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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2024-00672

COUNSEL: Work-Product

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

At the time of his discharge, he did not go in front of a board to dispute their findings. The testimonies were never discussed at the time he chose to accept the discharge. His discharge was in 1980, 44 years ago. While he was on active-duty, he received an Air Force longevity service award ribbon and the good conduct medal. Since discharge, he graduated from college and became a school teacher. He has taught in public school for 34 years and is still teaching as a private lesson instructor. He is in the process of trying to purchase a house with a Department of Veterans Affairs (DVA) loan and needs a certificate of eligibility (COE) as soon as possible.

In support of his request for a discharge upgrade, the applicant provides a personal statement and copies of his airman performance report (APR)s.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 30 Jun 80, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual (AFM) 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, paragraph 2-15c for misconduct involving personal use of drugs. The specific reasons for the action were:

- a. On 6 Jun 80, an AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for the use of

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marijuana while on the Air Force band tour between 20 Jan 80 and 22 Jan 80 and between 4 Feb 80 and 28 Feb 80. The applicant received a reduction to the grade of sergeant (E-4) and forfeiture of \$325.00 pay per month for two months.

- b. In Dec 78, he sold approximately one ounce of marijuana to a non-commissioned officer (NCO) while on an Air Force band tour.
- c. In Dec 78, he used marijuana at a hotel while on an Air Force band tour.
- d. During the period of 15 Apr 75 to 12 Feb 80, he sold approximately two ounces to an NCO and two ounces to an airman.
- e. During the period of 15 Apr 75 to 12 Feb 80, he repeatedly purchased and used marijuana.
- f. In Sep or Nov 79, he used marijuana at [REDACTED] Work-Product, Texas.

On 5 Aug 80, the applicant offered an unconditional waiver, waiving his rights to an administrative discharge board.

On 7 Aug 80, the Staff Judge Advocate found the discharge action legally sufficient.

On 14 Aug 80, the discharge authority directed the applicant be discharged for drug abuse, with a UOTHC service characterization. Probation and rehabilitation were considered but not offered.

On 20 Aug 80, the applicant received a UOTHC discharge. His narrative reason for separation is "Misconduct-Drug Abuse-Board Waiver" and he was credited with 5 years, 5 months, and 18 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 16 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 11 Aug 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 16 Apr 24, the Board staff provided the applicant a copy of the clemency/fundamental fairness 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 10 U.S.C. Section 1552(b).
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. 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 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. The Board finds the evidence presented by the applicant does not outweigh the severity of his offenses during service. Specifically, he established a pattern of drug abuse with not only numerous incidents of use and purchase, but also the sale of marijuana. 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-2024-00672 in Executive Session on 29 May 25:

Work-Product [REDACTED] 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/atchs, dated 15 Feb 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 16 Apr 24.

Exhibit D: FBI Report, dated, 11 Aug 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.

10/23/2025

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Work-Product GS-15, DAF

Associate Director, AFBCMR

Signed by: USAF

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