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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01652

COUNSEL: [REDACTED] *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to an honorable discharge, his narrative reason for separation amended from "Misconduct" to "Secretarial Authority" with corresponding separation code, and his reentry (RE) code amended from "RE-2M" to "RE-1."

APPLICANT'S CONTENTIONS

According to counsel, the applicant enlisted in the Air Force at the age of 18 years old. During his entrance into service, he never had any noted issues with drinking or alcohol usage from before enlistment. Overall, the applicant was excited to begin his enlistment and find proper structure in his life. He had plans to build a long career in the military. After completion of basic training, the applicant trained as a Space Systems Apprentice. Early in his service, the applicant began showing the utility he brought to his unit with his deeds and actions. His initial Enlisted Performance Report from 15 Jan 97 to 14 Sep 98 showed the applicant was highly educated in Air Force Satellite Control Network resources and was responsible for monitoring squadron ground systems resources. He was consistently rated as an excellent performer of his responsibilities, praised for setting an example for others to follow, and the applicant was rated as ready for promotion to the next rank. The applicant was ultimately recommended for promotion to airman on 3 Apr 98. But while the applicant was performing his duties admirably and above standards, he began having issues with underage drinking and alcohol.

Given the applicant's young age, immaturity, and impressionability when compared to his peers, he began spending his time drinking along with his fellow airmen. The applicant acknowledges he was young and did not have any experience being away from home, which caused him to begin drinking recreationally. The applicant started running into several instances of misconduct related to his underage drinking and received multiple nonjudicial punishments (NJP) to correct his behavior. As the applicant's service continued, his drinking problems began to worsen to the point where he built a dependence on it to make it through the days. The applicant was punished with multiple Letters of Reprimand (LORs) for purchasing alcohol while under the age of 21 and general misconduct, and he was sent to alcohol rehabilitation as his situation spiraled out of control. The applicant's dependence made him unable to complete the program and he received yet another NJP for failure to adhere to the rehabilitation program.

The applicant's alcoholism reached a dire stage during an incident where another airman was injured due to his drunkenness. During the applicant's third year of enlistment, he was out with

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[REDACTED] *Work-Product*

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another airman and the applicant lifted one of his friends while they were drinking. He accidentally dropped her, and she sustained minor injuries to her head. The applicant was considered drunk and disorderly, and this led him to being punished and referred to a summary court-martial for his pattern of misconduct. The applicant was charged with specifications of the Uniform Code of Military Justice (UCMJ), Articles 128, 134, and 92 for his instances of consuming alcohol while under the age of 21, dereliction of his duties by failing to attend a Commander's Call, and for the disorderly lifting of another servicemember. The applicant was sentenced to confinement, reduction in rank, and forfeiture of pay. The applicant was recommended for separation for his pattern of misconduct based on five instances and was recommended for discharge with a general (under honorable conditions) characterization. He was discharged for his misconduct on 1 Apr 99 after just two years of service.

Counsel presented legal consideration matters, to include jurisdiction, timeliness, presumption of regularity, and Board of Corrections considerations, and referenced Title 10, United States Code § 1552 (10 USC § 1552), Title 32, Code of Federal Regulations § 581.3 (32 CFR § 581.3), 10 USC § 1552(b), and Department of Defense Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, in support.

Regarding presumption of regularity, the applicant previously applied for a characterization discharge upgrade from the Air Force Discharge Review Board (AFDRB); however, his request was denied in noting there exists no legal or equitable basis for upgrade of discharge. Over 20 years have passed since the applicant received this denial, and he fully believes his post-service documents indicate the incidents that led to his separation are a clear deviation from his current day character. The applicant requests he be given a new and impartial review without this Board's reliance on the presumption of administrative regularity.

Under material injustice, in the instant case, the applicant maintains it would serve the interests of justice to upgrade his character of discharge based on his specific circumstances from service, present-day character, and post-service records that all evidence his general (under honorable conditions) discharge should no longer be maintained in his military records. Counsel references *Sofranoff v. United States*, 165 Ct. Cl. 470 (Ct. Cl. 1964) and *Stapp v. Resor*, 314 F. Supp. 475, 478 (U.S.D.N.Y. 1970) in support. Even though the applicant's discharge is considered favorable, he still maintains he has been robbed of his good name overall, and guidance by federal courts should be applied to his specific situation.

The applicant offers his sincerest apologies to his former unit, this Board, and the Air Force as a whole for his acts of impropriety. He is frankly embarrassed at his youthful and irresponsible decisions that caused his discharge. This is a mistake the applicant has had to live with for the past almost 25 years, and he has been looking to atone for his mistakes ever since he was discharged. The applicant now better understands the gravity of his mistake in that it led his command to question his dedication to the Air Force, his adherence to his airman values, and ultimately, to the end of his career he was looking to build. For his mistake, no amount of apologizing can convey how ashamed the applicant is with the circumstances that led him to act in the way he did with alcohol and regarding his fellow airmen. While he acknowledges the wrongful mistake he made decades ago, the applicant maintains proper context is needed to fully understand the circumstances surrounding his misconduct. Counsel cited excerpts from the applicant's letter to the Board in support.

From the applicant's perspective, he acted without proper directive when he was in service. Being as young as he was, and due to this being the first time he was away from home, the applicant did

[REDACTED]

not know how to properly adjust himself to service life. While he greatly enjoyed the work he performed, the applicant never figured out how to manage himself accordingly and was simply emulating how other airmen acted around each other. This eventually became his own persona, which caused the applicant to begin drinking and rough housing in the same ways as his peers. The applicant now realizes he needed a mentor to guide him through his early days of service, and his desire for structure from his unit was not present. While the applicant does not fault his unit for his own indiscretions, it stands to reason his superiors should have better looked out for his wellbeing as the applicant was spiraling deeper into alcoholism, and this could have saved yet another airman from throwing away his career.

Given the applicant's discharge, he lived with the stigma of his immaturity, and he was still facing his alcoholism after his discharge, which took a while for him to control properly. Although the applicant wished he could change the past and continue his role with the Air Force, he nonetheless built a bright future to display even as a civilian, he has been an excellent representative of what an Air Force veteran should be. After his separation, the applicant took years rehabilitating himself to recover from alcoholism. He had a DUI [Driving Under the Influence] a few years after he was discharged while he was still struggling to find his way. The applicant was ordered to attend a seven-week Drinking Driving Program, and he completed the program. He was placed on court-ordered probation for three years due to a second incident with drunk driving, and the applicant continued to struggle. Dedicated to turning his life around, the applicant attended an outpatient rehabilitation program and fully committed to dealing with his alcoholism that had plagued him since his days in the Air Force. The applicant now has control of his alcoholism and is happy to have finally found his way after years of struggling. He knows dealing with alcoholism is a never-ending journey he will have to deal with for the rest of his life, but he has developed a tremendous web of support from his friends and family who have helped keep him on the right path.

While he was still dealing with his alcohol issues, the applicant began educating himself and honing his craft as an expert in computer engineering, and eventually, high-level communications. Overall, the applicant takes pride in the work he conducted ever since his discharge, and he strives to maintain his high level of performance to this day. This display of persistence and fortitude comes from the skills the applicant learned from the Air Force, and he is proud of how these skills have dramatically changed his life for the better. To further evidence the applicant's moral character and his commitment to serving others, several individuals who know him from after his discharge have written character memoranda detailing their experiences with him. Counsel cited excerpts from character letters in support.

Counsel concluded the applicant makes no excuses for his misconduct and fully acknowledges his reasons for his misconduct were due to his inexperience and his impressionability which led to him acting out of character. But despite the circumstances surrounding the applicant's discharge, the stigma his separation has brought him over the years, and his long battle with alcoholism over the past few decades, the applicant has proven himself to be a man of honor with his deeds and actions post-service. The applicant is leaps and bounds beyond his former self, and now as a civilian, he is an excellent representative of the Air Force and his airman core values. He now only requests the opportunity to clear his name from the mistakes in his youth and humbly petitions his character of service reflect the honorable man he has become.

In support of his request for a discharge upgrade, the applicant provides excerpts from his military human resources record; copies of numerous post-service training certificates; *Work-Product* Drinking Driver Program letter of completion; Department of Probation, [REDACTED] letter

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of probation supervision case closure; *Work-Product* Center, Addiction Recovery Services Division letter of program completion; 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 3 Oct 97, according to AF 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued NJP under Article 15, UCMJ for:

- [The applicant], who knew of his duties, at or near [REDACTED] Colorado (CO), on or about 23 Sep 97, was derelict in the performance of those duties in that he willfully failed to refrain from consuming alcohol while under the age of 21 years, as it was his duty to do.

- [The applicant], who knew of his duties, at or near [REDACTED] CO, on or about 23 Sep 97, was derelict in the performance of those duties in that he failed to carry his military identification card, as it was his duty to do.

The applicant was sentenced to a reduction in grade to airman basic (E-1), with a new date of rank of 3 Oct 97, and 30 days correctional custody.

On 28 Oct 97, according to AF Form 3212, *Record of Supplementary Action Under Article 15, UCMJ*, the applicant's sentence of correctional custody in excess of 26 days was remitted.

On 19 Jan 99, according to AF Form 2098, *Duty Status Change*, the applicant's duty status changed from Present for Duty to Absent Without Leave.

On 23 Jan 99, according to AF Form 2098, the applicant's duty status changed from Absent Without Leave to Present for Duty.

1 Mar 99, according to DD Form 2329, *Record of Trial by Summary Court-Martial*, the applicant was arraigned on the following charges:

- Charge I - Violation of the UCMJ, Article 128; Plea: Guilty, Findings: Guilty
- Specification: In that [the applicant] did, at or near [REDACTED], CO, on or about 17 Jan 99, unlawfully pick up and hold [airman] around the waist with his arms, hands, and shoulder. Plea: Guilty, Findings: Guilty

Charge II - Violation of the UCMJ, Article 134; Plea: Not Guilty, Findings: Guilty
- Specification: In that [the applicant] was, at or near [REDACTED] CO, on or about 17 Jan 99, drunk and disorderly. Plea: Not Guilty, Findings: Guilty

Charge III - Violation of the UCMJ, Article 92; Plea: Guilty, Findings: Guilty
- Specification 1: In that [the applicant] who knew of his duties at [REDACTED] CO, between on or about 21 Jan 99 and on or about 22 Jan 99, was derelict in the performance of those duties in that he negligently failed to attend a Commander's Call, as it was his duty to do. Plea: Guilty, Findings: Guilty

[REDACTED]

[REDACTED]

- Specification 2: In that [the applicant], who knew of his duties at or near [REDACTED] CO, on or about 17 Jan 99, was derelict in the performance of those duties in that he willfully failed to refrain from consuming alcohol while under the age of 21 years, as it was his duty to do. Plea: Guilty, Findings: Guilty

The applicant was sentenced to 10 days confinement, reduction to the grade of airman basic, and forfeiture of \$300.00 pay. The sentence was approved by the convening authority on 11 Mar 99.

On 22 Mar 99, the applicant's commander recommended the applicant be discharged from the Air Force for Misconduct, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.50.2. The specific reasons for the action were:

a. On or about 23 Sep 97, [the applicant] was derelict in the performance of his duties in that he willfully failed to refrain from consuming alcohol while under the age of 21 years, and he failed to carry his military identification card, as it was his duty to do. For this misconduct, he received punishment under Article 15, UCMJ, dated 3 Oct 97. His punishment included reduction to the grade of airman basic and 30 days of correctional custody.

b. On or about 28 May 98, [the applicant] was detained by local civilian law enforcement officers for purchasing alcohol under the age of 21 years. For this misconduct, he received an LOR, dated 22 Feb 99.

c. On or about 17 Jan 99, [the applicant] unlawfully picked up [airman], he was drunk and disorderly, and he was derelict in the performance of his duties in that he willfully failed to refrain from consuming alcohol while under the age of 21 years. Furthermore, between on or about 21 Jan 99 and or about 22 Jan 99, [the applicant] was derelict in the performance of his duties in that he negligently failed to attend a Commander's Call. For this misconduct, he was punished by Summary Court-Martial, dated 1 Mar 99. His punishment included 10 days confinement, reduction to airman basic, and forfeiture of \$300.00 pay.

d. On or about 19 Jan 99, [the applicant] failed to complete the AF Form 988, *Leave Request/Authorization*, after returning from leave, and before beginning his next scheduled leave. For this misconduct, he received an LOR, dated 22 Feb 99.

On that same day, the Staff Judge Advocate found the discharge action legally sufficient.

On 1 Apr 99, the discharge authority directed the applicant be discharged for Misconduct, under the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.50.2, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered but not offered.

According to DD Form 214, *Certificate of Release or Discharge from Active Duty*, on 1 Apr 99, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and his RE code is 2M [Serving a sentence or suspended sentence of court-martial; or separated while serving a sentence or suspended sentence of court-martial]. He was credited with 2 years, 2 months, and 16 days of total active service. Dates of Time Lost During this Period: 19 Jan 99 – 23 Jan 99.

On 24 Apr 00, the applicant submitted a request to the AFDRB for an upgrade to his discharge.

On 19 Oct 00, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

From 21 Apr 01 through 9 Jun 01, according to a Work-Product DDP letter, dated 24 Jan 14, provided by the applicant, he completed the requirements of the Work-Product State Drinking Driver Program, was evaluated by a Treatment Provider to determine whether further treatment was needed, and was released with the recommendation of no necessary treatment required.

From 15 Nov 04 through 26 Jul 05, according to a Work-Product Center, Behavioral Health Care, Addiction Recovery Services Division, Chemical Dependency Department letter, dated 30 Jan 14, provided by the applicant, he attended their program and successfully completed treatment.

On 2 Feb 05, according to a Department of Probation, letter, dated 16 Dec 13, provided by the applicant, he was sentenced to three years' probation, with closure date of 1 Feb 08, and is no longer under the supervision of this department on the referenced case.

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

POST-SERVICE INFORMATION

On 13 Nov 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 18 Nov 24 and provided an FBI report. According to the report, the applicant was arrested on:

- 11 Feb 01 for Operating Motor Vehicle with .10 of 1 percent Alcohol or More in Blood
- 23 Oct 04 for Operating Motor Vehicle with .08 of 1 percent Alcohol or More in Blood

The applicant provided character statements, certificates, and a copy of his resume with his original application to the Air Force Board for Correction of Military Records.

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 13 Nov 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 not timely filed but the untimeliness is waived because it is in the interest of justice to do so. 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 the victim of an injustice. While the Board finds no error in the original discharge process, the majority of the Board recommends full relief based on fundamental fairness in accordance with the Wilkie Memo; with the minority recommending amendment of the applicant’s narrative reason for separation and separation code. In particular, the Board considered the applicant’s age at the time of his misconduct, the length of time since his misconduct, and his efforts towards alcohol rehabilitation. Therefore, the majority of the Board recommends the applicant’s records be corrected as indicated below.

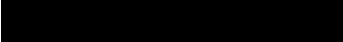
RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 1 Apr 99, he was discharged with service characterized as honorable, a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority), and a reentry code of 1J.

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-2024-01652 in Executive Session on 21 May 25:

-  Panel Chair
-  Panel Member
-  Panel Member





All members voted to correct the record; however, **Work-Product** voted to provide partial relief and did not provide a minority opinion. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 2 May 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 13 Nov 24.
- Exhibit D: FBI Report, dated, 13 Sep 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.

