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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00544

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COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His reentry (RE) code be upgraded to a code that is eligible for reentry into the Air Force.

APPLICANT'S CONTENTIONS

He is requesting an upgrade to his RE code due to his exemplary behavior since the driving under the influence (DUI) incident in 2008. Since that time, he has maintained a record of responsible behavior and has demonstrated a commitment to personal growth and rehabilitation. He has matured, is the proud father of two boys and a girl and has been married for 14 years. He is not the man today that he was when he made the mistake. Furthermore, he has remained free of any further legal issues or misconduct. He graduated from the University of Houston, Honors College with a Bachelor of Science, and subsequently earned a Master of Business Administration (MBA) from Texas A&M University, all while seeking to positively contribute to society. He is hopeful an upgrade to the RE code will allow him to further demonstrate his commitment to responsible behavior and contribute positively to his community by allowing reentry to the Air National Guard (ANG).

In support of his request for clemency, the applicant provides a personal statement and numerous Graduation Certificates related to his request for an upgrade.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 17 Jun 08, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49, for minor disciplinary infractions. The specific reasons for the action were:

- a. On 11 Apr 08, Letter of Reprimand (LOR) was issued for his off-base arrest for driving under the influence on or about 9 Mar 08.

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CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

- b. On 10 Jan 08, LOR was issued for failing to go to his appointed place of duty at the prescribed time on or about 21 Dec 07.
- c. On 10 Sep 07, LOR was issued for failing to report to mandatory physical training on or about 10 Sep 07.
- d. On 27 Aug 07, LOR was issued for failing to report to his appointed place of duty at the prescribed time on or about 24 Aug 07.
- e. On 14 Nov 06, LOR was issued for failing to report to his appointed place of duty after lunch at the prescribed time on or about 13 Nov 06.
- f. On 22 Sep 06, Letter of Counseling (LOC) was issued for failing to report to his appointed place of duty at the prescribed time on or about 22 Sep 06.
- g. On 2 Jun 06, LOR was issued for leaving work without authorization for the period of one hour on or about 1 Jun 06.
- h. On 11 Apr 06, LOR was issued for failing to report to his appointed place of duty at the prescribed time on or about 11 Apr 06.

On 7 Aug 08, the Staff Judge Advocate found the discharge action legally sufficient.

On 9 Oct 08, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with an under honorable conditions (general) service characterization. Probation and rehabilitation were considered, but not offered.

On 19 Oct 08, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Infractions)" with a RE code of "2B" which denotes "separated with a general or under-other-than-honorable-conditions (UOTHC) discharge." He was credited with 5 years, 6 months, and 25 days of total active service.

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

POST-SERVICE INFORMATION

On 4 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 3 May 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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 4 Apr 24, the 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.

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 RE code was contrary to the provisions of the governing regulation at the time of his separation. The Board understands the applicant's desire to change the RE code because he has been successful post-service and now desires to reenter;

however, the RE code annotated on his DD Form 214 represents the condition to which he was separated and is not subject to change unless an error was made in the original annotation. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, 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. It recognized the applicant's post-service achievements; however, the evidence he provides lacks references that demonstrate his character and 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-2024-00544 in Executive Session on 14 Jan 25.

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, w/atchs, dated 8 Feb 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Bulletin_Clemency Guidance), dated 4 Apr 24.

Exhibit D: FBI Report, dated, 8 Apr 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.

3/6/2025

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Board Operations Manager, AFBCMR

Signed by: Work-Product