



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2025-00229

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He was falsely accused. He did nothing wrong and was innocent. This has ruined his potential future employment opportunities which has affected his mental well-being. Instead of going through a court-martial, he was told by his lawyer because of his appearance and his large size that his best path forward was to request a discharge in lieu of a court-martial. There was no condemning evidence proving his guilt and there were inconsistencies in testimony at the Article 32 hearing. Because of the *Johnson v. Kendall* lawsuit for which he received a letter, he is revisiting his request for an upgrade.

In support of his request for a discharge upgrade, the applicant provides a personal statement and copies of military documents pertaining to his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 11 Sep 09, the applicant, through counsel, requested a discharge in lieu of court-martial. The letter states the charges preferred against him were for sexual assault to which the victim was intoxicated. The outcome of a trial would be uncertain due to the impairment of the victim's ability to form accurate memories due to her high level of intoxication.

On 28 Sep 09, the discharge authority approved the applicant's request to be discharged in lieu of a trial by court-martial with a UOTHC service characterization. Probation and rehabilitation were not offered as the applicant was not eligible.

AFBCMR Docket Number BC-2025-00229

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

On 6 Oct 09, the applicant received a UOTHC discharge. His narrative reason for separation is "Triable by Court-Martial" and he was credited with 6 years, 4 months, and 10 days of total active service.

On 5 May 11, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 8 May 12, the AFDRB denied the applicant's request and concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

POST-SERVICE INFORMATION

On 1 Jul 25, the Board staff sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

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 1 Jul 25, the Board staff provided the applicant a copy of the clarifying 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

AF/JAJI finds insufficient evidence to recommend relief on the basis of a legal error. Per AFI 36-3208, *Administrative Separation of Airmen*, Chapter 4, airmen may request discharge if charges have been preferred with respect to an offense for which a punitive discharge is authorized. The request is voluntary and initiated by the airman. An airman may withdraw the request any time before the decision of the General Court-Martial (GCM) or Secretary of the Air Force (SAF) authority. The GCM authority personally takes final action on requests for discharge in lieu of trial by court-martial. The Staff Judge Advocate (SJA) for the GCM authority reviews the case for legal sufficiency before the GCM authority acts on it.

The applicant has the burden of providing evidence in support of their allegations of an error or injustice, per DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, and the AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision for an abuse of discretion. However, absent evidence to the contrary, AF/JAJI presumes regularity in the decision-making of the principals who resolved questions of fact and took the actions at issue. The applicant had the full opportunity to consult with a defense counsel and review the evidence before electing to submit a request for discharge in lieu of court-martial. There is no evidence the applicant was denied his procedural rights.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board staff sent a copy of the advisory opinion to the applicant on 14 Aug 25 for comment (Exhibit E) but received no response.

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. Based on the available evidence of record, the Board finds the discharge was consistent with the substantive requirements of the discharge regulation and the applicant was afforded all of his due process rights. The Board notes the applicant's claim he was innocent; however, the applicant provided no evidence which would lead the Board to believe his service characterization was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. The applicant has the burden of proof to provide evidence to support his claim. Nonetheless, in the interest of justice, the Board considered upgrading the applicant's discharge. The Board considered the many principles included in the Wilkie Memo to determine whether to grant relief based on an injustice or fundamental fairness; however, the applicant did not provide any post-service evidence to show he made a successful transition to civilian life. This Board 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. In this respect, the Board does not find the applicant's submission sufficient to grant the requested relief. 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 based on clemency and fundamental fairness.

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, paragraph 2.1, considered Docket Number BC-2025-00229 in Executive Session on 12 Nov 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 17 Jan 25.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 1 Jul 25.
- Exhibit D: Advisory Opinion, AF/JAJI, dated 5 Aug 25.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Aug 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.

1/4/2026

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF