

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

PEB 24 1999

IN THE MATTER OF:

DOCKET NUMBER: 96-01136

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His court-martial conviction be overturned and/or his general discharge be upgraded to honorable.

His rank of sergeant (E-4) be restored.

Negative information regarding his lost time, reason and authority for his discharge, and reenlistment eligibility (RE Code), be removed from his DD Form 214, Armed Forces of the United States Report of Transfer or Discharge.

The effective date of his separation be changed.

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APPLICANT CONTENDS THAT:

He believes his punishment was harsh and he was treated unfairly. He suffered from medical conditions, particularly Chronic Fatigue Syndrome and Exhaustion, which he believes resulted in him being unfairly punished.

He truly believes that he did his best to serve his country in time of war. Since his discharge from the Air Force, he has worked his way through college and he has a master's degree in Education from Temple University. He has also had no trouble with civilian law enforcement agencies.

In support of his appeal, the applicant provides a personal statement, a copy of his DD Form 214, and post-service documentation.

Applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 15 Jan 69 for a period of four years in the grade of airman basic. Prior to the matter under review, the applicant was progressively promoted to the grade of sergeant (E-4).

Applicant's APR/EPR profile follows:

PERIOD ENDING	EVALUATION
28 Feb 70	9
21 Aug 70	9
21 Feb 71	7
21 Aug 71	7
31 Dec 71	7

On 29 Dec 71, the applicant received disciplinary punishment under Article 15 for failure to go at the time prescribed to his appointed place of duty on or about 21 Dec 71 and 22 Dec 71. He was reduced from the grade of sergeant to airman first class and ordered to forfeit \$50.00 per month for two months. The reduction to the grade of airman first class was suspended until 27 Jun 72, at which time, it was to be remitted without further action. However, on 14 Apr 72, the commander vacated the suspended reduction based on the applicant's failure to go to his place of duty at the prescribed time on 1 Apr 72. Based on this action, the applicant was reduced to the grade of airman first class.

On 3 May 72, the applicant received disciplinary punishment under Article 15 for being absent without leave (AWOL). He was reduced in grade from airman first class to airman and ordered to perform extra duties for a period of 14 days.

On 26 Jul 72, the applicant was convicted by special court-martial of one specification of Article 91, UCMJ, for disrespect towards his superior noncommissioned officer and ten of twelve specifications of Article 86, UCMJ, for failure to go and AWOL from his duty assignment during periods of May through Jul 72. He was sentenced to be confined at hard labor for six months, to forfeit two-thirds of his pay per month for six months, and to be reduced to the grade of airman basic. The applicant successfully completed the Rehabilitation Program at Lowry AFB with a total of 177 days as lost time due to his military confinement. On 18 Jan 73 the Retraining Classification Board recommended that the applicant be returned to duty and noted that with six months' service remaining and no intention by the applicant to reenlist, he would be separated under the provisions of AFM 39-10.

On 23 Jan 73, the applicant was notified by his commander that he was being recommended for discharge with a general discharge.

On 20 Feb 73, legal authority found the discharge action to be legally sufficient and recommended that the applicant be discharged with a general discharge.

Applicant was discharged on 26 Apr 73 under the provisions of AFM 39-10 with a general (under honorable conditions) discharge. He was credited with 3 years, 9 months, and 19 days of active duty service.

Pursuant to the Board's request, the Federal Bureau of Investigation, Washington, D.C., provided an investigative report which is attached at Exhibit C.

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AIR FORCE EVALUATION:

The Military Justice Division, AFLSA/JAJM, reviewed this application and recommended denial. According to JAJM, all matters presented by the applicant were before his commander in 1973 when he initiated discharge and directed separation with a general discharge. His records thoroughly discussed his court-martial conviction, confinement, and rehabilitation. Also documented in his military records are three nonjudicial punishment actions occurring prior to his court-martial which were identical to his subsequent court-martial charges.

As to the merits of the applicant's request to upgrade his discharge to honorable as being unduly harsh and punitive to him at this time, JAJM indicated that no legal error or injustice exists to warrant an upgrade. While the applicant has bettered himself through advanced education and seeks eligibility for specific areas of employment, this alone is not a sufficient basis now to override matters considered relevant in 1973 by the commander in making his decision as to the level of separation.

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

The Airman Promotion Branch, AFPC/DPPPWB, reviewed this application and concurred with recommendation for denial made by AFLSA/JAJM. DPPPWB indicated that a review of the applicant's records reflects that while serving in the grade of sergeant (E-4), he was administered an Article 15 on 29 Dec 71 that consisted of a reduction to the grade of airman first class (E-3) which was suspended until 27 Jun 72. However, on 14 Apr 72, his commander vacated the suspended reduction to airman first class based on the applicant's failure to go to his place of duty at the prescribed time on 1 Apr 72. Based on this action, the applicant was reduced to the grade of airman first class. On 3 May 72, the applicant received a second Article 15 for being AWOL. His punishment consisted of a reduction to the grade of airman and extra duties for a period of 14 days. Based on these actions the applicant was serving in the grade of airman (E-2) when he received the court-martial action on 7 Sep 72.

Therefore, if the AFBCMR overturns his court-martial action, he would only be entitled to have his former grade of airman reinstated with an effective date and date of rank of 3 May 72. He would not be entitled to have his sergeant grade reinstated unless the AFBCMR voided the court-martial and both Article 15 actions.

A complete copy of the DPPPWB evaluation, with attachment, is at Exhibit E.

The Claims Branch, DFAS-DE/FYDEC, reviewed this application and provided an advisory addressing the portion of the appeal pertaining to the applicant's military pay. DFAS-DE/FYDEC indicated that the applicant's pay records are no longer available to verify any claim for leave not paid at separation. His DD Form 214, Certificate for Release or Discharge from Active Duty, failed to reveal any accrued leave days. Requests for payment should be paid only if upheld by government records or other substantiating documents. Based on the information provided and the lapse of 23 years, DFAS-DE/FYDEC found no correction of military records is justified. They recommended denial.

A complete copy of the DFAS-DE/FYDEC evaluation is at Exhibit F.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his response, the applicant indicated that it is compassion, understanding, and justice that he seeks, and he addressed several areas where he believes he has been the victim of unfairness and injustice. In his view, the authors of the advisory opinions were insensitive and did not fully understand the human story involved in his case. He asks the Board to not let one action in his past affect his entire future.

Applicant's complete response is at Exhibit H.

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ADDITIONAL AIR FORCE EVALUATION:

Pursuant to the Board's request, The BCMR Medical Consultant reviewed this application and recommended denial. According to the Medical Consultant, the applicant's contention of a medical condition contributing to his poor work performance and commission of the many disciplinary infractions cited in his court-martial was not supported by the evidence of record, nor by the achievements he has accomplished in the years since his discharge. With no strong evidence of such a condition being found during his service years, or in his post-service decades, the applicant's request for relief based on this contention cannot be favorably considered.

A complete copy of the BCMR Medical Consultant's evaluation is at Exhibit I.

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APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

Applicant indicated that it is clear that his unaddressed medical problems caused his inability to work. His inability to work was wrongly interpreted as misconduct. The only misconduct was the injustices of being denied leave by command and having foot and fatigue problems unrecognized as being eligible for sick leave. It was wrongfully assumed that it was some kind of purposeful action. Had his condition been timely and properly diagnosed and treated, he would not have been court-martialed.

Applicant's complete response is at Exhibit K.

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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.

a. Concerning the applicant's request that his court-martial conviction be overturned, we note that 10 USC 1552(f) limits this Board to correction of a record to reflect actions taken by the reviewing official and action on the sentence of a court-martial for the purpose of clemency. The authority of the Correction Board to change the finding or verdict is specifically excluded from the statute, and we find no basis to disturb either the record of the reviewing official or the sentence of the court-martial. Furthermore, we do not find that any relief related to the sentence, which is within this Board's authority to grant based on clemency, is supported by the evidence provided. Accordingly, the applicant's request that his court-martial conviction be overturned is not favorably considered.

b. Regarding the applicant's remaining requests, the applicant's complete submission was thoroughly reviewed and his contentions were duly noted. However, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of sufficient evidence that the applicant's discharge was improper or contrary to the prevailing regulation, or that the information contained in his

separation document, to include his rank at the time of his discharge, reason for his separation, RE code, lost time, and effective date of his separation, were erroneous, his requests are not favorably considered.

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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 3 Nov 98, under the provisions of AFI 36-2603:

Ms. Rita S. Looney, Panel Chair  
Mr. Steven A. Shaw, Member  
Mr. Patrick R. Wheeler, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 29 Apr 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. FBI Report.
- Exhibit D. Letter, AFLSA/JAJM, dated 19 Aug 96.
- Exhibit E. Letter, AFPC/DPPPWB, dated 26 Aug 96.
- Exhibit F. Letter, DFAS-DE/FYDEC, dated 21 Oct 96.
- Exhibit G. Letter, SAF/MIBR, dated 4 Nov 96.
- Exhibit H. Letter, applicant, dated 15 Nov 96.
- Exhibit I. Letter, BCMR Medical Consultant, dated 22 Jun 98.
- Exhibit J. Letter, AFBCMR, dated 3 Aug 98.
- Exhibit K. Letter, applicant, dated 26 Aug 98.

  
RITA S. LOONEY  
Panel Chair