

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01203

COUNSEL: NONE

HEARING: NO

FEB 12 1999

[REDACTED]

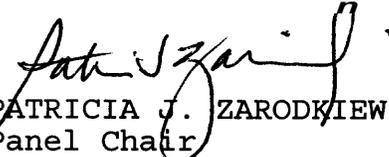
The applicant requests that he be reinstated to the grade of staff sergeant (E-5) until the year 2002. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record. Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Ms. Patricia J. Zarodkiewicz, Mr. William H. Anderson, and Mr. Joseph A. Roj considered this application on 11 February 1999 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


PATRICIA J. ZARODKIEWICZ
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. AFBCMR Ltr Forwarding Advisory Opinions



DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

23 Jun 98

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM (Maj Hogan)
112 Luke Avenue, Room 343
Bolling AFB, DC 20332-8000

SUBJECT: Correction of Military Records e [REDACTED]

Applicant's request: In an application dated 26 Apr 98, the applicant requests that he be reinstated to the rank of E-5 until the year 2002. On 9 Jan 92, the applicant pled and was found guilty of stealing and cashing a check belonging to his wife as well as forging his wife's signature on the check at a special court-martial held at Davis Monthan AFB, Arizona. The applicant was sentenced to 6 months confinement, reduction to the grade of E-3 and forfeiture of \$200 pay per month for six months. The applicant was subsequently allowed to retire in the grade of E-3 after serving his court-martial sentence. The application is past the three year statute of limitations provided by 10 U.S.C. 1552(b) and the applicant provides no justification for filing the application beyond the statute of limitations.

Facts of military justice action: The applicant was assigned to the 836th CES located at Davis Monthan AFB, Arizona. In February 1991, the applicant was a Master Sergeant. On 12 Feb 91, the applicant was punished under Article 15, UCMJ, for drunk driving in violation of Article 111 of the UCMJ. The applicant's punishment consisted of forfeitures of \$650.00 pay per month for two months, and a suspended reduction to the grade of TSgt. The applicant was also ordered not to drive on Davis Monthan AFB. On 15 Mar 91, the suspended reduction to TSgt was vacated as a result of the applicant driving on Davis Monthan AFB in violation of the order. On 13 May 1991, the applicant was apprehended for drunk driving on Davis Monthan AFB. The applicant also violated the order not to drive on Davis Monthan AFB. For these offenses, the applicant was served nonjudicial punishment which consisted of being reduced to the grade of E-5 and suspended forfeitures of \$300 pay per month for two months.

On 9 Jan 92, the applicant pled guilty to stealing a US. Treasury check in the amount of \$882.64 which was the property of his wife, [REDACTED]. The applicant also pled guilty to forging his wife's signature on the check and unlawfully uttering the check. As mentioned above, the applicant was reduced to the grade of E-3 as part of his court-martial sentence. The applicant retired from active duty with an honorable discharge on 31 Aug 92 in the grade of E-3.

Applicant's contentions: The applicant believes he was court-martialed for what he believes to be a "civilian concern" and not the concern of the Air Force. The applicant admits he

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forged a Social Security check which was addressed to his wife (the check was for the benefit of the applicant's stepdaughter). The applicant believes he was unjustly court-martialed and that the rank of E-5, which was the rank he held prior to the court-martial, should be restored to him. The applicant claims he has repaid the full amount of the check he stole from his wife. As a result, he believes he should be allowed to receive retired pay in the grade of E-5. The applicant asserts he was approved for retirement and was placed on administrative hold two days prior to going on terminal leave and subsequently court-martialed.

Discussion: AFI 36-2603, para 4.1 states that the applicant has the burden of providing sufficient evidence of probable material error or injustice. The applicant has failed to indicate any material error or injustice regarding his court-martial conviction. The applicant admits that he forged the Social Security check. He pled guilty at the court-martial. The offense which the applicant committed was a serious offense and it was appropriate to try the applicant at a special court-martial for this misconduct. The court-martial sentence was fair and just especially when the applicant's past disciplinary history is taken into account.

It should also be noted that according to his records the applicant will receive retired pay at the grade of E-7 beginning in the year 2002. On 21 May 91, the SAF Personnel Council determined that the applicant served satisfactorily in the grade of E-7 within the meaning of 10 USC 8964 and directed that he be advanced to that grade upon completion of "all required service," which would be 19 June 2002. The applicant has suffered no injustice as a result of his court-martial sentence. It was an appropriate sentence for his offense. Considering the applicant's disciplinary record, he was fortunate to be able to retire from the Air Force rather than being discharged.

Recommendation: After reviewing the available records, I conclude there are no legal errors requiring correction. The Board should either deny the application based on the statute of limitations or on its merits.



LOREN S. PERLSTEIN
Associate Chief, Military Justice Division
Air Force Legal Services Agency

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

21 Aug 98

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPRR

550 C Street West, Suite 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Reference: Airman First Class [REDACTED]

Requested Action. Applicant is a retired Air Force A1C who is requesting retirement in the grade of staff sergeant (**SSgt**).

Basis for Request. Applicant states he was court martialled in 1992, 8 days prior to reaching 20 years of active service. He was demoted to the grade of airman **first** class (A1C) and allowed to retire. Applicant contends the problems he had were not an **Air** Force concern, but a civil one. He contends he was unjustly court martialled and his rank of staff sergeant (**SSgt**) should be restored.

Discussion.

a. We defer to the advisory submitted by AFLSA/JAJM regarding the military justice action. Our advisory will address the retirement process only.

b. The applicant voluntarily applied to retire on 8 Jul 92 to be effective 1 Sep 92 (Atch 1). Had the applicant not requested retirement, he would have separated on 31 Aug 92 due to his having reached his high **year** of tenure. The applicant's request for retirement was approved on 13 Jul 92 (Atch 2).

c. Section 8961, Title 10, United States Code (Atch 3) states: "Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force...who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement." In the applicant's case, the grade he held upon retirement was airman first class (A1C).

d. Section 8964, Title 10, United States Code (Atch 4) allows the advancement of enlisted members to the highest grade in which they served on active duty satisfactorily as determined by the Secretary of the **Air** Force. The Secretary of the Air Force has delegated this authority to the Secretary of the Air Force Personnel Council (SAF/PC).

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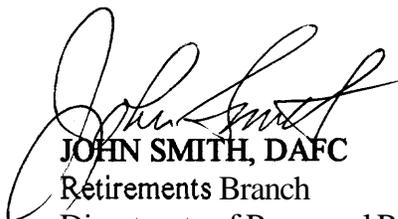
e. Since applicant had previously held a higher grade on active duty, a grade determination was accomplished on 21 May 91 (Atch 5) and the results of this grade determination were published by Special Order Number AC-015277 dated 28 Jul 92 (Atch 6). Section 8964, Title 10, United States Code is very specific in its application. This provision of law allows retired enlisted members who are retired with less than 30 years of active service to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily (as determined by the Secretary of the Air Force) when their active service plus service on the retired list totals 30 years. At the time of applicant's retirement, he had served 20 years 2 months and 11 days of active service. His advancement date to the grade of master sergeant will be 20 Jun 02.

Recommendation. Denial.

a. In accordance with the provisions of law, the applicant was correctly retired in the grade of airman first class (A1C), which was the grade he held on the date of his retirement.

b. Applicant's grade determination for advancement purposes was accomplished in accordance with the law on 21 May 91 and the Secretary of the Air Force determined that applicant served satisfactorily in the grade of master sergeant (MSgt). There is an advancement statement on applicant's retirement order which advances him to the grade of MSgt at the 30 year point (20 Jun 02).

c. No irregularities or injustices were discovered while reviewing the applicant's retirement actions.



JOHN SMITH, DAFC
Retirements Branch
Directorate of Personnel Program Management

Attachments

1. AF Form 1160
2. DAF Special Order AC-014489
3. Section 8961, Title 10, U.S.C.
4. Section 8964, Title 10, U.S.C.
5. SAF Memorandum, 21 May 91
6. **DAF** Special Order AC-015277

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