



**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03542

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

**APPLICANT'S REQUEST**

1. His general (under honorable conditions) discharge be upgraded to honorable.
2. His grade of sergeant (E-4) be reinstated.
3. He be compensated as if he served until he was retirement eligible and militarily retired; or in the alternative, be compensated for four additional years of service.

**APPLICANT'S CONTENTIONS**

He was treated unfairly. The drug charges were false, and he was unjustly discharged. He was told an anonymous person saw him smoking drugs and he was told he would be court-martialed. During this time, he was being tested for drugs but never tested positive. Regardless of the facts, they were going to kick him out. His lawyer was told he could either be court-martialed and spend the next three years as an airman basic working in the disciplinary workgroup or accept a general discharge and be released the next day. His lawyer knew the charges were false; however, advised him to take the general discharge and if not, his leadership would bring more false charges against him. After being discharged, it took him 10 years to get his family's life back on track financially.

In support of his request for a discharge upgrade, the applicant provides a personal statement 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 first class (E-3).

On 5 Jan 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation of Unsuitability, Misconduct, Personal*

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[REDACTED]

*Abuse of Drugs, Resignation or Request for Discharge for the Good of the Service*, Chapter 2, Section B, paragraph 2-15a and 2-15c. The specific reasons for the action were:

- a. On 15 Mar 81, he received and signed a Letter of Counseling (LOC) for being late for duty.
- b. On 3 Apr 81, he received and signed an LOC for being late for duty.
- c. On 4 Apr 81, an LOC was initiated; however, he did not sign the letter, for being late for duty.
- d. On 26 Aug 81, he received an LOC; however, refused to sign the letter, because his dormitory room was inspected and found to be unsatisfactory.
- e. On 16 Sep 81, he received a Letter of Reprimand (LOR) for failing to go to a scheduled appointment on 28 Aug 81 and an Unfavorable Information File (UIF) was created.
- f. Dated 16 Oct 81, AF Form 3070, *Record of Nonjudicial Punishment (NJP) Proceedings*, indicates the applicant received NJP, Article 15 for the following offenses:
  - On Aug of 81, wrongfully use and possess marijuana
  - On or about 19 Aug 81, wrongfully possess marijuana
  - On or about 27 Aug 81, wrongfully possess marijuana
  - On or about 20 Sep 81, wrongfully use and possess marijuana
  - On or about 20 Sep 81, wrongfully use and possess marijuana
  - On or about 27 Sep 81, wrongfully use and possess marijuana

The applicant was given a reduction in grade to airman first class and fined \$200.00 per month for one month. In his statement to the NJP, the applicant claims he did not use drugs and was falsely accused.

On 28 Jan 82, the Staff Judge Advocate found the discharge action legally sufficient.

On 29 Jan 82, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation were considered but not offered.

On 1 Feb 82, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Drug Abuse" and he was credited with 1 year, 2 months, and 28 days of total active service.

On 28 Sep 85, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge. The applicant maintained he did not use drugs as alleged.

[REDACTED]

On 14 Mar 86, the AFDRB majority 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. One member of the board voted to grant a discharge upgrade to honorable.

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

## **POST-SERVICE INFORMATION**

On 17 Apr 24, 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 Jun 24 and provided an FBI report. According to the report, the applicant was arrested on 3 Sep 92 for possession of marijuana and drug equipment and for producing marijuana. The applicant also provided a statement explaining the marijuana charges, along with personal statements about his business and community involvement,

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 17 Apr 24, the Board staff provided the applicant a copy of the liberal consideration 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.

[REDACTED]

**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 not timely filed but the untimeliness is waived because it is in the interest of justice to do so. 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 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. Due to this, the Board finds no reason to grant the applicant's request to reinstate his grade or to be compensated for additional years of service. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge based on fundamental fairness. In support of his request for an upgrade, the applicant provided an FBI report which indicates he had a drug charge in 1992 and a personal statement. In his statement to the Board, the applicant claims the charges of drug usage were false and he was forced to take the general discharge or be court-martialed. Notwithstanding, 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. The evidence he provides lacks references that demonstrate his character, post-service rehabilitation, service to the community, or any degree of remorse pertaining to his in-service conduct to warrant a discharge upgrade. Therefore, the Board recommends against correcting the applicant's record. 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.

## **RECOMMENDATION**

[REDACTED]

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-2023-03542 in Executive Session on 19 Mar 25:

[REDACTED] Panel Chair  
[REDACTED], Panel Member  
[REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 17 Apr 24.
- Exhibit D: Applicant's Response, w/atchs, dated 7 Jun 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.

X [REDACTED] 4/4/2025

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[REDACTED]  
Board Operations Manager, AFBCMR  
Signed by: USAF