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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03881

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He disagrees with the reason for his discharge. He was charged with being absent without leave (AWOL) even though he had convalescent leave paperwork turned into his commander the day before, prior to his surgeries. He never followed through to ensure the leave was approved. After his surgery, he spent four weeks on convalescent leave. He was unaware a "Be on the Lookout" (BOLO) was issued until his father informed him. Once he turned himself in, he was immediately placed in confinement. He was given two options by his appointed counsel, take the plea deal and spend 30 days in confinement with a discharge from the Air Force or fight the charges but would spend three to five years in confinement if he lost. He was also told since he was AWOL during a time of war he could receive the death penalty. He felt he was being coerced into taking the plea deal. Before his court-martial, he was told by his counsel, they were also trying to charge him with adultery even though he was legally separated. He was found guilty and was released from confinement on day 26 for good behavior. He takes responsibility for his actions since he did not follow through to ensure his leave was approved but does not think his case was properly handled. Everyone in his squadron knew he was having knee surgery and knew where he lived with his roommate, a fellow airman; the fact he was not informed he was AWOL until his father was called almost 30 days later is an injustice.

In support of his request for a discharge upgrade, the applicant provides a personal statement and a witness statement from his father verifying the applicant's contentions and the sequence of events from his perspective.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

AFBCMR Docket Number BC-2024-03881

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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

On 8 Apr 05, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for being AWOL from Airmen Leadership School on or about 28 Mar 05 through 29 Mar 05. He received a reduction in grade to airman (E-2) with reduction below airman first class suspended until 7 Oct 05 unless sooner vacated, and 45 days of extra duty.

On 8 Jul 05, AF IMT 2098, *Duty Status Change*, indicated the applicant was determined to be AWOL when he failed to report for duty on 7 Jul 05.

On 20 Jul 05, AF IMT 2098 indicated the applicant had knee surgery on 7 Jul 05 and was instructed to fill out convalescent leave but failed to do so.

On 7 Aug 05, AF IMT 2098 indicated the applicant's status changed from AWOL to desertion on his 31st day of absence.

On 18 Aug 05, AF IMT 2098 indicated the applicant voluntarily reported to his squadron after being absent for 41 days.

On 9 Sep 05, DD Form 2329, *Record of Trial by Summary Court-Martial*, indicates the applicant pled guilty and was found guilty of one charge and one specification of being AWOL between on or about 8 Jul 05 and 18 Aug 05 (Article 86). The applicant was sentenced to confinement for 30 days (term of confinement having been served), reduction to the grade of airman basic, and forfeiture of \$823.00 in pay.

On 28 Sep 05, AF IMT 100, *Request and Authorization for Separation*, indicates the applicant was to receive a general (under honorable conditions) discharge, effective 29 Sep 05.

On 29 Sep 05, AF IMT 100 indicates an amendment was issued changing the applicant's character of service to UOTHC and on this same date, the applicant received an UOTHC discharge. His narrative reason for separation is "Misconduct" and he was credited with 4 years, 8 months, and 25 days of total active service.

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 12 Mar 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 22 Mar 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 12 Mar 25, the Board staff provided the applicant a copy of the 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.

AIR FORCE EVALUATION

AFPC/DPMSSR recommends denying the application finding the discharge was consistent with the procedural and substantive requirements of the discharge instruction and was within the discretion of the discharge authority based on a review of the records and the presumption of regularity. The discharge package is absent from the record; however, based on the presumption of regularity, the squadron commander would have recommended discharge to the Base Discharge Authority (BDA). The BDA would have directed discharge and the service characterization concluding the BDA determined the amount of misconduct committed by the applicant outweighed any positive aspects of his military service. A review of the Military Personnel Data System (MILPDS) confirms the UOTHC service characterization, concluding the technician preparing the separation orders made an error. The MPF prepared an amendment (AE-539, dated 29 Sep 05) located in the applicant's records correcting the character of service to reflect UOTHC.

The complete advisory opinion is at Exhibit E.

AF/JAJI recommends denying the application finding no legal error or additional information to suggest clemency in the form of a discharge upgrade is warranted.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 2 Jun 25 for comment (Exhibit G) but has received no response.

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 not the victim of an error or injustice. The Board concurs with the rationale and recommendations of AFPC/DPMSSR and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the presumption of regularity, the Board finds the 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, and in the absence of post-service information, except for an FBI report indicating no criminal activity, demonstrating the applicant has made a successful post-service transition, the Board finds no basis to do so. The Board notes the applicant's contentions he had surgery and was to be on convalescent leave, but this was not the first time the applicant was AWOL. Furthermore, the Board does commend the applicant for taking responsibility for his actions when he did not ensure his leave was approved, but in the absence of evidence pertaining to his post-service accomplishments showing he has led a successful life since discharge, the Board cannot grant relief and recommends against correcting his record. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his current moral character, occupational, and social advances, in the consideration for an upgrade of discharge characterization due to clemency 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-2024-03881 in Executive Session on 18 Jul 25:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 26 Sep 24.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Guidance), dated 12 Mar 25.

Exhibit D: FBI Report, dated, 22 Mar 25.

Exhibit E: Advisory Opinion, AFPC/DP2SSR, dated 16 May 25.

Exhibit F: Advisory Opinion, AF/JAJI, dated 29 May 25.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jun 25.

AFBCMR Docket Number BC-2024-03881

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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.

9/1/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-03881

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