

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00288

COUNSEL: GARY R. MYERS

HEARING DESIRED: YES

JUL 31 1998

APPLICANT REQUESTS THAT:

1. The narrative reason for separation be changed to "Secretarial Authority" rather than "Misconduct" and the separation code be changed to a code reflecting secretarial authority.
2. The 19 October 1995 show cause board finding recommending his separation be set aside and recoupment of the pilot bonus be voided.
3. He be reinstated on active duty with back pay and allowances and with credit for time in service for all purposes from the date of separation to the date of reinstatement.

APPLICANT CONTENDS THAT:

The reasons the applicant believes the records to be in error or unjust and the evidence submitted in support of the appeal is at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The Chief, Program and Procedures Branch, AFPC/DPPRP, states that this case has been reviewed for separation processing and there are no errors or irregularities causing an injustice to the applicant. The discharge complies with directives in effect at

the time of his discharge and his reason for discharge is correct according to DOD and Air Force Instructions. The records indicate member's military service was reviewed and appropriate action was taken. Applicant has submitted no information for consideration that was not or could not have been presented on his behalf during his Board of Inquiry (BOI) or his discharge processing. Applicant did not identify any specific errors in the discharge processing nor provide facts which warrant a change in the reason for separation or a change in the separation code.

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

The Staff Judge Advocate, AFPC/JA, reviewed this application and states the applicant's only specific claim of error or injustice is that the BOI that recommended his discharge was subjected to command influence as a result of his wing commander, a brigadier general, testifying before the board. This claim is totally without merit. Commanders who initiate adverse administrative actions often testify at board proceedings arising out of decisions to process personnel for administrative separations. Aside from the specific allegation of command influence, counsel's argument in support of this application follows a common theme: applicant's military record outweighed this one course of misconduct, and he should not therefore have been discharged. They note that applicant was discharged for serious and recurring misconduct punishable by military or civilian authorities. The maximum punishment for adultery under the UCMJ is dismissal, forfeiture of all pay and allowances, and confinement for one year. Therefore, the offense is clearly serious. This affair lasted several months, and it was therefore recurring. Thus, the applicant was legally subject to discharge. Whether involuntary discharge would be initiated was a decision for the applicant's commander - a decision clearly supported by the evidence of record. In his testimony before the board, the applicant's commander stated on several occasions that the applicant's record had been considered in making the decision to initiate discharge action. AFI 36-3206, paragraph 4.37.2.1, states, in part: "If the Secretary of the Air Force directs involuntary separation for any reason in chapter ...3, the officer is subject to recoupment of a portion of ... bonus money received." Absent granting applicant's requested relief to return him to active duty which might result in his return to flying status and void recoupment, it is their opinion that this Board is without authority to forgive indebtedness (or order repayment of any moneys recouped). The only exception would be if the Board found an error or injustice in the applicant's record, the correction of which would have the result of setting aside the basis for the debt. This could only happen here if the applicant were returned to active duty and flying status. Finally, the applicant requests that the reason for separation and accompanying separation code on his DD Form 214 be changed from "Misconduct" to "Secretarial Authority." He does not allege any error in the form, but believes that the separation authority

should be changed since the basis for his discharge was one incident over a thirteen year career. Applicant confuses "Character of Service" with "Separation Authority." His DD Form 214 clearly reflects his "Character of Service" during his career as "Honorable." It also accurately reflects his "Narrative Reason for Separation" as "Misconduct." To change it would be to introduce error into his record. It is their opinion that the application should be denied. Applicant has failed to present relevant evidence of any error or injustice warranting relief.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 28 April 1997, for review and response. As of this date, no response has been received by this office.

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 warranting favorable action on the applicant's request to set aside the show cause board findings; payment of the pilot bonus and reinstatement in the Air Force with back pay and allowance. The applicant's contention that the show cause board was tainted by command influence is noted; however, other than his own statement, the applicant has failed to provide sufficient evidence to substantiate that his commander influenced the outcome of the Board of Inquiry in any way. The comments concerning this allegation have been addressed by the Staff Judge Advocate and we agree with their recommendation. Therefore, in the absence of evidence to the contrary, we find no basis upon which to recommend favorable action on these requests.
4. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice in regard to the reason for the applicant's separation. While we do not condone applicant's behavior, the majority of the Board believes that in view of his over 13 years of outstanding service in the Air Force and since it appears that he was having marital

difficulties at the time the offenses were committed, the reason for his separation should be changed to "Secretarial Authority" as a matter of clemency. Therefore, the majority recommends the applicant's records be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 25 April 1996, he was discharged under the provisions of AFI 36-3207 "Secretarial Authority" and issued a Separation Program Designator of "KFF."

The following members of the Board considered this application in Executive Session on 4 September 1997, under the provisions of AFI 36-2603:

Mr. Oscar A. Goldfarb, Panel Chair
Mr. Walter J. Hosey, Member
Mr. Vaughn E. Schlunz, Member

The Board recommended denial of applicant's requests pertaining to setting aside the show cause board findings; payment of the pilot bonus and reinstatement in the Air Force with back pay and allowance. By a majority vote, the Board recommended granting applicant's request to change the reason for his separation to "Secretarial Authority." Mr. Hosey voted to deny applicant's request pertaining to the narrative reason but does not desire to submit a Minority Report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 27 Jan 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRP, dated 4 Apr 97.
- Exhibit D. Letter, AFPC/JA, dated 9 Apr 97, w/atchs.
- Exhibit E. Letter, AFBCMR, dated 28 Apr 97.



OSCAR A. GOLDFARB
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

AFBCMR 97-00288

JUL 31 1998

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] [REDACTED] corrected to show that on 25 April 1996, he was discharged under "Secretarial Authority" and issued a Separation Program Designator of "KFF."


JOE C. LINEBERGER
Director

Air Force Review Boards Agency