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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03993

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His bad conduct discharge (BCD) be upgraded to honorable.

### APPLICANT'S CONTENTIONS

He chose to serve because he respects the military and what it stands for. However, he made a bad decision over 20 years ago at 20 years of age. He has two daughters and is a law-abiding citizen who has not been in trouble since his discharge. He is on a mission to improve the quality of his life, for himself and his children. He was proud to serve and still carries that pride today. He has worked for **Attorney...** for over 11 years and feeds the homeless through the **Attorney-Client**.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 16 Mar 05, AF Form 2098, *Duty Status Change*, indicates the applicant was convicted by court-martial on 16 Mar 05 with confinement beginning this same day. According to the FBI report submitted by the applicant, he was arrested or received one charge of having carnal knowledge with a child 12 to 16 years of age (Article 120) on or about 4 Jul 04; one charge of felony carnal knowledge of a juvenile on 16 Mar 05; and one charge and two specifications of carnal knowledge on or about 4 May 05 (Article 120). The FBI report also indicates he was charged with failing to register as a sex offender on 23 Aug 05.

On 4 Aug 05, AF Form 2098 indicates the applicant was released from confinement.

On 3 Nov 06, the convening authority published Special Court Martial Order (SCMO) number **Wor...** The Order stated the sentence, a BCD, confinement for six months, and a reduction in grade to airman basic, as promulgated in SCMO number **W** was affirmed with the BCD being executed.

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

Pursuant to Article 58b, section (b), automatic forfeiture of two-thirds pay per month was waived from 7 Apr 05 for a period of two months or upon release from confinement, whichever was sooner with the forfeitures directed to be paid to his spouse.

On 2 Apr 07, the applicant received a BCD. His narrative reason for separation is “Court Martial” and he was credited with 5 years and 27 days of total active service.

For more information, see the excerpt of the applicant’s record at Exhibit B, the advisory at Exhibit C, and the Federal Bureau of Investigation (FBI) report at Exhibit F.

## **POST-SERVICE INFORMATION**

On 6 May 25 and again on 16 Jul 25, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a 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 E). The applicant replied on 30 Jul 25 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a printout of his job history, two character reference statements from friends attesting to his strong character, compassion, and work ethic, and his college transcripts and diploma.

The applicant’s complete response is at Exhibit F.

## **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 6 May 25 and 16 Jul 25, the Board staff provided the applicant a copy of the clarifying guidance (Exhibit E).

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 denying the application finding no basis of a legal error. The AFBCMR always 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 from a legal perspective. The applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and BCD. The AFBCMR and the Secretary of the Air Force (SAF) 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 take action 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, the 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 complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 16 Jul 25 for comment (Exhibit D) 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 other available administrative remedies 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 recommendation of AF/JAJI and finds the sentence of the military court was not improper or that it exceeded the limitations set forth in the UCMJ. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. In support of his request for an upgrade, the applicant provided an FBI report, two character statements, a copy of his job history, and a copy of his diploma and college transcripts. The Board contemplated the many principles included in the Wilkie Memo to determine whether to grant relief based on clemency. However, the Board does not find the evidence presented is sufficient to conclude the applicant's post-service activities overcame the serious misconduct for which he was discharged. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant presented some supporting statements indicating he has apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, the supporting statements from the applicant's friends indicate their admiration for the applicant and the way he has lived his life; however, these statements do not provide his impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. Therefore, the Board does not find the applicant's submission sufficient to grant the requested relief and recommends against correcting his record. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, additional character statements, or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on clemency.

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-2024-03993 in Executive Session on 31 Jul 25 and 22 Aug 25:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member
Work-Product	Panel Chair
Work-Product	Panel Member
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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, dated 13 Nov 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 8 Jul 25.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Jul 25.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 6 May 25 and 16 Jul 25.
- Exhibit F: Applicant’s Response, w/atchs, dated 30 Jul 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.

10/3/2025

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Board Operations Manager, AFBCMR  
Signed by: USAF