

JUL 02 1998

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02797

COUNSEL: None

HEARING DESIRED: No

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APPLICANT REQUESTS THAT:

His former grade of sergeant (E-4) be restored.

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APPLICANT CONTENDS THAT:

He had less than two months left in service before reduction of rank was handed down. The commander had less than 30 days of command when he (commander) made the decision. The applicant feels there was a lack of evidence and insufficient proof of wrongdoing.

In support of his request, he submitted a copy of the Article 15 with supporting documents.

His complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

The applicant entered active duty on 14 January 1988.

A resume of his EPRs is as follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
13 Jan 1989	9
13 Sep 1989	4
13 Sep 1990	3
13 Sep 1991	3
13 Sep 1992	4
13 Sep 1993	4
1 Apr 1994	5
1 Apr 1995	3
1 Apr 1996	3
1 Apr 1997	4

On 25 July 1997, applicant was notified of his commander's intent to impose nonjudicial punishment upon him for: You, did, at or near [redacted] AFB, [redacted] on or about 22 July 1997, with intent to deceive, make to [redacted] an official statement, to wit:

"I took care of the check. My wife did write it - but I took care of it," which statement was totally false, and was then known by you to be so false. You, did, at or near [REDACTED] AFB, [REDACTED] on or about 19 July 1997, with intent to deceive, make to [REDACTED] -- and [REDACTED] an official statement to wit: "I don't have the gun in my possession," which statement was totally false, and was then known by you to be so false. You, did, at or near [REDACTED] AFB, [REDACTED] between on or about 14 July 1997 and on or about 16 July 1997, with intent to deceive, make to [REDACTED] an official statement, to wit: "The check that was written to the Child Care Center and bounced was written by my wife," which statement was totally false, and was then known by you to be so false. You, did, at or near [REDACTED] AFB, [REDACTED] between on or about 14 July 1997 and on or about 16 July 1997, with intent to deceive, make to [REDACTED], an official statement, to wit: "The check that was written to the Child Care Center and bounced was written by my wife," which statement was totally false, and was then known by you to be so false. You, did, at or near [REDACTED] AFB, [REDACTED] on or about 19 June 1997, make and utter to the [REDACTED] Child Development Center a certain check, in words and figures as follows, to wit: check number 382, dated 19 June 1997, in the amount of \$243.33, and did thereafter dishonorably fail to maintain sufficient funds in the First Union National Bank for payment of such check in full upon its presentment for payment.

On 5 August 1997, after consulting with counsel, applicant waived his right to a trial by court-martial, requested a personal appearance and submitted a written presentation.

On 7 August 1997, he was found guilty by his commander who imposed the following punishment: Reduction to the grade of airman first class, with new date of rank of 7 August 1997, 21 days extra duty, and a reprimand.

Applicant did appeal the punishment; however, the appeal was denied on 19 August 1997. The Article 15 was filed in his Unfavorable Information file (UIF).

The applicant had a date of separation (DOS) of 11 January 1998 and is currently serving in the Air Force Reserves.

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AIR FORCE EVALUATION:

The Chief, Military Justice Division, AFLSA/JAJM, reviewed this application and stated that the evidence relied upon by the commander to support his decision to punish the applicant under Article 15, Uniform Code of Military Justice (UCMJ), consisted of the returned check and statements from MSgt R---, TSgt S--- and SSgt A---. The applicant lied directly to his commander about the location of his privately-owned weapon. After considering all the evidence, the commander did not believe the rather strained explanation and determined that the applicant did commit the offenses cited and imposed punishment. The applicant claimed that

his reduction was an excessive punishment for the charged offense. Considering the applicant was charged with five separate offenses and the commander could have reduced him to airman basic, the loss of one stripe coupled with 21 days extra duty and a reprimand is not excessive or illegal punishment. The applicant had received a prior Article 15 for financial irresponsibility on 28 August 1996. His suspension ended on 18 February 1997. Five months later, he was again in trouble for financial irresponsibility. In conclusion, the applicant's nonjudicial punishment action was properly accomplished and legally sufficient. He was afforded all rights granted by statute and regulation. Additionally the applicant had the advice of counsel throughout the proceedings and exercised his decisions accordingly. After reviewing the available records, JAJM determined there are no legal errors requiring corrective action regarding the nonjudicial punishment and administrative relief is not warranted. They recommended the applicant's request be denied.

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

The Enlisted Promotions Branch, AFPC/DPPPWB, reviewed the application and defers to the evaluation from JAJM. However, should the board grant the applicant's request, his former effective date and date of rank for sergeant was 1 January 1990. They also noted that the applicant has a high year tenure (HYT) date of January 1998. --

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

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the evaluations were forwarded to the applicant on 8 December 1997 for review and comment within 30 days. As of this date, no response has been received in this office.

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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 to warrant restoring his former grade of sergeant. The commander had the discretionary authority to impose nonjudicial punishment under Article 15, UCMJ, when he concluded that reliable evidence existed to prove an offense was committed. The applicant has not submitted any evidence to sufficiently convince the Board there was a lack of evidence showing he committed all of the charged offenses. Additionally, since this is his second Article 15 for a

similar offense, the Board is not convinced this is excessive punishment. In light of his past disciplinary record and the nature of the current charges, we do not find the commander's punishment disproportionate to the offense and conclude no basis exists to recommend favorable action on his request.

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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 13 May 1998, under the provisions of AFI 36-2603:

Mr. Vaughn E. Schlunz, Panel Chair  
Mr. Kenneth L. Reinertson, Member  
Mr. Michael P. Higgins, Member  
Mrs Kay Byrne, Examiner (without vote) --

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 15 Sep 97, with atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/JAJM, dated 29 Oct 97.
- Exhibit D. Letter, AFPC/DPPPWB, dated 18 Nov 97.
- Exhibit E. Letter, AFBCMR, dated 8 Dec 97.

  
VAUGHN E. SCHLUNZ  
Panel Chair