

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00522

COUNSEL: None

16 OCT 1998

HEARING DESIRED: No

Applicant requests that his special court-martial conviction be removed from his service record. Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

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 opinion appear to be based on the evidence of record and have not been 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 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. Vaughn E. Schlunz, Mr. Richard A. Peterson, and Mr. Patrick R. Wheeler considered this application on 29 September 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.

AUGH E. SCHLUNZ
Panel Chair

Exhibits:

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



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

6 May 98

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM (Maj Hogan)
112 Luke Avenue, Room 343
Bolling AFB, DC 20332-8000

SUBJECT: Correction of Military Records of [REDACTED]

Applicant's request: In an application dated 20 Feb 98, the applicant requests that his special court-martial conviction be removed from his service record. On 16 Apr 79, the applicant's court-martial sentence was approved. The application is past the three year statute of limitations provided by 10 U.S.C. 1552(b) and the applicant provides no justification for filing the application beyond the statute of limitations.

Facts of military justice action: The applicant (then an A1C) was assigned to the Security Police Squadron, [REDACTED]. On 28 Mar 79, the applicant, contrary to his pleas, was tried and found guilty in a special court-martial of wrongfully selling amphetamine in violation of Article 92 of the Uniform Code of Military Justice (UCMJ) and of wrongful use of marijuana in violation of Article 134, UCMJ. The applicant was sentenced to 60 days confinement, 60 days hard labor without confinement, 60 days restriction to base, forfeitures of \$210.00 of his pay per month for four months and to be reduced to the grade of Airman Basic.

On 8 Aug 79, the applicant was involuntarily discharged under AFM 39-12, Chapter 2, Section A, paragraph 2-4c for unsuitability (apathy, defective attitudes, or inability to expend effort constructively). The applicant's squadron commander recommended the characterization of the applicant's discharge be a general discharge. On 14 Aug 79, 26 TRW/CC ordered the applicant's separation from the Air Force with an honorable discharge. On 22 Aug 79, the applicant was separated from the Air Force with an honorable discharge.

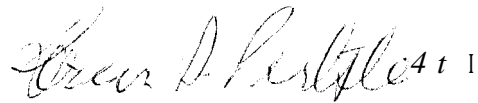
Applicant's contentions: The applicant believes the special court-martial conviction should be expunged because he served the USAF honorably for three years and did his job well. The applicant believes since he received an honorable discharge, the court-martial conviction should be removed from his records. The applicant states that the offenses he was convicted of are considered misdemeanors in the civilian courts. The applicant states that his military record is preventing him from getting a good job. The applicant admits he got involved in parties where there were alcohol and drugs when he was younger. The applicant does not believe it is fair that he should be branded for a stupid mistake he made 19 years ago.

9800522

Discussion: AFI 36-2603, para 4.1 states that the applicant has the burden of providing sufficient evidence of probable material error or injustice. The applicant has failed to indicate any material error or injustice regarding his court-martial conviction. The applicant is not proclaiming his innocence or complaining that his sentence was too harsh. The applicant believes it to be unfair for his special court-martial conviction to remain in his records permanently.

AFPAM 36-2607, para 5.1 states that the AFBCMR cannot change the verdict of a courts-martial imposed after May 4, 1950. In courts-martial, the Board's authority is limited to changing the sentence received based on clemency. The Board has no authority to grant the applicant's request.

Recommendation: After reviewing the available records, I conclude that administrative relief by this office is not possible. There are no legal errors requiring correction. I recommend the Board deny the application based on the merits.



LOREN S. PERLSTEIN
Associate Chief, Military Justice Division
Air Force Legal Services Agency

9800522