



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00721

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His grade of senior airman (E-4) be restored to sergeant (E-4).
2. His separation code and corresponding narrative reason for separation of misconduct-drug use be changed to "Secretarial Authority."

APPLICANT'S CONTENTIONS

He was having marital problems. His ex-wife was angry and made allegations against him, and he requested a urinalysis to clear him. He went to a party off base where marijuana was present. He did not partake in the smoking of marijuana but due to second-hand smoke inhalation, he was discharged for drug usage. He did not realize the severe outcome of his irresponsibility and is ashamed of his actions. He hoped to continue to serve his country after 9-11 but when seeking employment, he is portrayed as a drug user which he is not. As part of the evidence submitted to support his case, he submitted a letter from his Area Defense Counsel which indicates his urinalysis (UA) was requested by him and not ordered as part of a unit inspection, a Noncommissioned Officer Leadership School Diploma, and his Performance Reports.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 6 Feb 85, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-49c for misconduct, drug abuse as indicated on the 21 Dec 84 notification letter. This letter indicates the applicant tested positive for marijuana on 28 Aug 84.

On 14 Feb 85, the Staff Judge Advocate found the discharge action legally sufficient. It is noted the applicant's commander ordered the applicant to take a UA test without probable cause and the

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statement submitted by the applicant's counsel admitted this UA test was commander-directed without probable cause.

On 25 Feb 85, the discharge authority directed the applicant be discharged for misconduct, drug abuse, with an honorable service characterization. Probation and rehabilitation were denied due the seriousness of the offense.

On 27 Feb 85, the applicant received an honorable discharge. His narrative reason for separation is "Misconduct - Drug Abuse" and he was credited with five years, six months, and four days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and D.

POST-SERVICE INFORMATION

On 1 Oct 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); however, he has not replied.

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.

AIR FORCE EVALUATION

AFPC/DPMSSR recommends denying the applicant's request to change his separation code and corresponding narrative reason for separation finding no error or injustice with the discharge processing. The applicant was afforded proper due process, and the discharge was consistent with the procedural and substantive requirements of the discharge regulation. The applicant tested positive on a Commander-Directed urinalysis for marijuana usage and was subsequently recommended for discharge with an honorable service characterization. The Base Legal Office

conducted a review of the discharge with recommendation for honorable service characterization to the Base Discharge Authority (BDA). The BDA directed discharge with an honorable service characterization.

The complete advisory opinion is at Exhibit C.

AFPC/DPMSPP recommends denying the applicant's request to have his grade restored finding no injustice. According to the applicant's record, the demotion was consistent with the discharge regulation listed on the legal review memorandum. There is no official documentation located nor provided that verifies the applicant's leadership recommending restoration of his grade.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 23 Sep 24 for comment (Exhibit E), and the applicant replied on 3 Oct 24. In his response, the applicant contends he made a bad, irresponsible and costly decision he has regretted his entire life and asks the Board to consider a change to his record to reflect "Secretarial Authority" and his grade changed to sergeant.

The applicant's complete response is at Exhibit G.

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 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 concurs with the rationale and recommendations of AFPC/DPMSR and AFPC/DPMSPP and finds the preponderance of evidence does not support the applicant's contentions. Based on the available evidence of record, it appears the discharge and demotion action were consistent with the substantive requirements of the regulations and were within the commander's discretion. The applicant provided no evidence which would lead the Board to believe his narrative reason for separation or demotion action were contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offense committed. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge; however, the applicant provided no evidence of post-service activities. The Board notes the applicant's contention his UA test was voluntary, and he was subjected to second-hand smoke; however, his test came back as positive for marijuana usage and the evidence in his case does not

support his contention it was from second-hand smoke inhalation. The applicant retains the right to request reconsideration of this decision under the guidance of the Wilkie Memo based on fundamental fairness, which could be in the form of a personal statement, post-service achievements, 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.

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-2024-00721 in Executive Session on 14 Jan 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 13 Feb 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSR, dated 18 Sep 24.
- Exhibit D: Advisory Opinion, AFPC/DPMSP, dated 23 Sep 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Sep 24.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 1 Oct 24.
- Exhibit G: Applicant's Response, dated 3 Oct 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.

4/2/2025

Board Operations Manager, AFBCMR

Signed by:

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