derelict in the performance of his duties in that he willfully failed to refrain from using his Bank of America government travel card while not on official government travel, as it was his duty to do.

The applicant was found guilty of the above misconduct in a Special Court-Martial, on 4 Jan 05.

On 17 Jun 05, the Staff Judge Advocate found the discharge action legally sufficient.

On 20 Jun 05, the discharge authority directed the applicant be discharged for misconduct, pursuant to the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.50.2. (Conduct

Prejudicial to Good Order and Discipline), with a UOTHC service characterization. Probation and rehabilitation were considered, but not offered.

On 24 Jun 05, the applicant received a UOTHC discharge. His Narrative Reason for Separation is "Misconduct", and he was credited with 3 years, 4 months, and 25 days of total active service, with dates of time lost of 4 Jan 05 – 28 Apr 05.

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

POST-SERVICE INFORMATION

On 5 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 7 Dec 23 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided copies of military kudos and certificates, a certificate of ordination as a minister, personal photographs, and other documents related to his request for upgrade with his original application.

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 5 Dec 23, 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.

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.

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 was afforded due process and waived his right to a hearing before an administrative discharge board. 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 serious nature of the misconduct and the evidence presented, the Board finds no basis to do so. 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-2023-02711 in Executive Session on 12 Sep 24:

- , 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/atchs, dated 8 Feb 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 5 Dec 23.

Exhibit D: FBI Report, dated, 7 Dec 23.

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