

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]
[REDACTED]

DOCKET NUMBER: 97-00716

COUNSEL: NONE

HEARING DESIRED: NO

FEE 5 1999

Applicant requests that his dishonorable discharge be upgraded. 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. Henry C. Saunders, Ms. Ann L. Heidig, and Ms. Sophie A. Clark considered this application on 10 Dec 98 in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C.. 1552.


HENRY C. SAUNDERS
Panel Chair

Exhibits:

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



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

MEMORANDUM FOR AFBCMR

1 SEP 1998

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

CT 1 of 1 Records of [REDACTED]

Applicant's request: In an application dated 17 February 1998, [REDACTED] the applicant, requests that his dishonorable discharge from the Air Force be upgraded. While no specific characterization is requested, it can be assumed that [REDACTED] would like his punitive discharge to be upgraded to an honorable discharge. The applicant's dishonorable discharge went into effect on 13 April 1992. The application was not submitted within the three-year limitation provided by 10 U.S.C. 1552(b) and is untimely. The applicant states no basis for the untimeliness of his request.

Facts of military justice action: On 22 February 1991, a general court-martial convicted the applicant of desertion in violation of Article 85 of the UCMJ. The applicant was formerly an Airman First Class assigned to the 7th Munitions Maintenance Squadron, [REDACTED]. On about 24 April 1990, the applicant failed to show up for work and could not be located. He did not return to military control until 7 December 1990 when he was arrested by civilian law enforcement in [REDACTED] for criminal mischief and bond forfeiture. The applicant was sentenced to a Dishonorable Discharge, confinement for 1 year, forfeiture of \$450.00 pay per month for 12 months and reduction to E-1. The Air Force Court of Military Review affirmed the lower court's decision on 13 November 1991.

Applicant's contentions: The applicant wants to have his discharge upgraded for employment purposes. He has provided no documents in support of his request.

Discussion: The applicant's application is untimely. He also provides no compelling reason as to why his discharge should be upgraded. The applicant deserted from the Air Force. He was returned to military control only after being arrested by civilian police over seven months later. A dishonorable discharge is appropriate for the offense of desertion. Air Force Instruction 36-3203, *Air Force Board for Correction of Military Records*, para 4.1, requires the applicant to prove sufficient evidence of probable material error or injustice. The applicant has provided no information alleging any material error or injustice. The applicant's court-martial was properly convened and had jurisdiction over the applicant and the offenses tried. The decision of the court and sentence was ultimately affirmed by the Air Force Court of Military Review. The applicant

9700716

does not challenge the underlying offenses for which he was convicted. A discharge upgrade is not warranted in this case.

Recommendation: The applicant's request is untimely and should be denied for failing to comply with the statute of limitations. The applicant has provided no basis for upgrading his dishonorable discharge to an honorable 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

970 0714