

ADDENDUM TO  
RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00268

COUNSEL: None

HEARING DESIRED: No

JUL 31 1998

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RESUME OF CASE:

In an application dated 22 January 1997, applicant requested all record of nonjudicial punishment under Article 15 be removed from his records, restitution of \$894.00 in military pay and authorization to resubmit a DECOR-6 for award of the Air Force Commendation Medal (AFCM).

On 20 January 1998, the Board considered and denied applicant's request. A complete copy of the Record of Proceedings is attached at Exhibit G.

Applicant submitted additional information on 27 April 1998 and requested reconsideration of his application (Exhibit H). The request for reconsideration was approved and his case has been reopened.

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BOARD CONCLUDES THAT:

The applicant is requesting the nonjudicial punishment be set aside with restitution of \$894.00 pay and authorization to resubmit a DECOR-6 for award of the AFCM. However, after again thoroughly reviewing applicant's record, we find no basis upon which to disturb the earlier decision. As was noted in the original application, the Report of Investigation supported the commander's decision. The punishment was well within legal parameters and we do not find it an abuse of the commander's discretionary authority. The letter submitted from the applicant's brother is duly noted; however, we do not find this sufficiently persuasive to override the rationale provided by the Air Force. We find that applicant has failed to sustain his burden of establishing the existence of either an error or an injustice warranting favorable action on his requests.

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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal

appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered this application in Executive Session on 1 June 1998, under the provisions of AFI 36-2603:

Mr. Vaughn E. Schlunz, Panel Chair  
Mr. Gerald B. Kauvar, Member  
Mr. Gregory H. Petkoff, Member  
Mrs. Kay Byrne, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit G. Record of Proceedings, dated 10 Mar 98, with atchs.
- Exhibit H. Applicant's Letter, dated 27 Apr 98, with atchs.

  
VAUGHN E. SCHLUNZ  
Panel Chair

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00268

COUNSEL: None

MAR 10 1998

HEARING DESIRED: No

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APPLICANT REQUESTS THAT:

1. The nonjudicial punishment imposed on him under Article 15, on 21 June 1995 be removed from his records with restitution of \$894.00 in military pay.
2. Authorization to resubmit a DECOR-6 request for award of the Air Force Commendation Medal (AFCM) .

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APPLICANT CONTENDS THAT:

He was wrongfully accused of violating Article 92, Failure to obey a lawful order, and wrongfully punished under Article 15 of the Uniform Code of Military Justice (UCMJ) pre and post imposition of the nonjudicial punishment action. His initial intent was to demand trial by court-martial, request to make a personal appearance and not attach a written presentation. His counsel advised him to withdraw his intention to appeal. He later found out that this was a big mistake and he had been ill-advised by his counsel.

In support of his request, he submitted a statement with copies of the pre-nonjudicial punishment incidents, a copy of the Article 15, a copy of the first Article 15 showing his intentions, and a copy of the Report of Investigation.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of technical sergeant (E-7).

On 19 June 1995, applicant was notified of his commander's intent to impose nonjudicial punishment upon him for: You, who knew of your duties not to establish or maintain social contacts with or offer to give any article, ~~in~~ favor, service to any prisoner/detainee, in the state of ~~between~~ on or

about 28 May 1995 and on or about 29 May 1995, were derelict in the performance of those duties in that you willfully took a former prisoner to a picnic in your car and accompanied 2 former prisoners at [REDACTED] amusement park, as it was your duty not to do.

On 19 June 1995, after consulting with counsel, applicant waived his right to trial by court-martial, requested a personal appearance and submitted a written presentation.

On 21 June 1995, he was found guilty by his commander who imposed the following punishment: Forfeiture of \$894.09 pay.

On 21 June 1995, applicant stated he would appeal the punishment and he submitted matters in his own defense. However, on that same date, he withdrew his decision to appeal. The Article 15 was not placed in an unfavorable information file (UIF).

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AIR FORCE EVALUATION:

The Military Justice Division, AFLSA/JAJM, reviewed the application and noted that the applicant is contending that the basis used for his Article 15 was legally insufficient. They noted that while the investigation into the applicant's alleged dereliction of duty could have been more thorough, it nonetheless provided the commander with enough evidence to form the basis of his opinion. The commander's decision was reasonably supported by the evidence contained in the Report of Investigation. The punishment was well within legal parameters and suggested that the commander was sensitive to the applicant's position and somewhat conflicting testimonies. The applicant consulted with counsel and continued to communicate throughout the entire nonjudicial process. Additionally, the applicant could have refused to accept the Article 15 and demanded trial by court-martial or appealed his commander's findings or punishment. The decision to award or not award the applicant a Commendation Medal is clearly within the commander's discretion and not a proper matter for the Board to consider. After a review of the available records, JAJM concluded there are no legal errors requiring corrective action and granting the applicant's request is not warranted.

A complete copy of the evaluation is attached at Exhibit C.

The Recognition Programs Branch, AFPC/DPPRA, reviewed the application and stated that decorations cannot be awarded or presented to any person whose entire service for the period covered has not been honorable. The applicant received the Article 15 during the period in question. This renders him ineligible for a decoration. They recommend denial of his request.

A complete copy of the evaluation is attached at Exhibit D.

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

The applicant reviewed the evaluation and responded that there appears to be several administrative errors in the Air Force evaluation from JAJM. Only three of the four staff members statements refers to the allegation that they overheard his admitting to accompanying former prisoners to an amusement park. Out of the five prisoners sitting at the table to whom he allegedly made such statements, only one stated that he recalled the applicant making such comments.

In the summation portion of JAJM evaluation it is stated that at the time he was notified of impending nonjudicial punishment, he could have refused to accept the Article 15 and demanded trial by court-martial or appealed the commander's findings or punishment. To this he refers to the AF Form 3070, Block 5 showing that he initialed the block that states he demanded trial by court-martial. His commander asked that he consult with counsel again and it was his counsel's advice that he accept the Article 15 proceedings. After punishment was imposed, he elected to immediately appeal, and again was ill-advised by counsel to not appeal at that time. This is noted on AF Form 3070, Block 9.

He submitted an AF Form 1168, Statement of Witness Complainant, signed by his former roommate. The statement this roommate had wrote concerning him in June 1995 had an impact on their friendship and situation as roommates. They terminated the lease at the end of the month. In March 1997, without the roommate knowing he had received an Article 15, he contacted her and asked her to submit a statement concerning what had happened. He believes the statement in 1995 was used in the ROI to appear that the roommate validated that he and a former prisoner were in attendance at the picnic together and that he would not have left the former prisoner in the car while he attended the picnic. There is not one shred of evidence to support the alleged statement he had been accused of making stating that he had accompanied two former prisoners to an amusement park. The investigator needed something to support her findings in the ROI.

He attached an Oil Change Receipt showing that his personal vehicle was in poor working condition and was in need of major mechanical repairs. This corroborates the facts as to why he employed the use of a rental vehicle to travel to visit an older brother and elected not to use his privately owned vehicle.

In conclusion, if JAJM had not reviewed his packet hap hazardly without reading all the specifics, or paying attention to detail, items overlooked, not thoroughly evaluated and

considered, undoubtedly played a strong role in assisting to form the basis for their opinion. His commander based his decision on one statement that allegedly provided some support to the summary in the ROI. He gave no weight to the fact that the miles on the rental car did not **add up** to support the allegation made that he **drove it from [REDACTED]** to an amusement park over **400** miles away in **[REDACTED]**. The commander did not consider that he proved his whereabouts and had witnesses to support that fact on the day of the picnic. He states he cannot begin to express what a devastating toll this action has had upon him mentally and professionally. He has been denied key Special Duty assignments, diagnosed with a mild form of depression, and suffered from insomnia. Since the incident, over a year and a half, he has had to endure many trying times simply as a result of the Article 15. If this situation is not corrected soon, it will have an affect on his next promotion opportunity. He is not bitter but is truly saddened by this incident **and** has been changed as a result of it. He is believing in this system to reach a decision that is supported by all the evidence presented. He now sees that he never ever at any time committed the charge of disobeying a lawful order or was derelict in the performance of his duties during his entire tour at the NAVCONBRIG Miramar.

His complete response is attached at Exhibit F.

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**THE BOARD CONCLUDES THAT:**

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence, the majority of the Board finds no persuasive evidence that the Article 15 should be removed from the applicant's records. The commander had the discretionary authority to impose nonjudicial punishment under Article 15, UCMJ, when he concluded that the reliable evidence existed to prove an offense was committed. The Report of Investigation reasonably supported this decision. It was also noted that when offered the Article 15, applicant had an opportunity to establish his innocence by demanding trial by court-martial. However, he apparently chose not to pursue this avenue and accepted the Article 15. We note the assertion that his counsel misadvised him when he withdrew his demand for trial by court-martial. However, other than his own self-supporting statement, he proffers no corroborative evidence in this regard. Therefore, in the absence of substantiating evidence to the contrary, the majority believes that the applicant voluntarily

withdrew his demand for a court-martial. Thus the majority finds no basis to set aside the Article 15.

4. The applicant's request to resubmit a DECOR-6 request for award of the Air Force Commendation Medal cannot be granted. Decorations cannot be awarded or presented to any person whose entire service for the period covered has not been honorable. He is ineligible for this award with the Article 15 in his records.

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RECOMMENDATION OF THE BOARD:

A majority of the panel finds insufficient evidence of error or injustice and recommends the application be denied.

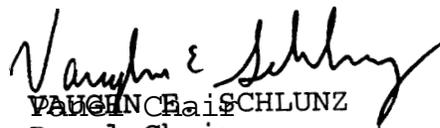
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The following members of the Board considered this application in Executive Session on **20 January 1998**, under the provisions of AFI **36-2603**:

Mr. Vaughn E. Schlunz, Panel Chair  
Mr. Gerald B. Kauvar, Member  
Mr. Gregory H. Petkoff, Member  
Mrs. Kay Byrne, Examiner (without vote)

By a majority vote, the members voted to deny the request. Mr. Petkoff voted to correct the record and did not desire to submit a minority report. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated **22 Jan 97** with atchs.  
Exhibit B. Applicant's Master Personnel Records.  
Exhibit C. Letter, AFLSA/JAJM, dated **12 Feb 97**.  
Exhibit D. Letter, AFPC/DPPRA, dated **6 Mar 97**.  
Exhibit E. Letter, AFBCMR, dated **24 Mar 97**.  
Exhibit F. Applicant's Letter, dated **14 Apr 97**.

  
VAUGHN E. SCHLUNZ  
Panel Chair



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

Office of the Assistant Secretary

JUL 31 1998

AFBCMR 97-00268

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, AIR FORCE BOARD  
FOR CORRECTION OF MILITARY RECORDS (AFBCMR)

SUBJECT: AFBCMR Application of [REDACTED]

I have carefully reviewed the evidence of record and the recommendation of the Board members. A majority found that applicant had not provided substantial evidence of error or injustice and recommended the case be denied. I concur with that finding and their conclusion that relief is not warranted. Accordingly, I accept their recommendation that the application be denied.

Please advise the applicant accordingly.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency