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Attorney-Client

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02339

Attorney-Client

COUNSEL:

Attorney-Client

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

1. His bad conduct discharge (BCD) be upgraded to honorable.
2. His narrative reason for separation be changed to Secretarial Authority.
3. His separation code be changed to Secretarial Authority.

### APPLICANT'S CONTENTIONS

The applicant requests consideration of clemency based on the Wilkie Memo factors. He fully accepts responsibility and expresses he has experienced a void from being unable to fulfill his service obligation. To fill this void, he has actively served the government and his community as evidenced by multiple character references and devotion to the community. He has worked hard to make a positive difference in his community, starting an after-school science technology engineering and math (STEM) program in 2015. He has also served as a science fair judge, hosted code sessions for youth, coached middle school football, taught martial arts, served as a judge for the open karate competition and donates to several organizations.

He has also had a highly successful work history. He worked at several healthcare organizations, the National Aeronautics and Space Administration (NASA), Lockheed Martin, and Microsoft. During his tenure at Microsoft, he spent a lot of time working with the government and has served in multiple presidential administrations. For him to serve these administrations, he was adjudicated for top secret clearance, which he still holds. He worked at Microsoft for 31 years and is currently at another major technology firm. His job history shows he has been an upstanding citizen. His post-service history is filled with instances where he has positively impacted the federal government.

In support of his request for a discharge upgrade, the applicant provides a personal statement, character statements, and a Federal Bureau of Investigation (FBI) criminal history check.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

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On 21 Dec 87, the convening authority published Special Court-Martial Order (SPCMO) Number [Atto...]. The order stated the applicant pled guilty to one charge and one specification of absenting himself from duty from on or about 1 Feb 87 to on or about 29 Sep 87 (Article 86). The applicant was sentenced to confinement for five months, forfeiture of \$200.00 pay per month for five months, reduction to the grade of airman basic (E-1), and discharge from the service with a BCD.

On 9 Mar 88, the convening authority published SPCMO Number [Atto...]. The order stated the actions taken by SPCMO Number [Atto...] were withdrawn and only so much of the sentence as provides for a BCD, forfeiture of \$200.00 pay per month for five months, confinement for 82 days, and reduction to the grade of airman basic (E-1) is approved, and except for the part of the sentence to a BCD will be executed. SPCMO Number 2, dated 21 Dec 87 was rescinded.

On 31 May 88, the convening authority published SPCMO Number [Atto...]. The order stated SPCMO Number [Atto...] dated 9 Mar 88 was rescinded and the action taken was withdrawn as the record of trial was returned by the judge advocate general with directions with the following substituted for the original action: Only so much of the sentence as provides for a BCD, confinement for 82 days, forfeiture of \$200.00 pay per month for five months, and reduction to the grade of airman basic (E-1) was approved except for the part of the sentence extending to a BCD would be executed. On 16 Sep 88, SPCMO number [Atto...] indicates the sentence was finally affirmed and the BCD was to be executed.

On 28 Oct 88, the applicant received a BCD. His narrative reason for separation is "Conviction by Court-Martial (Desertion)" with a corresponding separation program designator (SPD) code of JJC, and he was credited with 1 year, 9 months, and 25 days of total active service.

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

## POST-SERVICE INFORMATION

The applicant provided an FBI criminal history check with his application. According to the report, the applicant has had no arrests since discharge.

## APPLICABLE AUTHORITY

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.

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.

## AIR FORCE EVALUATION

AF/JAJI recommends partially granting the application.

The applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and a BCD. The AFBCMR and the Secretary of the Air Force have limited authority to correct court-martial records. Under 10 U.S.C. Section 1552(f), the AFBCMR may extend its authority to correct a record to reflect an action taken by review authorities under the Uniform Code of Military Justice (UCMJ) or act on the sentence of a court-martial for purposes of clemency. The applicant does not request correction of a record to reflect an action taken by review authorities. Therefore, clemency on the applicant's sentence is the only option available for consideration.

In accordance with the Wilkie Memo, when determining whether to grant relief on the basis of clemency, BCMRs should consider a variety of factors to include character references, evidence of rehabilitation, severity of misconduct, an applicant's meritorious service, character, and reputation. Of note in this case, the AFBCMR should also consider the applicant's candor, and whether the punishment, including any collateral damages, was too harsh.

The AFBCMR has the authority to grant clemency in the form of a discharge upgrade. However, AF/JAJI's review did not identify any information warranting clemency in the form of a discharge upgrade from a legal perspective.

The applicant's conviction at court-martial was absence without leave (AWOL), in violation of Article 86, UCMJ, and not "Desertion" as reflected on DD Form 214, *Certificate of Release or Discharge from Active Duty*, in Block 28 in the narrative reason for separation. Therefore, correction to the narrative reason for separation is appropriate. However, there is no information in the case file from which AF/JAJI may determine if "Secretarial Authority" is an appropriate and warranted narrative reason for separation. Similarly, AF/JAJI has no opinion on the merits of changing the "JJC" separation code in Block 26. The appropriate content for these blocks is beyond their knowledge and expertise.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 25 Apr 25 for comment (Exhibit D), and the applicant replied on 5 May 25. In his response, the applicant concedes he does not present a legal argument for clemency but rather points to the factors of the Wilkie Memo in support of his request and highlights the Board should note his meritorious lifetime of service to the government.

The applicant's complete response is at Exhibit E.

### **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 has presented sufficient evidence to demonstrate a discharge upgrade is warranted based on clemency. In the interest of justice, the Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on clemency. In particular, the Board noted his clean criminal history, length of time since discharge, and a lifetime of service to the government. This demonstrates a successful post-service transition which supports a discharge upgrade to general; however, the Board cannot support the applicant's request for an honorable discharge. The Board finds his original discharge was consistent with the substantive requirements of the discharge regulation and his service characterization was not contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed at the time of his discharge. But again, based on clemency, the Board recommends correcting the applicant's records as indicated below.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 28 Oct 88, he was discharged with service characterized as general (under honorable conditions), and a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

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## CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-02339 in Executive Session on 18 Jul 25:

Attorney-Client

, Panel Chair

Attorney-Client

, Panel Member

Attorney-Client

, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 27 Jun 24.

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

Exhibit C: Advisory opinion, AF/JAJI, dated 17 Apr 25.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 25 Apr 25.

Exhibit E: Applicant's response, dated 5 May 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.

7/23/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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