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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00431

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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

The time at his first duty station was tainted by the false narrative he was a troublemaker. In technical training he was wrongly blamed for another airman's infractions. He had the same last name and first initial. He had to pay the price this airman did because his name was well known. It was only discovered when the airman got arrested for sneaking out during hours he was supposed to be indoors. He was doing overnight change of quarters (CQ) duty that came from something the other airman did. The morning shift technical instructor came in, saw him and said why was he not in jail, because he had been arrested. The instructor escorted him to the back with other sergeants, then later came out and apologized as they figured out he was not the one that had been doing all those things.

A few years later, while out processing, he found all the infractions from technical training were not removed from his record. Instead, the infractions followed him to his first base and any little thing he did was scrutinized with a microscope. He believes if the proper protocols had been followed, his entire enlistment would have gone completely different. For these reasons he should at least be granted an honorable discharge due to everything that happened at his first base were minor infractions and would not have been blown out of proportion if he had his clean real record.

The applicant's complete submission is at Exhibit A.

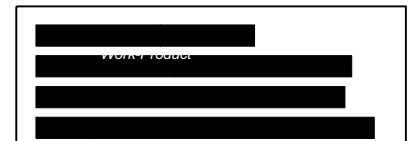
STATEMENT OF FACTS

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

On 14 Dec 04, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, chapter 5, section H, paragraph 5.49, for minor disciplinary infractions. The specific reasons for the action were:

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- a. On 4 Dec 03, the applicant failed to obey an order to bring his Career Development Course (CDC) materials to work. For this incident, he received a Record of Individual Counseling (ROIC), dated 8 Dec 03.
- b. On 19 Dec 03, the applicant failed to report to work on time and failed to obey an order by a senior non-commissioned officer. Additionally, on 6 Jan 04, he failed to report to a mandatory formation and failed to report to a mandatory study session on time. For these incidents, he received a Letter of Reprimand (LOR), dated 7 Jan 04.
- c. On 7 Jan 04, the applicant failed to report to work on time and received an LOR, dated 7 Jan 04.
- d. On 17 May 04, the applicant failed to report to the Fitness Center for squadron physical training. Additionally, on 6 Jun 04, he failed to obey a direct order given by a non-commission officer to bring his CDC's back to work after the lunch hour. He, also, displayed substandard duty performance. Furthermore, on 15 Jun 04, he failed to report to the Airman's Center for a CDC pretest as directed to do so. For these incidents, he received a Letter of Counseling (LOC), dated 16 Jun 04.
- e. On 18 Jul 04, the applicant was disrespectful in tone to a non-commissioned officer, when she was counseling him. Additionally, on 19 Jul 04, the applicant failed to obey a direct order given by a non-commission officer to provide the reference on shaving requirements. Furthermore, between 2 Aug 04 and 8 Aug 04, he displayed substandard duty performance by failing to update his files in the office file plan for an upcoming inspection, complete an assigned tasking, and process a \$3,000.00 check into the daily accountability. For these incidents, he received an LOR, dated 19 Aug 04.
- f. On 28 Jul 04, the applicant improperly processed a collection voucher and collected a check under the wrong voucher number. For this incident, he received an ROIC, dated 30 Jul 04.
- g. On 1 Sep 04, the applicant failed to report to work on time. For this incident, he received an ROIC, dated 8 Sep 04.
- h. On 8 Sep 04, the applicant failed to obey a direct order to complete a detail prior to the end of the duty day. Additionally, on 9 Sep 04, he failed to report to work at 0715 as ordered. For these incidents, he received an LOR, dated 10 Sep 04.
- i. On 15 Oct 04, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP) Article 15 for going from his appointed place of duty without authority on 1 Oct 04, on the same day, he made a false official statement to a senior non-commissioned officer. Additionally, on 8 Oct 04, he failed to go at the prescribed time to his appointed place of duty. He received a reduction in grade to airman (E-2) with a new date of rank of 15 Oct 04 and an Unfavorable Information File was established.
- j. On 27 Oct 04, the applicant was given a citation by Security Forces personnel for driving without a valid driver's license. For this misconduct, he received an LOR, dated 1 Nov 04.

k. On 6 Dec 04, AF Form 3070, indicates the applicant received NJP Article 15 for failing to go at the time prescribed to his appointed place of duty on 4 Nov 04 and 8 Nov 04. Additionally, on 9 Nov 04, he made a false official statement to a non-commissioned officer. He received a reduction in grade to airman basic (E-1), suspended until 5 Jun 05, and forfeiture of \$100.00 pay.

On 22 Dec 04, the Staff Judge Advocate found the discharge action legally sufficient and on the same date, the convening authority approved an administrative discharge with an under honorable conditions (general) for minor disciplinary infractions. Probation and rehabilitation were considered, but not offered because the evidence indicated the applicant lacked the capacity to be rehabilitated for further service.

On 28 Dec 04, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 2 years and 12 days of total active service.

On 27 Jul 11, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 7 Jun 12, 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 2 Apr 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 25 Apr 24 (Exhibit D). According to the report, the applicant has had no arrests since discharge.

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 2 Apr 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. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. In support of his request for an upgrade, the applicant has provided an FBI report with no evidence of arrests since his discharge. 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 numerous misconduct incidents 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 does indicate he has apparently made a successful post-service transition; however, this evidence 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-2022-00481 in Executive Session on 19 Feb 25:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atch, dated 1 Feb 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 2 Apr 24.

Exhibit D: Applicant's Response, w/atch, dated 25 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.

3/6/2025

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