

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SEP 23 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-03125

[REDACTED]
[REDACTED]
COUNSEL: NONE

HEARING DESIRED: YES

Applicant requests that his rank of Airman Second Class be restored, he receive payment for 60 days accrued leave, reimbursement of forfeited pay, and separation and travel pay. He also requests that he receive recognition of the Expert Badge, Presidential Unit Citation and 7-Level AFSC. Applicant's submission is at Exhibit A.

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

On 17 July 1996, the Board considered and recommended approval of applicant's request for an upgrade of his discharge to honorable. The Board concluded that no error was made in the discharge action taken against him; however, based on his post-service record, his discharge was upgraded based on clemency.

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. 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.

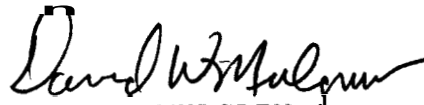
Accordingly, applicant's request is denied.

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 issue(s) 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 Mr. David W. Mulgrew, Mr. Jackson A. Hauslein, and Mr. Terry A. Yonkers considered this application on

27 August 1998, in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.



DAVID W. MULGREW
Panel Chair

Exhibits:

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



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

13 FEB 1998

MEMORANDUM FOR AFBCMR


FROM: AFPC/DPPPWB
550 C Street West, Ste 09
Randolph AFB TX 78150-4711

SUBJECT: Application for Correction of Military Records 

Requested Action. The applicant is requesting several actions we will address the one requesting the Board restore him to the rank of Airman Second Class.

Reason for Request. Applicant believes that errors and injustice occurred before his trial even began.

Facts. See AFLSA/JAJM Ltr 14Nov 97

Discussion. This application has not been submitted within the three year time limitation. A review of the records reflects that the highest grade he held while on active duty was airman second class, with date of rank of 11 Feb 59. The applicant was reduced to airman basic by Special Court Martial Order  dated 24 May 61. The AFBCMR upgraded the applicant's discharge to an Honorable discharge on 17 Jul 96. It did not grant relief from his court-martial sentence, therefore, he was discharged in his proper grade of airman basic. The applicant was promoted to A2C (E-3) on 11 Feb 59.

Recommendation. We defer to the recommendation of AFLSA/JAJM.


TONY R. MERRITT
Chief, Inquiries/BCMR Section
Enlisted Promotion & Mil Testing Br



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

MEMORANDUM FOR AFBCMR

10 April 1998

FROM: HQ AFPC/DPPPRA
550 C Street West Ste 12
Randolph AFB TX 78150-4714

SUBJECT: Application for Correction of Military Records (DD Form 149)
[REDACTED]

1. REQUESTED ACTION. Applicant requests his DD Form 214 be corrected to reflect award of the Presidential Unit Citation.

2. BASIS FOR REQUEST. Applicant provided nothing to substantiate his claim.

3. FACTS.

a. The unit to which the applicant was assigned never earned the Presidential Unit Citation' (Atch 1).

b Applicant is entitled to the National Defense Service Medal, which has been added to his DD Form 214.

4. DISCUSSION. Since the applicant's unit never earned the Presidential Unit Citation, he is not eligible for this unit award.

5. RECOMMENDATION.

We recommend disapproval of the applicant's request to have his DD Form 214 corrected to reflect award of the Presidential Unit Citation.

FOR THE COMMANDER

GEORGIA A. WISE, DAFC
Recognition Programs Branch
Promotions, Eval & Recognition Div

[REDACTED]

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DEFENSE FINANCE AND ACCOUNTING SERVICE
DENVER CENTER
6760 E. IRVINGTON PLACE
DENVER, COLORADO 80279

MAY 26 1998

DFAS-DE/FYCC

MEMORANDUM FOR AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS
ATTN: AFBCMR

SUBJECT: Application for Correction of Military Records

We examined the application for correction of military records for [REDACTED]. Since we are unable to take action to administratively provide the relief sought on only one item, we are forwarding it for your consideration.

The applicant is requesting several corrective actions. We are addressing only the portion pertaining to his payment of accrued leave. His request pertaining to reimbursement of forfeited pay while incarcerated for 154 days, and separation travel pay would depend on his court-martial being overturned by the board.

The former member's military pay records are no longer available to verify any claim for leave not paid at separation. Payment can only be made if upheld by government records or other substantiating documents that reflect his leave balance at separation. If these documents are forwarded to our office by [REDACTED] the payment of accrued leave can be done administratively. A copy of our letter to [REDACTED] is attached.

Based upon the information provided we are forwarding this application for correction of military records without recommendation. Any action taken by this office for reimbursement of forfeited pay and separation travel pay will be determined by the board's decision on the applicant's request.

Our address is DFAS-DE/FYCC, 6760 East Irvington Place, Denver, Colorado 80279-7100. Our point of contact is [REDACTED]

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[REDACTED] and she may be reached at DSN 926-4790 or commercial
(303) 676-4790.

Diana E. Settelmeyer

Diana E. Settelmeyer
Chief, Claims Branch
Directorate of Debt and Claims
Management

[REDACTED]

[REDACTED]

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DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

14 Nov 97

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM (Major Self)
112 Luke Avenue, Room 343
Bolling Air Force Base, DC 20332-8000

SUBJECT: Correction of Military Records 

Applicant's request: In an application dated 29 August 1997, the applicant requests that the Board restore him to the rank of Airman Second **Class** with 26 months time in grade, payment for 60 days accrued leave, reimbursement of forfeited pay, and separation and travel pay. He also requests certain miscellaneous personnel items be corrected in his record. The applicant was court-martialed in 1961. The application is therefore not within the three-year filing window provided by 10 U.S.C. 1552(b).

Facts of military justice action: The applicant was convicted on 18 Apr 61, pursuant to his guilty plea, at trial by special court-martial of violating a lawful order of a superior noncommissioned officer. He was sentenced to a Bad Conduct Discharge (BCD), forfeiture of \$70 pay per month for six months, six months confinement, and reduction to E-1. The applicant had a previous summary court-martial conviction for disrespect to a superior noncommissioned officer. On 25 Sep 61, the Air Force Discharge Review Board suspended the BCD until 25 Mar 62. The applicant was subsequently administratively discharged from the Air Force with an Under Other than Honorable Conditions discharge on 3 Nov 61. The AFBCMR upgraded the applicant's discharge to an Honorable discharge on 17 Jul 96. It did not grant relief from his court-martial sentence.

The applicant urges the Board to restore his rank and grant him back pay along with pay for accrued leave, forfeited pay and travel pay. The applicant has not provided any evidence to challenge the legal sufficiency of his court-martial conviction or sentence. He **asks** that he be granted sentence relief **as** a matter of equity because his sentence was too severe. The upgrade of the character of his administrative discharge would not automatically include sentence relief from his court-martial sentence. They are two entirely separate issues. However, AFI 36-2603, para 7.2.2 states that DFAS settles pay claims on the basis of corrected military records and any issues regarding entitlements to pay should be directed to them. Issues regarding corrections to his personnel records should be directed to HQ AFPC.

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