

AUG 14 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-01237

COUNSEL:

HEARING DESIRED: Yes

Applicant requests that his undesirable discharge be upgraded to honorable. Applicant's submission is at Exhibit A.

Pursuant to the Board's request, the Federal Bureau of Investigation (FBI), Clarksburg, West Virginia, provided an investigative report which is attached at Exhibit C.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit D). The advisory opinions were forwarded to the applicant and counsel for review and response (Exhibit E). Counsel's response to the advisory opinions is at Exhibit F.

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 opinions appear to be based on the evidence of record and have not been adequately rebutted by applicant/counsel. 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 applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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 Ms. Martha Maust, Mr. Richard A. Peterson, and Mr. Patrick R. Wheeler considered this application on 4 August 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


MARTHA MAUST
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. FBI Report
- D. Advisory Opinions
- E. AFBCMR Ltr Forwarding Advisory Opinions
- F. Counsel's Response



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



OCT 10 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPRS
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records [REDACTED]

The applicant, while serving in the grade of private, was discharged from the Air Force 11 Dec 50 under the provisions of AR 615-368 (Unfitness) and received an undesirable discharge. He served 02 years, 07 month and 14 days total active service.


Requested Action. The applicant is requesting that his undesirable discharge be upgraded to honorable.

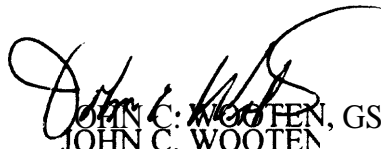
Basis for Request. Applicant states records showing 103 days lost time under AW 107 is incorrect. He states **the** total lost time was 10 days, 25 minutes. He **further** states he was found not guilty of any criminal activity to include alleged theft of government property. Master personnel record indicates applicant's case was review by the Air Force Discharge Review Board (AFDRB) during Jan 69, Docket Number 68-3470. Applicant has submitted character statement and letters of references since his discharge from the Air Force.

Facts. Applicant's master personnel record does not contain the discharge case file. However, a WD AGO Form **24A** (Service Record) has recorded a Summary Court Martial Order Number 19 for conviction for being AWOL for the period 17 Jan 50 to about 27 Jan 50 which resulted in a sentence to confinement at hard labor and forfeiture of \$50.00 pay. Applicant was given a second **Summary** Court Martial Number 69 for failure to repair on or about 1 Aug 50 which resulted in a forfeiture of \$8.00.

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Recommendation. Based on information contained in applicant's application, information reflected on his DD Form **214** and the recorded misconduct on the WD **AGO** Form 24A, we find no evidence to indicate the applicant's discharge, over **46** years ago, was incorrect, an injustice occurred to the applicant, or that the discharge did not comply with the discharge directive in effect at the time of his discharge. Accordingly, we recommend applicant's request for an upgrade of his discharge **be** denied. He has not filed a timely request.




JOHN C. WOOTEN, GS-9
JOHN C. WOOTEN

Military Personnel Mgmt Spec
Separations Branch
Dir of Personnel Program Management

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



19 December 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/JA (Major Reed)
550 C Street West Ste 44
Randolph AFB TX 78150-4746

SUBJECT: Application for Correction of Military Records · 

REQUESTED ACTION: Applicant requests upgrade of his undesirable discharge to honorable.

BASIS FOR REQUEST: Applicant believes that the record which shows 103 days lost time is incorrect, that his total lost time is 10 days and 25 minutes, and that he was not found guilty of any criminal activity.

FACTS: Applicant entered the United States Air Force on 15 Jan 48 and was discharged in the grade of Private, E-1, on 11 Dec 50 with an undesirable discharge. Applicant's records are aged (47 years have passed since his discharge) and incomplete. They do not include his discharge case file. Furthermore, his records were damaged in the fire at the records repository in St. Louis, and portions of what few records remain are illegible due to a combination of age and heat. The following facts can be pieced together from applicant's application and the available records.

From about 17 Jan 50 to about 27 Jan 50, applicant was AWOL from his unit. For this offense, he was convicted by *summary* court-martial and sentenced to 30 days confinement and forfeiture of \$50.00 pay. On about 1 Aug 50, applicant failed to report for duty and was once again convicted by a *summary* court-martial. For this offense, he was ordered to forfeit eight dollars pay.

Applicant's service records indicate that there were 103 days of lost time. Page 7 of the service records indicates that applicant was AWOL from 24 Oct 49 to 30 Oct 49, a total of seven days; that he was AWOL again from 17 Jan 50 to 26 Jan 50, a total of 10 days; that he was in confinement from 2 Feb 50 until 25 Feb 50, a period of 24 days; **and** that he ~~was~~ again confined from ~~an~~ illegible date in Aug 50 until 16 Nov 50, a total of 62 days. The aggregate time lost under A.W. 107 for reason ~~of~~ AWOL and confinement according to applicant's records would have been 103 days.

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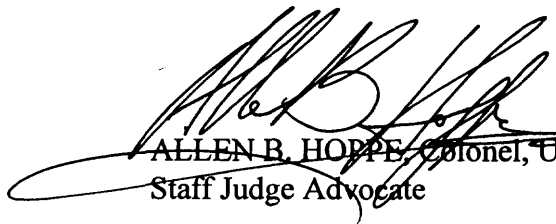
The only other pertinent record in applicant's files is a partially burned form indicating that the Air Force Board for the Correction of Military Records reviewed applicant's case and that on 24 Jan 69 (Docket Number 68-3470) determined that "No corrective action [was] indicated in this case."

DISCUSSION: This application could be denied on three separate grounds. First, it was not timely filed, having been filed 47 years after discovery of the alleged error or injustice. The combination of the scarcity of records in this case, caused by both the passage of time and the destruction of the records by fire, makes this a perfect case for exercise of the statutory three year limitation. Second, applicant appears to have already filed a petition with the Board approximately 18 years ago. While we do not know the substance of his application, applicant clearly had the opportunity at that time to present his claims, and he thus should be barred at this time. Finally, applicant's claim should be barred as not merited by the facts.

Applicant alleges that he was never convicted of a criminal offense, and that the 103 days of lost time on his DD Form 214 are incorrect. He is in error on both counts. First, applicant's records clearly show that he was twice convicted by *summary* court-martial for the criminal offenses of failure to repair and AWOL. His own submissions verify these convictions. Additionally, applicant's records indicate a period of 62 days of unexplained confinement. This confinement does not include the confinement ordered as part of the *summary* courts-martial. We, in fact, have no basis of telling where the confinement was generated—civil confinement and confinement **as** a result of a court-martial would have been recorded simply as confinement. It is quite possible that applicant had a civilian conviction or a third court-martial conviction for which no record exists. In any event, absence reliable evidence to the contrary—and applicant has presented absolutely none—the Air Force is entitled to a presumption that these records are correct. Even without the presumption that applicant was convicted a third time, the records of the two convictions certainly support his discharge and the characterization as undesirable.

Second, applicant's claim that his DD Form 214 is in error is clearly and unequivocally wrong. Lost time is not generated by AWOL alone. Lost time can include confinement and periods of disability caused by misconduct. Applicant's records clearly record 103 total days of lost time, the total to which applicant objects and the total correctly reflected on applicant's DD Form 214.

RECOMMENDATION: Because the application has not been filed in a timely manner, and because applicant has failed to establish the existence of an error or injustice in his Air Force records, we recommend that this application be denied.


ALLEN B. HOPPE, Colonel, USAF
Staff Judge Advocate

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