

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00957

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXXXXX

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable and his narrative reason for separation be amended to reflect "Secretarial Authority."

APPLICANT'S CONTENTIONS

Per counsel, the applicant served honorably for two years and nine months before his discharge, notwithstanding a single act of indiscretion where he made an uncharacteristically bad decision. The applicant was young at the time and admits it was irresponsible of him to use marijuana. He is aware this violated the Air Force's zero-tolerance policy and is remorseful for his involvement in illegal drug use. The applicant now realizes his actions were immature and irresponsible. Although the applicant's indiscretion violated Uniform Code of Military Justice (UCMJ) regulations, this single offense should not be enough to prevent him from obtaining an honorable discharge. He confessed his mistake, and given the opportunity, would have corrected it and continued to serve honorably.

According to counsel, before this incident, the applicant served honorably and received many awards and positive marks on his record. The discharge took place over 23 years ago and it is unjust to continue to punish him for this discharge. The applicant admitted his mistakes and has received full punishment, both by society and the Air Force, through nonjudicial punishment and separation. To this day, the applicant is still living with the consequences of his mistake. Since his discharge, the applicant has developed himself as a model citizen of the United States. He has no criminal record, no involvement in drugs, no type of alcohol abuse or any run-ins with the law since his discharge. The applicant has become a father to a daughter with autism, continues to be a firefighter, and becomes a better man and father daily. Further, the applicant's support system is his family. Although his parents are ill, and the applicant is their primary caretaker, they continue to support him and show him love through all his life challenges.

Counsel introduced the whole person concept for consideration and provided details of the applicant's pre-service life in support. Per counsel, the applicant was discharged from the Air Force under court-martial from a bachelor party where the applicant partook in marijuana drug use. Since this unfortunate incident, he has stayed away from any drugs or irresponsible behavior because he wants nothing but to be an honorable man for his family. The applicant has been a fireman with multiple bases since his discharge. He eventually received a Statement of Reasons for the discharge, which he won, and was reinstated as a person holding a secret security clearance. The reason for the discharge does not define who he is as a person, nor does it accurately represent the strong values he has continuously lived by. The reasons for the discharge are not a threat to the military, nor do such reasons reflect negatively on the Air Force. The applicant requests a discharge upgrade and has made good efforts to show candor, acceptance, and responsibility for his discharge.

In support of his request for a discharge upgrade, the applicant provides a personal statement, letters of reference, copies of post-service performance evaluations, information regarding his

daughter's condition and care; a copy of his reinstatement for a security clearance, a copy of his credit report, copies of his identification cards, and photographs of him and his family.

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/About 26 Apr 99 – 4 Jun 99, according to Air Force Office of Special Investigations (AFOSI) Report of Investigation (ROI), dated 9 Jun 99, the applicant was investigated for wrongful use, possession, and distribution of controlled substances in violation of Article 112a, UCMJ. The investigation was initiated based upon information the applicant used marijuana, Lysergic Acid Diethylamide (LSD) and distributed LSD once to an active duty member.

On 15 Feb 00, according to an applicant memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial, the applicant requested he be discharged from the Air Force according to Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Chapter 4, in lieu of trial by court-martial. The applicant acknowledged he may be discharged under other than honorable conditions (UOTHC) and was aware of the adverse nature and possible consequences of such a discharge.

On 18 Feb 00, the applicant's squadron commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial, with a UOTHC discharge.

On 23 Feb 00, the applicant's wing commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial, with a UOTHC discharge.

On 2 Mar 00, according to AF Form 1768, *Staff Summary Sheet*, the Staff Judge Advocate found the discharge action legally sufficient.

On 3 Mar 00, the discharge authority directed the applicant be separated from service under the provisions of AFI 36-3208, Chapter 4, pursuant to his request for discharge in lieu of trial by court-martial, with an "under than honorable conditions"¹ discharge. The applicant was not eligible for probation and rehabilitation under AFI 36-3208, Chapter 7. On this same date, the applicant acknowledged receipt of Approval of Discharge in Lieu of Court-Martial, dated 3 Mar 00.

According to AF Form 100, *Request and Authorization for Separation* (Special Order Number XXXXX), dated 6 Mar 00, the applicant was separated effective 8 Mar 00, with a UOTHC character of service.

On 8 Mar 00, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received an under honorable conditions (general) discharge². His narrative reason for separation is "Trial by Court-Martial"³ with a separation code of "KFS" [In lieu of trial by court-martial], and he was credited with 3 years, 2 months, and 26 days of total active service.

¹ There appears to be an administrative error regarding the service characterization. Consistent with other applicant discharge documentation, the service characterization should read "under other than honorable conditions."

² There appears to be an administrative error in DD Form 214, Block 24. *Character of Service*. According to other applicant discharge documents, to include the AF Form 100, the applicant's Character of Service should read "under other than honorable conditions."

³ The applicant's Narrative Reason for Separation should read "In Lieu of Trial by Court-Martial." This is supported by the Separation Code of "KFS" [In lieu of trial by court-martial].

On 5 Mar 14, according to a Personnel Security Appeals Board (PSAB) memorandum, Subject: Final Decision on Revocation of Eligibility for a Security Clearance and Assignment to a Sensitive Position – [applicant], provided by the applicant, the PSAB will direct reinstatement of the applicant's eligibility for a security clearance and assignment to a sensitive position predicated on conditions outlined in the memorandum, which included, but were not limited to, compliance with installment arrangements with the Internal Revenue Service, quarterly meetings with his Security Manager to discuss progress of the applicant's bankruptcy petition, financial status, and any additional indebtedness, the applicant's continued compliance with his treatment plan and medication management and maintaining his commitment to a drug-free lifestyle, and random drug testing for one year from the date of the memorandum.

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

POST-SERVICE INFORMATION

On 29 May 24, the Board sent the applicant a standard request for post-service information. This letter informed the applicant a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did provide post-service information with his original application, it did not include an FBI background check or other criminal history data. The applicant did provide proof of employment with a government agency which would have required a background check prior to employment as well as a PSAB memorandum reinstating his eligibility for a security clearance and assignment to a sensitive position.

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 29 May 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.

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. 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 Title 10, United States Code § 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 has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of his request. The Board also notes, according to relevant associated documentation found in the applicant's military human resources record, the applicant was furnished a UOTHC service characterization as the result of discharge in lieu of court-martial. Due to administrative oversight, the applicant's current DD Form 214 erroneously reflects "Under Honorable Conditions (General)" in Block 24. *Character of Service*, and Block 28. *Narrative Reason for Separation*, erroneously reflects "Trial By Court-Martial."

Irrespective of the administrative errors on the applicant's DD Form 214, the Board finds no error in the original discharge process, and recommends partial relief based on fundamental fairness. In particular, the Board considered the applicant's extensive post-service employment with the federal government as a firefighter and associated character references. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 8 Mar 00, he was discharged with service characterized as "general (under honorable conditions)" with a narrative reason for separation of "In Lieu of Trial by Court-Martial."

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-2024-00957 in Executive Session on 15 Jan 25:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 9 Feb 24.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 29 May 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

Board Operations Manager, AFBCMR