

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-02385

COUNSEL: None

FEB 5 1999

HEARING DESIRED: No

Applicant requests that his bad conduct discharge (BCD) be upgraded to honorable. Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was 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 opinion 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 Mr. Michael P. Higgins, Mr. Richard A. Peterson, and Mr. Patrick R. Wheeler considered this application on 2 February 1999 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


MICHAEL P. HIGGINS
Panel Chair

Exhibits:

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



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

6 Oct 98

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM (Lt Col Woodford)
112 Luke Avenue, Room 343
Bolling AFB, DC 20332-8000

SUBJECT: Request for Correction of Military Records [REDACTED]

Applicant's request: In an application dated 8 Aug 98, the applicant requests that his bad conduct discharge (BCD) be upgraded to an honorable discharge. On 27 Feb 69, the applicant was convicted at a general court-martial. He was sentenced to confinement at hard labor for one (1) year, forfeiture of all pay and allowances, reduction to the grade of airman basic and received a BCD. The application was not submitted within the three-year statute of limitations provided by 10 U.S.C. 1552(b). The applicant provides no basis for the delay in submitting his application, nor does he offer any reason why the Board should find it in the interest of justice to consider this application.

Facts of military justice action: On 29 Jan 69, the accused was convicted by a general court-martial convened at [REDACTED]. The first charge involved two (2) specifications in violation of Article 121, Uniform Code of Military Justice (UCMJ), of wrongfully appropriating a vehicle, the property of an airman and, of stealing a stereo and stereo tapes, the property of another Air Force member. A second charge involved a single specification of absent from his organization without proper authority (AWOL) in violation of Article 86, UCMJ. The applicant was found guilty of the referenced specifications and charges. He was found not guilty of a third specification of stealing a tape deck, the property of another Air Force member, in violation of the first charge. He was sentenced to confinement at hard labor for one (1) year, forfeiture of all pay and allowances, and reduction in grade to airman basic. The convening authority approved the findings and sentence on 27 Feb 69. The applicant initially elected not to have appellate defense counsel represent him. However, a Petition For Grant Of Review was later submitted by applicant with benefit of appellate defense counsel, yet the applicant did not assign any specific errors. On 22 May 69, appellate review in the case was completed with the applicant's Petition For Grant Of Review of the court-martial decision being denied. The applicant's conviction was ordered executed on 14 July 69. Clemency was not approved by the Clemency and Parole Board following a review on 31 July 69. The applicant was discharged Under Conditions Other Than Honorable on 18 Aug 69.

Applicant's contentions: The applicant makes no allegation of legal error in the record. He states that he knows it's been a long time since he's been in the Air Force. In support of his request, he contends that he was told by counsel that his discharge would be upgraded in two (2) years of leaving confinement at [REDACTED]. The applicant indicates that he needs his discharge changed "to receive eligibility for loan guaranty entitlement." He requests that his BCD be upgraded to an honorable discharge.

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Discussion: The applicant does not allege that any injustice or legal error occurred during his court-martial. However, he says that his counsel said that his discharge would be upgraded within two (2) years of leaving confinement. There is no indication in the file that defense counsel made such a statement; and it would be uncharacteristic of counsel to make such a statement because such a statement would not be based on any truth in fact or law. There should be a presumption of regularity accorded the process and the actions of defense counsel at that time should be believed as being proper, unless there is some contemporaneous objection or evidence to the contrary.

There is no substantive justification for upgrading applicant's BCD to an honorable discharge or for that matter a general discharge. The BCD reflects the applicant's characterization of active duty service and his desire to leave the service as soon as possible without true concern for how it happened or whatever the characterization of the departure. This is particularly true given a review of the file and the post-trial clemency report in particular, wherein it is reported that the applicant's future plans were to obtain employment with his uncle, who was not concerned with what type of discharge he got from the Air Force. The comment in the report was that the applicant wanted to get out of the Air Force as soon as he could and was not interested in going to rehabilitation. The referenced report also indicates that the applicant felt his defense counsel did a "real good job," but that the court was too harsh as far as his sentence. The applicant evidently indicated that he didn't think he would get any more than six (6) months and a BCD.

Nonetheless, the Board does have the discretionary power to upgrade the applicant's bad conduct discharge as a matter of equity. However, the applicant's lack of making any argument or support for any reasons why an injustice has occurred draws into question the prudence of granting such equitable relief.

Recommendation: The applicant's request is untimely and should be denied for failing to comply with the statute of limitations. Further, after reviewing the available records, this office concludes that administrative relief by this office is not warranted. There are no legal errors requiring correction, and the applicant has failed to provide a sufficient basis for upgrading his bad conduct discharge to the requested honorable discharge or a general discharge. I recommend the Board deny this application based upon the statute of limitations, or, if waived, deny the application on its merits.



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

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