

SECOND ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

MAR.

9 1999

IN THE MATTER OF:

DOCKET NUMBER: 95-00443

COUNSEL: NONE

HEARING DESIRED: NO

RESUME OF CASE:

On 3 December 1996, the Board reconsidered and denied applicant's requests that his records be corrected to show that he was upgraded in Air Force Specialty Code (AFSC) 30332; all derogatory and incriminating evidence be removed from his records; he be given the promotions he missed with back pay; his discharge be set aside; and he be reinstated to active duty. A complete copy of the Addendum to Record of Proceedings is attached at Exhibit H.

In an application, dated 11 November 1997, the applicant provided additional documentation and requested reconsideration of his application. In addition, the applicant amended his requests to include award of the Air Force Good Conduct Medal (AFGCM) for the period 5 September 1962 through 4 September 1965. The applicant's complete submission is attached at Exhibit I.

AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, AFLSA/JAJM reviewed this application and states that they have reconsidered their 3 April 1995 memorandum to the Board in the case wherein they opined that although the two Article 15s do not appear in the applicant's records, he needed to do more than boldly assert he did not receive them. They now feel that the dearth of evidence in the file that the applicant ever received two Article 15s in 1963 does warrant redacting all references to them. In addition, since the applicant's records do contain the 1956 Article 15 which he is no longer contesting, the presumption of regularity would have it that any other Article 15s the applicant received would be present also. Therefore, they recommend the board redact all references to the two 1963 Article 15s from his records. However, since his discharge was not based on these Article 15s, their removal should not affect the legality of his discharge.

A complete copy of the Air Force evaluation is attached at Exhibit K.

The Recognition Programs Branch, AFPC/DPPRA, reviewed this application and states that the applicant has failed to substantiate his claim that he deserves the AFGCM. Although the applicant bases most of his allegations and accusations of prejudice and unfairness on his last tour at Mt. Hebo, his Airman Performance Reports (APRs) for his tour on Okinawa clearly show a pattern of indifferent attitude toward his training, his job, and the Air Force, Therefore, they recommend denial of his request for award of the AFGCM,

A complete copy of the Air Force evaluation is attached at Exhibit L.

The Superintendent, USAF Education & Training, AFPC/DPPAT, reviewed this application and states that although training indicators represent a significant part of the discharge package, the primary basis was unsuitability. The withdrawal action was based on solid training indicators over an extended period of time, not because he was rotating to the United States. The documents and narratives provided by the applicant appear to be anecdotal and represent isolated incidents, The documents in the discharge package and in the military record establish behavioral trends and support the discharge action. Therefore, they recommend denial of his requests.

A complete copy of the Air Force evaluation is attached at Exhibit M.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluations and states that he is requesting voidance of the 1956 Article 15 since he was not provided 72 hours to respond. In addition, he was never provided legal counsel and provided only one hour to respond.

In regard to the basis for his discharge, the applicant contends that since he completed his Career Development Course for AFSC 30332 and completed On-the-Job-Training (OJT) and passed the Specialty Knowledge Test (SKT), the basis should be negated. He believes that false and misleading information presented to the discharge board was used to have him discharged.

The applicant's complete responses, with attachments, are attached at Exhibits O through T.

THE BOARD CONCLUDES THAT:

1. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice to warrant voiding the two 1963 Article 15s. After thoroughly

reviewing the additional documentation and noting the applicant's contentions, we believe that a preponderance of the evidence of record raises doubt as to whether or not the applicant ever received two Article 15s in 1963. We note the applicant's records contain the Article 15 he received in 1956 and given the presumption of regularity any other Article 15s the applicant received should also be present. In view of this and since there are no Article 15s from 1963 in the applicant's records, we believe that equity dictates that any doubt should be decided in the applicant's behalf. Therefore, we recommend his records be corrected to the extent indicated below. It should be noted, however, that the primary basis for the applicant's discharge was unsuitability, not the 1963 Article 15s. As such, their removal should in no way be viewed as a determination by this Board that the applicant's discharge was in error or unjust.

2. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice regarding the remainder of applicant's requests. In this respect, we note the following:

a. The applicant has provided no evidence to warrant removal of the 1956 Article 15. He contends that he was not provided 72 hours to respond to the Article 15; however, he provides no corroborative evidence in support of this contention. To the contrary, the evidence of record indicates that the applicant did not request trial by court-martial and agreed to accept the nonjudicial punishment.

b. The applicant has submitted no evidence to show that he should be awarded the AFGCM for the period 5 September 1962 through 4 September 1965. He contends that he was not awarded the AFGCM due to prejudice and unfairness; however, he has also failed to provide corroborative evidence in support of this contention. In addition, the applicant's performance reports rendered during his tour at Okinawa indicate that he displayed a pattern of indifferent attitude toward his training, his job, and the Air Force during the period in question. These factors could have contributed to the decision to not recommend him for the medal in question.

c. The applicant completed his OJT and passed the SKT, but there is no evidence his supervisor ever recommended him for upgrade to the five skill level in AFSC 30332. Since the supervisor's recommendation is required prior to upgrading skill levels, in the absence of such evidence, we find no basis to warrant correcting the applicant's records to show that he was upgraded to the five skill level in AFSC 30332.

d. The evidence of record indicates that discharge action was taken against the applicant because he was unwilling or unable to apply himself to the training programs which were offered to him. In addition, his indifferent attitude during 11 years of active service prevented him from advancing beyond the

grade of airman second class, apprentice skill level. Therefore, we find no basis to recommend favorable consideration of that portion of his request for a change in the character of his discharge.

e. In view of our determination that the applicant's discharge was not in error or unjust, we find no basis to recommend favorable consideration of his request for retroactive promotions and reinstatement to active duty.

THE BOARD RECOMMENDS THAT.

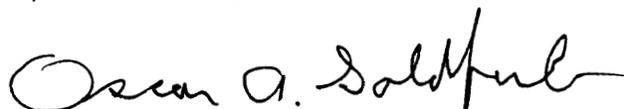
The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that any and all documents and references to two (2) nonjudicial punishments under Article 15, Uniformed Code of Military Justice, imposed in 1963, be declared void and removed from his records.

The following members of the Board considered this application in Executive Session on 2 November 1998, under the provisions of AFI 36-2603:

Mr. Oscar A. Goldfarb, Panel Chair
Ms. Charlene M. Bradley, Member
Mr. Michael P. Higgins, Member
Mr. Phillip E. Horton, Examiner (without vote)

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit H. Addendum to Record of Proceedings, w/atchs.
- Exhibit I. DD Form 149, dated 11 Nov 97, w/atchs.
- Exhibit J. Letter, AFBCMR, dated 23 Jan 98.
- Exhibit K. Letter, AFLSA/JAJM, dated 6 Mar 98.
- Exhibit L. Letter, AFPC/DPPRA, dated 7 Apr 98, w/atchs.
- Exhibit M. Letter, AFPC/DPPAT, dated 17 Apr 98.
- Exhibit N. Letter, SAF/MIBR, dated 27 Apr 98.
- Exhibit O. Letter, Applicant, dated 4 May 98, w/atchs.
- Exhibit P. Letter, Applicant, dated 6 May 98, w/atchs.
- Exhibit Q. Letter, Applicant, dated 8 May 98, w/atchs.
- Exhibit R. Letter, Applicant, dated 13 May 98, w/atchs.
- Exhibit S. Letter, Applicant, dated 18 May 98.
- Exhibit T. Letter, Applicant, dated 17 Jun 98.



OSCAR A. GOLDFARB
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

MAR - 9 1999

Office of the Assistant Secretary

AFBCMR 95-00443

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that any and all documents and references to two [REDACTED] ts under Article 15, Uniformed Code of Military Justice, imposed in 1963, be, and hereby are, declared void and removed from his records.

A handwritten signature in black ink, appearing to read "Joe G. Lineberger".

JOE G. LINEBERGER
Director
Air Force Review Boards Agency