

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00455

COUNSEL: None

16 OCT 1998

HEARING DESIRED: No

Applicant requests that all references of his court-martial be expunged from his service record. 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. Vaughn E. Schlunz, Mr. Richard A. Peterson, and Mr. Patrick R. Wheeler considered this application on 29 September 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


VAUGHN E. SCHLUNZ
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)

4 May 98

MEMORANDUM FOR AFBCMR

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

SUBJECT: Correction of Military Record [REDACTED]

Applicant's request: In an application dated 10 Feb 98, the applicant requests that all references to his court-martial be expunged from his service record. On 19 Sep 62, the applicant's court-martial sentence was approved. The application was not submitted within the three year statute of limitations provided by 10 U.S.C. 1552(b). The applicant is aware the application is past the three year statute of limitations but believes it is reasonable to have his court-martial conviction record expunged.

Facts of military justice action: On 24 August 1962, the applicant (then an Airman Second Class) plead guilty to two specifications of larceny in violation of Art 121 of the UCMJ. The applicant and another Airman stole an Austin 7 engine, which had a value of less than \$20.00. The applicant and the same Airman also wrongfully appropriated an automobile which belonged to another Airman. The applicant was sentenced to 3 months confinement, forfeiture of \$50.00 in pay per month for three months and reduction to Airman Basic. On 1 Oct 62, the convening authority remitted the remaining portion of the applicant's confinement. The applicant had served 39 days confinement.

Applicant's contentions: The applicant states there is no legal error in the record. The applicant believes the court-martial should be expunged from the record. The applicant alleges that civilian offenses are routinely expunged from the record and he believes that he should be afforded the same consideration as any defendant in civilian life would receive.

The applicant claims that the value of the property he stole was equal to one British pound which was \$2.82 in US dollars in 1962. The applicant states he was told he was given a special court-martial instead of a summary court-martial because the co-actor in the offense had been in prior trouble. The applicant and his co-actor allegedly were tried by court-martial at the same time. After being released early from confinement, the applicant served out his full four year enlistment and was honorably discharged from the service on 6 Mar 64.

The applicant provides a chronology of his life after his service in the Air Force to show that he has been successful in his civilian life. Once discharged from active duty, the applicant

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worked as an electronic technician for several years. The applicant then attended the University of Illinois. In 1974, the applicant entered into the Foreign Service of the United States where he served until his retirement in 1992. He retired in the grade of the Foreign Service Equivalent of GS-13. In 1992, the applicant accepted a civil service position with the U.S. Department of State. The applicant continues to work in this position at the level of GS-14. The applicant indicates that he has continually held a Top Secret clearance with special clearances for access depending upon his location and duties. The applicant has been married for 35 years and has three grown children and three grandchildren.

The applicant admits that his life has not been unduly impacted by having the court-martial conviction in his record but feels the conviction is an embarrassment and believes it is fair to remove it from the record. The applicant requests the Special Court-Martial conviction be expunged from his record and an amended DD 214 be issued which reflects the change.

Discussion: The applicant alleges no errors in his Special Court-Martial. No clear injustice occurred during the applicant's court-martial. There is no method of expunging the applicant's conviction from his records. The military justice system is different from the civilian court system. The military justice system does not allow the expungement of a court-martial conviction from a military member's records. It is also important to note that, although the Board has full discretion in granting relief on the sentence imposed in a court-martial, the Board does not have the authority to change the findings of a court-martial.

Recommendation: After reviewing the available records, I conclude that administrative relief by this office is not possible. There are no legal errors requiring correction. The Board should note the statute of limitations has also passed. I recommend the Board interpose the statute of limitations or, if the statute of limitations is waived, deny the application on its merits.



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

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