

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00941

NOV 13 1998

COUNSEL: NONE

HEARING DESIRED: NO

[REDACTED]  
[REDACTED]

Applicant requests that his bad conduct discharge be upgraded to a general or an honorable. 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. Robert D. Stuart, Mr. Henry Romo, Jr., and Mr. Richard A. Peterson considered this application on 15 October 1998, in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.



ROBERT D. STUART  
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)

1 July 1998

MEMORANDUM FOR AFBCMR

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

SUBJECT: Correction of Military Records of [REDACTED]

**Applicant's request:** The applicant requested a change in his bad conduct discharge (BCD) status. His request was *not* timely submitted within the three-year limitation provided by 10 U.S.C. 1552(b).

**Facts of military justice action:** The applicant was tried by general court-martial (GCM) convened at K-13 Air Base on 26 June 1952. He was tried and convicted on one count of larceny of 13 cases of beer and three counts of violation of a lawful regulation, in violation of Articles 121 and 92, Uniform Code of Military Justice, respectively. He was sentenced to a BCD, total forfeitures, and confinement for one year. The convening authority approved the sentence as adjudged on 24 July 1952. On 26 September 1952, the Board of Review for the Department of the Air Force Office of the Judge Advocate General approved the findings of guilty. The Board of Review affirmed the sentence (except for the confinement portion, which it reduced to six months) as being appropriate to the offenses of which the applicant was convicted. Because of the applicant's youth and the character of his prior service, on 1 October 1952, the Judge Advocate General suspended execution of the BCD until the applicant's release from confinement.

**Applicant's Contentions:** The applicant believes the Board of Correction of Military Records (hereinafter "Board") should review his request because the pay forfeiture in and of itself constituted enough punishment. He states that all he did was sell 20 cases of green beer on the black market, that he paid for this crime for 50 years, and that at the time he committed the act, he was only 21 years old and was "foolish."

**Discussion:** There are two issues in this application. The first is whether the Board should waive the three year statute of limitations. If the Board does waive the requirement, the second issue is whether the Board should upgrade the applicant's discharge.

Applicant's requesting correction of their military records have three years to do so from the date "the error or injustice was discovered, or, with due diligence, should have been discovered by the applicant." AFR 31-1. The applicant had three years to submit a timely application, starting when his BCD was executed. Title 10, United States Code, Section 1552 provides that the Board can waive the three year requirement if it is in the interest of justice. The

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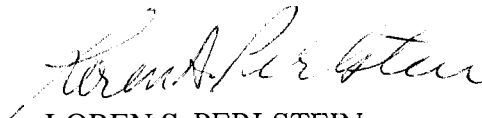
applicant states that it is in the interest of justice to waive the statute of limitations because the BCD he has not been in trouble since this incident. While the applicant alleges that he has made a successful adjustment to civilian life since his discharge from the Air Force, there is nothing in his post-service record that justifies the extraordinary action of waiving the statute of limitations.

Even if the Board decides to waive the three year requirement, under 10 U.S.C. § 1552(f), (which amended the basic corrections board legislation), its ability to correct records related to court-martials is limited. Specifically, Section 1552(f)(1) permits the "correction of a record to reflect actions taken by reviewing authorities under [the UCMJ]." Additionally, Section 1552(f)(2) permits the correction of records related to "action on the sentence of courts-martial for the purpose of clemency." Apart from these two limited exceptions, the effect of Section 1552(f) is that the Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction which occurred on or after 5 May 1950 (the effective date of the UCMJ).

The facts of this case do not warrant upgrading the applicant's discharge. While it is commendable that the applicant has apparently turned his life around, one can logically infer that the court-martial punishment helped, at least in part, to motivate him to do so. The case file accurately reflects the action taken by reviewing authorities so correction of clerical or administrative errors as contemplated under 10 U.S.C. § 1552(f)(1) is unnecessary. Clemency under Section 1552(f) is not appropriate because the applicant has submitted no evidence that his court-martial was improperly convened or conducted.

The court-martial conviction and sentence were supported in both law and fact. Court members and the applicant's commander, after careful consideration, determined he deserved a BCD. Restoring his discharge to honorable would diminish the value of the discharge structure for Air Force personnel, who unlike the applicant, served honorably. Therefore, his application should be denied for being without merit.

**Recommendation:** After a review of the available records, I conclude that administrative relief by this office is not possible or appropriate. Since the application was untimely filed, I recommend that the Board interpose the statute of limitations.



LOREN S. PERLSTEIN  
Associate Chief, Military Justice Division

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