

Work...



Work...

Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01703

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions (UOTHC) discharge be upgraded to general (under honorable conditions).

APPLICANT'S CONTENTIONS

Since his discharge, he has continually improved himself. He has served his community with pride, honor, and distinction. It has been 39 years since his discharge, and it took him a long time to forgive himself for how he left the service, which he loved. He asks the Air Force to consider his proof of change. He has considered this request for several years and decided it is time to request the change. He was unable to forgive himself for how he left the Air Force. It took a long time for him to realize God had forgiven him and he needed to forgive himself. This is the last step in the forgiveness process.

In support of his request for a discharge upgrade, the applicant provides post service certifications, character references, and awards.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 5 Feb 85, the applicant received a referral enlisted performance report (EPR) because his off-duty behavior raised questions concerning his ability to accept noncommissioned officer (NCO) responsibilities with a comment he had significant lapses in maturity and judgment. In the applicant's response to the referral EPR, he stated the allegation against him was unfounded and he was innocent of any wrongdoing.

On 12 Mar 85, the applicant submitted a response to the discharge action in accordance with AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-49a for commission of a serious offense-

AFBCMR Docket Number BC-2024-01703

Work...

Work-Product

Work-Product

Work...

sexual deviation, stating he did not waive his rights to a hearing before an administrative discharge board.

On 3 May 85, the applicant received a UOTHC discharge. His narrative reason for separation is “Misconduct – Sexual Deviation” and he was credited with 4 years, 10 months, and 7 days of total active service.

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

POST-SERVICE INFORMATION

On 2 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 assist the Board in evaluating his request. 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 Aug 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge.

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 2 Aug 24, the Board staff provided the applicant a copy of the clemency/fundamental fairness 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. 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 finds his discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, was unduly harsh or disproportionate to the offenses committed. Nonetheless, in the interest of justice, the Board considered upgrading the discharge based on clemency and fundamental fairness; however, given the evidence presented, the Board finds insufficient basis to do so. The Board considered the principles included in the Wilkie Memo; however, the applicant did not provide sufficient evidence to warrant granting relief on the basis of clemency. Therefore, the Board recommends against correcting the applicant's records.

Work...

Work...

Work-Product

The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide additional documentation pertaining to his post-service accomplishments and activities, the Board would be willing to review the materials for reconsideration of his request based on fundamental fairness.

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-2024-01703 in Executive Session on 6 Jun 25:

Work-Product

Panel Chair

Work-Product

Panel Member

Work-Product

Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 Apr 24.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), 2 Aug 24

Exhibit D: FBI Report, dated 15 Aug 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.

6/27/2025

X

Work-Product

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-01703

Work...

Work-Product

Work...