

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01071

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to an honorable discharge and his narrative reason for separation be amended to reflect something that does not reference misconduct, such as "Secretarial Authority."

### APPLICANT'S CONTENTIONS

Per applicant's counsel, he enlisted in the Air Force at the age of 17. Because of his youth and immaturity, and because of a personal issue with test-taking, the applicant twice failed his Career Development Course (CDC) tests. His leadership treated this as dereliction of duty and thus, misconduct, gave the applicant nonjudicial punishment (NJP), and administratively separated him with a general discharge. However, the minor and non-violent nature of the applicant's offense, his youth when he committed it, the successful life he has built since then, and the length of time that has passed all suggest he should receive clemency.

The applicant learned from this painful experience. He obtained work as a business analyst and eventually found success as a consultant, in part by overcoming the difficulties that had defeated him in his Air Force career. According to counsel, the applicant has matured, obtained the practical education and training he needed for his civilian work, built a strong career, and participated in veterans' charities.

In support of the applicant's request for relief, counsel references the Under Secretary of Defense for Personnel and Readiness (USD P&R) memorandum, Subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determination, dated 25 Jul 18 (also known as the Wilkie Memo).

Counsel contended the applicant trained as an aircraft maintenance scheduler and performed his duties with energy and success. However, the applicant also had a duty to advance his Air Force career through education, and in particular, to study and pass tests in his CDCs. In this, he failed. As the applicant candidly admits, he had an issue with test-taking and with studying on his own. When he was 19-years-old, he had not learned to overcome this issue. Counsel presented counseling comments from the applicant's commander and noncommissioned officer in charge to detail the issues surrounding the applicant's test failures. Per counsel, the applicant's command believed his test failures represented willful dereliction of duty. In his response to the imposed NJP, the applicant admitted to having problems in his family life, but denied he tried to fail the CDC to get out of the Air Force. Nevertheless, the command imposed the punishment and processed the applicant for administrative separation. At the time, the applicant thought accepting the separation was the best move. Only later did he come to see otherwise.

Outside of this failure, the applicant's Air Force service was excellent. While he denied, and still denies failing the tests on purpose, the applicant understands that dereliction of duty through neglect or culpable inefficiency is still an offense, albeit a minor one. As shown by the

applicant's success in outgrowing and overcoming his weaknesses, his misconduct was a prime example of youthful indiscretion. Whatever value imposing a general discharge may have had 27 years ago, it serves no purpose now. The applicant's offense was non-violent, and in a real sense, hurt nobody but himself. He was his own sole victim, and he suffered the consequences.

The applicant's post-service achievements likewise favor clemency. Per counsel, after discharge the applicant began to take stock of his life and to think toward building a professional career. After applying to several companies, the applicant found a job as a business analyst. At this stage of his life, the applicant had to navigate his transition out of the Air Force, the beginning of his civilian career, and some serious growing up. The good news is that he succeeded. Counsel provided details of the applicant's civilian employment in support of these contentions.

Per counsel, the applicant's conduct since leaving the Air Force has been uniformly positive and shows he has overcome, or at least learned to deal constructively with, the personal weakness that got him in trouble in the Air Force. He has succeeded in his business endeavors in a field where constant learning is required and the only constant is change. The applicant has continued his consideration of others by participating in charitable events and showing himself worthy of the name "veteran." Counsel further contended the applicant has kept an emotional attachment to his Air Force service and has assisted with volunteer organizations, to include Code of Vets and Wounded Warrior Project/Cigars for Warriors. Yet the memory of a less than honorable discharge has always weighed on his mind.

Additionally, counsel referenced other upgrade cases favorably adjudicated by the Air Force Board for Correction of Military Records (AFBCMR) in support of granting relief, contending the applicant's case is comparable.

In support of his request for a discharge upgrade, the applicant provides a personal statement, excerpts from his military human resources record, certificates of appreciation/achievement, a personal resume, and other documents related to his request for upgrade.

The applicant's complete submission is at Exhibit A.

## **STATEMENT OF FACTS**

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

On 28 May 96, the applicant's commander recommended the applicant be discharged from the Air Force for failure to progress in on-the-job training and conduct prejudicial to good order and discipline, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section E, paragraph 5.26.3 and Section H, paragraph 5.50.2. The specific reasons for the action were:

a. On or about 4 Dec 95, the applicant failed his Course Examination test with a score of 53, as evidenced by the Report of Course Examination score sheet, dated 4 Dec 95.

b. On or about 25 Mar 96, the applicant failed his Course Examination test for a second time with a score of 63, as evidenced by the Report of Course Examination score sheet, dated 25 Mar 96.

c. On or about 16 Apr 96, the applicant was withdrawn from upgrade training because of his failure on the Course Examination.

d. Between on or about 4 Nov 95 and on or about 25 Mar 96, the applicant was derelict in the performance of his duties in that he willfully failed to properly study and prepare for the Career Development Course 2R151, as evidenced by the Article 15, dated 17 May 96.

On 31 May 96, the Staff Judge Advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, Chapter 5, Section E, paragraph 5.26.3 and Section H, paragraph 5.50.2, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 5 Jun 96, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 1 year, 9 months, and 27 days of total active service.

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

### **POST-SERVICE INFORMATION**

On 26 Aug 24, the Board staff sent the applicant a request for post-service information and advised the applicant he should 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 15 Nov 24 and provided an FBI report. According to the report, the applicant was arrested on:

- 30 Apr 03 for Domestic Violence; Assault
- 26 Jul 08 for Traffic Offense – Windscreen required on grove equip; Driving while license suspended
- 21 Aug 08 for No valid driver's license; driving while license suspended
- 19 Dec 20 for Driving Under the Influence (DUI) – Liquor/Drugs/Vapors/Combo; Fail to Stop/Accident/Unattended Vehicle; Extreme DUI – BAC .15-.20

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 26 Aug 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 Title 10, United States Code § 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. 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 clemency; however, given the evidence presented, the criminal history provided by the applicant, and in the absence of substantive post-service information, the Board finds no basis to do so. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01071 in Executive Session on 6 Jun 25:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 10 Mar 24.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 26 Aug 24.  
Exhibit D: FBI Report, dated 5 Mar 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