

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00230

COUNSEL: NONE

FEB 19 1999

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His 27 January 1989 bad conduct discharge (BCD) be upgraded to honorable.

APPLICANT CONTENDS THAT:

His active duty military record does not correctly reflect the person that he is now. During his military career, at times, he was very vulnerable and made mistakes that he cannot change and he was punished for them. Since his discharge, he has matured as a person, husband, and father and is now a very productive member of his community.

In support of his request, applicant provided his expanded comments, four letters of character reference from current and previous employers, and a certificate of appreciation received while he was on active duty. (Exhibit A)

STATEMENT OF FACTS:

On 17 February 1982, applicant contracted his initial enlistment in the Regular Air Force. He served on continuous active duty, and entered his last enlistment on 28 February 1985. The record reflects that on 21 April 1983, applicant received punishment under the provisions of Article 15, UCMJ, for wrongful use of marijuana. The punishment consisted of a reduction in grade from airman first class (E-3) to airman (E-2). Prior to the events under review, he attained the rank of sergeant (E-4). There are seven Airman Performance Reports (APRs) in the record reflecting overall ratings of (oldest to latest): 8, 9, 9, 9, 9, 9, and 2.

Applicant was tried by general court-martial (GCM) on 27 November 1987. He was charged with five counts of larceny and one count of wrongfully opening mail, in violation of Articles 121 and 134, UCMJ, respectively. The applicant pled guilty to all counts with the exception of one count of larceny (of which he was subsequently acquitted). The applicant was sentenced to a bad conduct

discharge; confinement for eight months; forfeiture of \$300 .per month for eight months; and reduction in grade to airman (E-2). On 12 February 1988, the GCM authority approved the entire sentence, and except for the BCD, the sentence was executed. On 22 April 1988, the Air Force Court of Military Review approved the findings of guilty and the sentence. On 18 May 1988, that portion of the sentence to confinement in excess of seven months was remitted by the GCM. The Court of Military Appeals denied applicant's petition for a Grant of Review. On 12 December 1988, the BCD was executed.

On 27 January 1989, applicant was discharged with a bad conduct discharge (BCD). At the time of his discharge, he was credited with 6 years, 5 months, and 18 days of active duty service (excludes 176 days of lost time due to confinement).

Pursuant to the request of the Board on 26 May 1998, the Federal Bureau of Investigation, Clarksburg, WV, indicated on 5 June 1998, that, on the basis of data furnished, they are unable to locate an arrest record (Exhibit C).

AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, AFLSA/JAM, reviewed this application and concluded that administrative relief by their office is not possible or appropriate. Since the application was untimely filed, JA recommended that the Board interpose the statute of limitations. Their comments, in part, follow.

JA stated that if the Board does waive the three year statute of limitations, the facts of this case do not warrant an upgrade of the 'applicant's discharge. The case file accurately reflects the action taken by reviewing authorities so correction of clerical or administrative errors as contemplated under 10 USC 1552(f)(1) is unnecessary. Clemency under Section 1552(f) is not appropriate because the applicant has submitted no evidence that his court-martial was improperly convened or conducted.

While it is commendable that the applicant has apparently turned his life around, one can logically infer that the court-martial punishment helped, at least in part, to motivate him to do so. Furthermore, the imposed punishment remains today, as it was at the time it was executed, a completely accurate characterization of the applicant's misconduct. The court-martial conviction and sentence was supported in both law and fact. His present contributions to his family and community do not erase the fact that a military judge and the applicant's commanders, after careful consideration, determined he deserved a BCD. Restoring his discharge to honorable would diminish the value of the discharge structure for Air Force personnel, who unlike the applicant, served honorably. Therefore, his application should be denied for being without merit.

The complete evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 19 March 1998 for review and comment within 30 days. As of this date, no response has been received by this office.

On 22 May 1998, the AFBCMR offered the applicant an opportunity to provide additional information pertaining to his activities since leaving the service and provided him a copy of the Information Bulletin - Upgrade of Discharge - Clemency (Exhibit F). As of this date, no further response has been received from the applicant.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We noted applicant's complete submission in judging the merits of the case. However, we agree with the comments of the Military Justice Division (AFLSA/JAJM) and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. The evidence provided indicates that he is held in high esteem by his employers since his separation. We note that prior to the time of his misconduct, his performance of his Air Force duties was also considered to be excellent. Nonetheless, in view of the seriousness of the misconduct which led to his court-martial and subsequent discharge and the paucity and limited scope of the post-service evidence provided, we are not inclined to recommend an upgrade of the characterization of his discharge on the basis of clemency at this time. In view of the foregoing, and in the absence of evidence that the applicant's court-martial was improper or that the punishment was unduly harsh, the applicant's request is not favorably considered.

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.

The following members of the Board considered this application in Executive Session on 10 December 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
Ms. Sophie A. Clark, Member
Ms. Ann L. Heidig, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 27 Jan 98, w/atchs,
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. FBI Report, dated 5 Jun 98.
Exhibit D. Letter, AFLSA/JAJM, dated 4 Mar 98.
Exhibit E. Letter, SAF/MIBR, dated 19 Mar 98; Letter, AFBCMR, dated 22 May 98.



HENRY C. SAUNDERS
Panel Chair