

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01122

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued on 24 Jun 04 be amended as follows:

- a. Upgrade his general (under honorable conditions) discharge to an honorable discharge.
- b. Change his narrative reason for separation from "Misconduct" to "Secretarial Authority," with corresponding separation code.
- c. Change his reentry (RE) code "4B" to reflect "RE-1."

He also requests his unused leave be transferred while he serves in the Army; or in the alternative, he be compensated for his unused leave.

### APPLICANT'S CONTENTIONS

According to applicant's counsel, as a preliminary matter, the applicant requested transfer of his unused leave from his Air Force career to the Army for use. In the alternative, he asked to be paid for the unused leave he accrued. Per the Military Pay Lead, the applicant accrued 33.5 days of unpaid leave from his time in the [State] Air National Guard (ANG).

Per counsel, the applicant enlisted in the Regular Air Force on 29 Apr 03. The applicant served for 1 year, 1 month, and 26 days as a Tactical Air Control Party Journeyman. During his service, the applicant earned the National Defense Service Medal and the Air Force Training Ribbon. The applicant's time in the active duty Air Force had various instances of minor misconduct. While at the beginning of his training, the applicant received a Letter of Counseling (LOC) for smoking a cigarette while in Phase 2. Additionally, he received another LOC for failing a dorm room inspection. Later, the applicant received Letters of Reprimand (LOR) for using smokeless tobacco and taking a fellow airman's room and security locker keys. After this, the applicant then received a Letter of Admonishment (LOA) for lying about a bullet in his dormitory, and a subsequent LOC for failing a dorm room inspection.

On 15 Apr 04, the applicant received an Article 15 for being off base in civilian clothes during Phase 1 training. The applicant responded to the Article 15, taking responsibility for the action, and provided the context for the situation. Before going off base, the applicant worked CQ [Charge of Quarters] throughout the night and missed breakfast. Upon waking up, he went off base to get something to eat. The applicant took full responsibility for the situation, and requested he be able to learn from his mistakes. As part of the punishment, the imposing commander took rank from the applicant and gave him 30 days correctional custody. The applicant appealed this punishment and his request was denied. On 1 Jun 04, the applicant received another Article 15 for failing to go to correctional custody. The applicant did not submit a response and was found guilty at nonjudicial punishment for the offense. He was then slated for separation due to the above infractions. The applicant was separated from the Regular Air Force on 24 Jun 04.

The applicant should receive an upgrade under the theory of material injustice. He has led a successful life since his discharge and has risen above his discharge. Counsel cited excerpts from character letters provided with the applicant's petition in support of his contentions. Following his service in the Regular Air Force, the applicant served in the [State] ANG. He earned distinguished awards from both [State] ANG organizations. The applicant's multifaceted service is further echoed in his contributions to the [State] Army National Guard (ARNG), where he received the Army Commendation Medal. These accolades are only a small fraction of the applicant's accomplishments while serving in the National Guard. In turn, these awards highlight the applicant's distinction and prestigious reputation throughout the entirety of his service.

Since his discharge, the applicant has put significant time and effort into his own educational endeavors. He completed his degree and earned a Liberal Arts degree in Political Science. Furthermore, in 2023, the applicant graduated from Warrant Officer Candidate School. He is currently a Warrant Officer and currently at flight training.

As part of his petition, the applicant offers his personal statement for the Board's consideration. He speaks about the difficulties that occurred while in the Regular Air Force, and what he did to bounce back. Following his discharge, the applicant enlisted in the ARNG, where he completed the Army Airborne Parachutist Course and Parachute Rigger Course. Additionally, the applicant speaks about his deployment to Afghanistan and his career progression after returning state-side, which included further education and a return to service as an instructor.

The applicant's case is an example in which the Wilkie Memorandum<sup>1</sup> applies. The Department of Defense published guidance for the Board for cases deserving of second chances. Examples of cases deserving of an upgrade include when an applicant exhibits positive character and rehabilitation. Here, the applicant understands he made errors while in service. Considering this, the applicant has bounced back both through military service and further education. Under a plain reading of the Wilkie Memorandum, the applicant is deserving of an upgrade. The applicant's honorable service should not be defined by an isolated incident. The Board should undo the discretionary error made against the applicant and upgrade his discharge for reasons of material error and injustice.

In support of his request for a discharge upgrade, the applicant provides a personal statement, excerpts from his military human resources record, post-Regular Air Force certificates of achievement, college transcript, character references, copies of military orders, military pay account documentation, 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 Regular Air Force airman first class (E-3).

On 16 Jun 04, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section H, paragraph 5.49. The specific reasons for the action were:

---

<sup>1</sup> 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 (Wilkie Memorandum)

- a. On 31 Oct 03, [the applicant] failed to maintain the 2d Air Force Phase Program by smoking a cigarette, for which he received an LOC, dated 7 Nov 03, which was filed in his Personnel Information File (PIF).
- b. On 13 Nov 03, [the applicant] failed to maintain the 2d Air Force Phase Program by failing his dorm room inspection, for which he received an LOC, dated 14 Nov 03, which was filed in his PIF.
- c. On 20 Feb 04, [the applicant] was caught using smokeless tobacco, for which he received an LOR, dated 23 Feb 04, which was filed in his PIF.
- d. On 2 Mar 04, [the applicant] took, without permission, [another airman's] room and security locker keys, for which he received an LOR, dated 3 Mar 04, which was filed in his PIF.
- e. On 3 Mar 04, when asked about a bullet in his dorm room, [the applicant] lied, for which he received an LOA, dated 3 Mar 04, which was filed in his PIF.
- f. On 12 Mar 04, [the applicant] failed to maintain the 2d Air Force Phase Program by failing his third dorm room inspection, for which he received an LOC, dated 15 Mar 04, which was filed in his PIF.
- g. On 4 Apr 04, [the applicant] failed to maintain the 2d Air Force Phase Program by wearing civilian clothes while outside the boundaries of Hurlburt Field, for which he was punished under Article 15, Uniform Code of Military Justice (UCMJ), on 23 Apr 04, which was filed in his PIF.
- h. On 30 Apr 04, [the applicant] failed to maintain 2d Air Force Phase Program by failing his fourth dorm room inspection, for which he received an LOR, dated 3 May 04, which was filed in his PIF.
- i. On 1 May 04, [the applicant] was found in his room watching television and playing video games, in direct violation of AETC Instruction 36-2216, *Administration of Military Standards and Discipline Training*, paragraph 7.7.4, for which he received an LOR, dated 7 May 04, which was filed in his PIF.
- j. On or about 12 May 04, [the applicant] failed to obey a lawful order issued by [commissioned officer] to go to correctional custody, for which he was punished under Article 15, UCMJ, on 1 Jun 04, which was filed in his PIF.

On 17 Jun 04, the Staff Judge Advocate found the discharge action legally sufficient.

On 20 Jun 04, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.49 for misconduct, more specifically, minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

On 24 Jun 04, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" with separation code "JKN" [Misconduct – Minor Infractions], and reentry code "4E" [condition barring immediate reenlistment]. He was credited with 1 year, 1 month, and 26 days of total active service.

On 12 Oct 15, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 11 Jan 16, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation, was within the discretion of the discharge authority, and the applicant was provided full administrative due process.

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

## POST-SERVICE INFORMATION

On 9 Apr 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 26 Jul 24 and provided an FBI report. According to the report, the applicant was arrested on 13 Nov 06 for:

- One count of false imprisonment; Dismissed
- One count of battery/former spouse; Dismissed
- Disturbance by loud/unreasonable noise; Convicted – five days jail, restitution, and three years' probation

The applicant provided post-service information with his original application to the Board.

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 9 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.

## AIR FORCE EVALUATION

NGB/FMFF recommends granting the applicant's request for leave transfer or compensation. Based on the documentation provided by the applicant and analysis of the facts, including the ability for Reserve Component members to carryover/transfer leave, there is no evidence of an error or injustice. The applicant has 33 days of leave that can be transferred or paid out.

As a member serving in the [State] ANG, the applicant earned leave during the following periods of active duty service: 10 Mar 14 – 14 Jun 14 (9 days leave earned), 15 Sep 18 – 31 Jan 19 (11.5 days leave earned), 17 Oct 18<sup>2</sup>, 1 Aug 20 – 31 Dec 20 (12.5 days leave earned). NGB/FMFF finds the total amount of leave accrued during these periods of active duty service is 33 days and not 33.5 days as stated on the Memorandum for Record in the applicant's case files. The total amount of 33 days leave earned for these periods of active duty service was not paid out and can be transferred to the applicant's current unit or paid out.

The complete advisory opinion is at Exhibit E.

NGB/A1PS recommends granting the applicant's request for leave transfer or compensation. Based on the documentation provided by the applicant and analysis of the facts, there is evidence the applicant had a leave balance at the end of his tour and said leave should have been carried over to the following set of active duty orders.

The applicable policy at the time of the alleged error or injustice is AFI 36-3003, *Military Leave Program*, 26 Oct 09, with guidance memorandum updates on 11 Oct 11 and 3 Mar 15, AFI 36-3003, 11 May 16, with guidance memorandum updates on 6 Jun 18 and 6 June 19, and AFI 36-3003, 24 Aug 20, Title 37, United States Code § 501 (37 USC § 501) - *Payments for Unused Accrued Leave*, and 10 USC § 701 - *Entitlement and Accumulation*.

NGB/A1PS reviewed the submitted package in its entirety. Based on the package provided, NGB/A1PS confirms the applicant was placed on orders four separate times in the following chronological order:

Order number XXXX from 20140310-20140614 for 97 days  
Order number XXXX from 20180915-20181016 for 32 days  
Order number XXXX from 20181017-20190131 for 107 days  
Order number XXXX from 20200801-20201231 for 153 days

Set 1 order number XXXX falls under the provisions of AFI 36-3003, 26 Oct 09, paragraph 4.4.2. *Accumulation*. "Members who are unable to use leave due to military necessity may accumulate a maximum of 60 days by the end of an FY. See for special leave accrual (SLA) provisions. Members not eligible for SLA can request recovery of days lost on 1 Oct by submitting DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*. See AFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*."

Set 2 order number XXXX falls under the provisions of AFI 36-3003, 26 Oct 09, with updated guidance AFI 36-3003\_AFGM8, dated 3 Mar 15, to add paragraph 4.1.4.10. *Prior to the end of an active-duty tour for Reserve Component (RC) personnel*. "However, an RC member who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in section 701 of Title 10 of the United States Code, without regard to separation or release from active service if the separation or release is under honorable conditions."

Set 3 order number XXXX falls under provisions of AFI 36-3003, 11 May 16, with updated guidance AFI36-3003\_AFGM2018-01, 6 Jun 18, reissued 6 Jun 19, stating in paragraph 4.1.1.1.9. *Prior to the end of an active-duty tour for Reserve Component (RC) personnel*. "However, an RC member who accumulates leave during a period of active service may carry

---

<sup>2</sup> 17 Oct 18 date included in previously noted active duty period.

over any leave accumulated to the member's next period of active service, subject to the accumulation limits in section 701 of Title 10 of the United States Code, without regard to separation or release from active service if the separation or release is under honorable conditions. Note: Members separating under "for cause" provisions and other separatees separating at the earliest possible date cannot take terminal leave. They either receive payment for unused accrued leave or forfeit the accrued days if they receive a discharge under other than honorable conditions."

Set 4 order number XXXX falls under provisions of AFI 36-3003, 24 Aug 20, stating in paragraph 6.10.1.6, "When a member does not take leave during a tour of duty and chooses not to sell it, this leave is carried forward to the next active-duty long tour."

NGB/A1PS reviewed and confirmed the submitted package. Per the referenced guidance, the applicant would be allowed to carry the unused leave over to a new set of active duty orders and has included the DD Form 149 requesting to carryover leave balance that did not qualify for SLA.

The complete advisory opinion is at Exhibit F.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 4 Feb 25 for comment (Exhibit G) but has received no response.

### **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 USC § 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 the victim of an error or injustice. The Board concurs with the rationale and recommendations of NGB/FMFF and NGB/A1PS and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided copies of his active duty orders, leave and earnings statements, and military payroll records, which is sufficient to justify granting the applicant's request to pay out his unused leave balance of 33 days. 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.

It appears the applicant's 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 Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to, upon the applicant's submission of a completed Department of the Air Force Form 1089, *Leave Settlement Option*, to the Air Force Personnel Command Operating Location, Indianapolis, pay out the leave balance of 33 days.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## 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-2024-01122 in Executive Session on 6 Jun 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 6 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 9 Apr 24.  
Exhibit D: FBI Report, dated, 26 Jul 24.  
Exhibit E: Advisory Opinion, NGB/FMFF, dated 10 Oct 24.  
Exhibit F: Advisory Opinion, NGB/A1PS, w/atchs, dated 23 Jan 25.  
Exhibit G: Notification of Advisory, SAF/MRBC to Counsel, dated 4 Feb 25.

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