

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-02864

XXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

His general (under honorable conditions) discharge be upgraded to an honorable discharge, his narrative reason for separation be amended to reflect "Secretarial Authority," his separation code amended to reflect "JFF," and his reenlistment code be amended to reflect "1."

### **APPLICANT'S CONTENTIONS**

According to counsel, the applicant served with the Air Force honorably for nearly six years. Throughout his service, the applicant repeatedly received performance reports recognizing his exemplary conduct as an airman, was annually identified as deserving of promotions, and viewed both by his superiors and his peers as a consummate leader both in his airman duties as well as in the greater community. As the applicant's service term was nearing completion, he made his first and only misstep in his six years of service when he consumed a single tablet of Percocet in a misguided attempt to treat severe sleep deprivation. At the time of the applicant's lapse, he was experiencing significantly impaired judgment due to a series of ongoing stress-inducing events and conditions, including severe sleep deprivation, debilitating back pain, increased responsibilities of caring for his newborn child, various administrative tasks associated with voluntary separation, and the inherent uncertainty that comes with uprooting the life he had established in the Air Force. To make matters worse, while undertaking the task of moving his family, the applicant began to experience intensifying back pain. Coupled with his sleep deprivation and stress, the back pain created a confluence of factors that resulted in the applicant's significantly impaired judgment. Under these conditions, he was involved in the lone and isolated incident that led to his general (under honorable conditions) discharge. Prior to the lone and isolated event, the applicant had no past incidents of misconduct. Accordingly, the applicant respectfully submits his otherwise honorable and exemplary military service and post-service conduct render his general (under honorable conditions) discharge unjustly harsh.

At the time of the isolated incident, the applicant was in the process of completing many administrative tasks required as part of his voluntary separation, as well as moving his and his wife's belongings. The applicant was the only individual in the household physically able to move the heavy furniture out of their quarters given that his family was hundreds of miles away and unavailable to assist him. Contemporaneously, the applicant's wife gave birth to the couple's first daughter, and the applicant was suddenly balancing his voluntary separation duties with the life-changing increase in responsibilities that accompanied caring for his newborn daughter. As a result of these stressors, the applicant struggled with sleep deprivation. Additionally, the applicant began experiencing severe back pain due to moving the heavy objects and it substantially contributed to his sleep deprivation. This confluence of stressors resulted in the applicant experiencing significantly impaired judgment. Feeling hopeless due to his inability to sleep, the applicant consumed one Percocet tablet in a misguided attempt to self-medicate his sleep deprivation. The applicant did not have a prescription for the Percocet which had been prescribed to his wife for the pain associated with her pregnancy.

Per counsel, the applicant tested positive for Oxycodone and Oxymorphone (Percocet) in a urinalysis test administered to his squadron on 6 Jan 10. His superiors subsequently informed the applicant charges were preferred against him for violation of Article 112a of the Uniform Code of Military Justice (UCMJ) and initially set the applicant's case for a trial by court-martial. Throughout the Air Force Security Forces investigation of the incident, the applicant remained completely transparent and immediately sought to take responsibility for his lapse in judgment by requesting an administrative discharge rather than disputing the charges in a trial by court-martial. Pursuant to Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, the applicant's request for an administrative discharge in lieu of trial by court-martial was granted, based in part on the reasoning the single instance of misconduct, when considered in light of his exemplary six-years' service as an airman, did not necessitate a trial by court-martial. As several Air Force investigators recognized in their reports, there was no recreational intent in the applicant's use of the Percocet. Accordingly, the applicant was administratively discharged with a service characterization of general (under honorable conditions).

Even a cursory review of the applicant's service records, particularly his performance reports and reviews by superiors, shows the truly aberrational nature of his misconduct and demonstrates the extent to which the applicant's judgment was severely impaired at the time of the incident. The applicant's post-service conduct, characterized by the same strong work ethic and demonstrable leadership abilities he exhibited as an airman, as well as his role model parenting for his children, further highlights the aberrational nature of the applicant's lone and isolated incident. The applicant's service characterization has prevented him from realizing many educational, financial, and employment-related benefits veterans enjoy. Even beyond these benefits, the applicant's principal motivation in seeking a discharge upgrade is the stain his service characterization has left on his otherwise exemplary service record. Since his discharge, the applicant has consistently felt shame and embarrassment due to his service characterization, and as a result, avoids sharing his military background with others. On 18 Apr 23, the Air Force Discharge Review Board (AFDRB) ruled unfavorably against the applicant on this matter. In the AFDRB's written decision, they inaccurately stated the opiate levels in the applicant's system at the time of his testing indicated he had consumed more than one Percocet pill. However, analysis of the initial data confirmed the testing supported the applicant's claim only one pill had been ingested.

In support of counsel's contentions, he provided a detailed summary of the applicant's military service. Counsel also referenced the applicant's personal affidavit, citing multiple passages. Counsel continued by reiterating the confluence of stressors preceding the applicant's incident, giving detailed accounts of the applicant's administrative responsibilities, the birth of his daughter, and his own personal ailments in explanation.

On 6 Jan 10, less than 30 days before his anticipated voluntary separation from the Air Force, the applicant was randomly selected for a urinalysis test. Six days before his anticipated separation date, the applicant was informed the Air Force Security Police filed a complaint against him, pursuant to the Drug Demand Reduction Program, alleging his 6 Jan 10 urinalysis sample tested positive for Oxycodone and Oxymorphone. Concerning the Air Force investigation, counsel contended the investigators initiated a formal investigation after reviewing the applicant's medical records and finding no prescription to justify the presence of Oxymorphone and Oxycodone in his system. The applicant admitted he had consumed one Percocet pill to relieve back pain he experienced due to moving heavy furniture in preparation for his voluntary separation from the Air Force.

Even when confronted with an inaccurate investigative analysis related to his case, the applicant did not waiver from the complete honesty he had initially provided to the investigators. The inaccurate investigative analysis resulted from a Medical Group Pharmacist, contacted by the investigators, incorrectly opining that while Oxycodone would appear in a urinalysis positive test

for consumption of Percocet, Oxymorphone would not and would instead be associated with ingestion of a different pain medication. Consequently, investigators conducted a second interview with the applicant to confront him with this purported inconsistency, but he stood by and reiterated his prior admission of consuming one Percocet pill and no other non-prescribed pain medications. A subsequent inquiry by investigators with Air Force drug testing personnel revealed the initial analysis to be incorrect, and correctly opined the applicant's positive urinalysis results for Oxymorphone and Oxycodone were consistent with the consumption of a single Percocet pill. In completing its investigation, investigators ultimately charged the applicant with the unlawful use/consumption of a Schedule II controlled substance.

On 8 Mar 10, seeking to accept responsibility for his wrongdoing, the applicant, through his area defense counsel (ADC) representation, filed a request for an administrative discharge in lieu of court-martial. His ADC emphasized the undisputed fact the applicant's one-time, isolated use of a single Percocet pill was not for purely recreational purposes, such as crushing and snorting it prior to going out to the clubs, for which it may be proper to sternly punish the user but rather was strictly for medicinal purposes. Therefore, the applicant's ADC argued an administrative discharge was more appropriate based on the fact of the applicant's case as well as for the administrative efficiency of the Air Force. In assessing the applicant's request, several Staff Judge Advocates agreed administrative discharge was more proper. Ultimately, on 29 Mar 10, the discharge authority approved the applicant's request for an administrative discharge in lieu of trial by court-martial and imposed a separation with a service characterization of general (under honorable conditions).

Counsel again refers to the applicant's personal affidavit, in this instance to capture the applicant's post-service conduct. Since leaving the Air Force, the applicant has had no legal or criminal issues and has maintained steady employment. The applicant is the proud and very involved and committed father of three children, two from his first marriage, and one from his current marriage. Counsel cited excerpts from character references provided in support. Though proud of his service, the applicant experiences feelings of embarrassment and shame associated with his general (under honorable conditions) discharge. While he would love to discuss his invaluable experiences in the Air Force and demonstrate his pride for his service, the applicant remains uncomfortable in doing so because of the blemish on his otherwise exemplary service record. Indeed, when meeting new individuals, whether at his place of employment or in his personal life, the applicant feels disinclined to bring up his military service, in fear he would have to address his service characterization.

In his request for clemency, counsel presents 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 (Wilkie Memorandum). According to counsel, the Wilkie Memorandum delineates factors the Board should consider in its application of relief: an applicant's candor, positive post-conviction conduct, length of time since misconduct, character and reputation of the applicant, and mitigating factors related to the record are all factors which weigh heavily in the applicant's favor. Per counsel, the Wilkie Memorandum speaks directly to the applicant's petition as the type of circumstances the Undersecretary intended the Board to consider more leniently.

On 21 Mar 23, the applicant appeared before the AFDRB via video teleconference to request an upgrade of his discharge characterization under the facts presented in this brief. After receiving his testimony and reviewing the relevant documentation, the AFDRB issued a written conclusion on 18 Apr 23, denying his request. The AFDRB; however, misstated a critical component of the factual circumstances regarding the applicant's discharge. In its written conclusion, the AFDRB wrote, "His levels [of opiates in the urine test] were 600 ng/ml and 321 ng/ml which is evident that he had ingested more than one tablet as he stated in his appeal." This statement

misrepresents the sequence of events that unfolded after the initial drug test. It is indeed true the initial analysis of the applicant's blood levels suggested he had ingested Oxycodone and Oxymorphone. When confronted with this inaccurate analysis, the applicant repeatedly maintained the accuracy of the information he had initially provided investigators that his mistake was limited to a single Percocet pill. Upon further review, his honesty was proven true – a subsequent inquiry by Air Force drug testing personnel revealed the initial analysis to be incorrect and confirmed the results were consistent with the consumption of a single Percocet pill. The now-uncontested scientific analysis supports the applicant's honesty throughout the investigative process. The AFDRB; therefore, relied on an inaccurate understanding of the facts in their conclusion the applicant was both dishonest with investigators and the AFDRB in his 2023 hearing. The applicant requests the Board remedy the factual error made by the AFDRB in the reasoning of its decision and upgrade his service discharge to honorable.

In support of his request for a discharge upgrade, the applicant provides a personal affidavit, excerpts from his military human resources record, three character references (dated circa 2017), an AFDRB decisional document, excerpts from the Air Force Security Forces Report of Investigation, a copy of 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 (Wilkie Memorandum), 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 senior airman (E-4).

On 6 Jan 10, according to an Air Force Security Police Report of Investigation, the applicant was randomly selected by the Drug Demand Reduction Program to provide a urine specimen for inspection testing. The applicant provided his urine specimen, as ordered.

On 27 Jan 10, according to a Drug Demand Reduction Program Manager memorandum, Subject: Medical Officer Review of Medical, Dental, and Pharmacy Records, the applicant provided a drug urinalysis specimen which tested positive for Oxycodone at 321 ng/ml and Oxymorphone at 600 ng/ml and the applicant did not have a current medical prescription or recent medical procedure to account for the positive results.

On 1 Mar 10, according to DD Form 458, *Charge Sheet*, the applicant was referred for trial at special court-martial for:

- Charge: Violation of the UCMJ, Article 112a
- Specification: In that [the applicant] did, within the continental United States, between on or about 30 Dec 09 and on or about 6 Jan 10 wrongfully use Oxycodone, a Schedule II controlled substance.

On 8 Mar 10, according to an applicant memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial, the applicant requested a general (under honorable conditions) discharge from the Air Force according to AFI 36-3208, Chapter 4, in lieu of trial by court-martial.

In an undated memorandum, the applicant's squadron commander stated the applicant was charged with one charge and one specification for wrongful use of Oxycodone, in violation of Article 112a of the UCMJ and had one Letter of Reprimand, dated 8 Sep 09, in his Personal Information File. The commander recommended the applicant's request for discharge be approved with a general (under honorable conditions) service characterization.

On 16 Mar 10, according to a XX FW/JA memorandum, Subject: Legal Review – [applicant] Request for Discharge in Lieu of Trial by Court-Martial, the Staff Judge Advocate recommended approval of the applicant's request for discharge in lieu of trial by court-martial with a general (under honorable conditions) service characterization. On this same date, according to a 20 FW/CC memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [applicant], the wing commander concurred with the recommendation of the Staff Judge Advocate.

On 29 Mar 10, according to a XX AF/JA memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [applicant], the Staff Judge Advocate found the discharge action legally sufficient. On this same date, according to XX AF/CC memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [applicant], the discharge authority approved the applicant's request as being in the best interest of the Air Force and directed the applicant's discharge with a general (under honorable conditions) service characterization.

On 9 Apr 10, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Triable by Court-Martial" with separation code "KFS" [In lieu of trial by court-martial], and reentry code "2B" [Separated with a general or under other than honorable conditions discharge]. He was credited with six years, two months, and seven days of total active service.

On 17 Oct 18, the applicant submitted a request to the AFDRB for an upgrade to his discharge, narrative reason for separation, and reentry code.

On 23 May 19, the AFDRB found insufficient evidence of an inequity or impropriety that would warrant a change to the applicant's discharge. The AFDRB also found the negative aspects of the applicant's willful misconduct outweighed the positive aspects of his military service.

On 24 Mar 21, the applicant submitted an appeal to the AFDRB for an upgrade to his discharge, narrative reason for separation, with corresponding separation code, and reentry code.

On 26 Apr 22, the AFDRB concluded the applicant made an informed decision when he requested the Chapter 4 discharge, and the negative aspects of the applicant's service outweighed the positive contributions he made in his Air Force career. The AFDRB reviewed the entire record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge.

The applicant submitted an appeal to the AFDRB, requesting a personal appearance, for an upgrade to his discharge, narrative reason for separation, with corresponding separation code, and reentry code.

On 21 Mar 23, the AFDRB concluded the applicant got what he asked for when he requested a discharge in lieu of trial by court-martial. The medical advisory stated the presence of opiates in urine indicates exposure to opiates within 2-3 days at 25 ng/ml. The applicant's levels were 600 ng/ml and 321 ng/ml which is evident he had ingested more than one tablet as he stated in his appeal. Further, the AFDRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant any changes to the discharge.

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

## **POST-SERVICE INFORMATION**

On 15 Jan 25, 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 15 Jan 25 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 15 Jan 25, the Board staff provided the applicant a copy of the clemency consideration 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. The applicant's request for discharge in lieu of trial by court-martial, with a general (under honorable conditions) service characterization, was found legally sufficient, and approved by the discharge authority. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the discharge authority'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 fundamental fairness

in accordance with the Wilkie Memorandum; however, given the evidence presented, and lack of substantive post-service information, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## **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-2024-02864 in Executive Session on 21 May 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 7 Aug 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 15 Jan 25.  
Exhibit D: FBI Report, dated 17 Apr 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**

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Board Operations Manager, AFBCMR