

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01271

COUNSEL: NONE

NOV 13 1998

HEARING DESIRED: NO

Applicant requests upgrade of his 14 December 1994 bad conduct discharge. Applicant's submission is at Exhibit A.

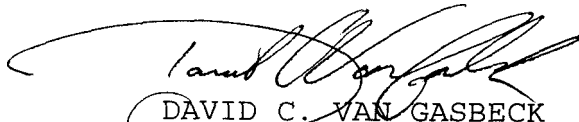
The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this 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, Messrs. David C. Van Gasbeck, Richard A. Peterson, and Jackson A. Hauslein, considered this application on 20 October 1998 in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.


DAVID C. VAN GASBECK
Chair

Exhibits:

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



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

5 August 1998

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM

112 Luke Avenue, Room 343
Bolling AFB, DC 20332-8000

SUBJECT: Correction of Military Records of [REDACTED]

Applicant's request: In an application dated 23 June 1998, [REDACTED], the applicant, requests that his bad conduct discharge from the Air Force be upgraded to an honorable discharge. The applicant's bad conduct discharge went into effect on 14 December 1994. The application was not submitted within the three-year limitation provided by 10 U.S.C. 1552(b) and is untimely. The applicant states no reasonable basis for the untimeliness of his request.

Facts of military justice action: On 13 April 1991, a general court-martial at Hickam AFB, Hawaii convicted the applicant of three specifications under Article 134 of the UCMJ. The first specification involved committing an indecent act upon his nine-year-old step-daughter by rubbing his penis on her bare buttocks until he ejaculated. Another specification involved the applicant taking indecent liberties with his nine-year-old step-daughter by exposing his penis to her and directing her to look at and/or touch his penis with the intent to gratify his sexual desires. The third specification involved the applicant committing an indecent act upon his nine-year-old step-daughter by inserting his finger into her vagina with the intent to gratify his sexual desires. Contrary to his pleas, the applicant was convicted and sentenced to a bad conduct discharge, confinement for three years and reduction to E-1. The applicant's conviction and sentence were affirmed during the appellate process. The bad conduct discharge was executed on 14 December 1994.

Applicant's contentions: The applicant requests that his discharge be upgraded since he has been a model citizen ever since being discharged from active duty. The applicant alleges that he has had a clean record since his release from confinement. The applicant claims he has been a steady worker and tax payer. He alleges he was a student leader in collegiate programs and has volunteered his time helping the elderly and homeless. The applicant states that the characterization of his discharge has hindered his productivity as a civilian.

The applicant indicates that he was released early from confinement. The applicant states that he graduated from college with a Bachelor of Arts degree in Business Communication with a 3.1 cumulative grade point average. The applicant also points out that he had no disciplinary infractions prior to the court-martial charges and contends that his service in the United States

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Air Force was honorable under the circumstances. The applicant has provided no additional documentation supporting this request.

Discussion: The applicant's application is beyond the statute of limitations. The applicant's request can be denied based upon the statute of limitations or based upon the merits. The applicant has provided no compelling evidence to justify upgrading his bad conduct discharge to an honorable discharge.

Regardless of the untimeliness of the applicant's submissions, under AFI 36-3203, *Air Force Board for Correction of Military Records*, para 4.1, the applicant has the burden of proving sufficient evidence of probable material error or injustice. The applicant has not carried his burden of proof. The applicant's court-martial was properly convened and had jurisdiction over the applicant and the offenses tried. The decision of the court and sentence was ultimately affirmed by the Air Force Court of Military Review. The applicant has made no allegations of a material error or injustice occurring during his court-martial proceedings. A court-martial panel heard all of the evidence and found the applicant guilty beyond a reasonable doubt. A bad conduct discharge is ~~an~~ appropriate punishment for the offenses the applicant has committed. Committing indecent acts upon a nine-year-old child is a serious and egregious offense. A discharge upgrade is not warranted in this case.

Recommendation: The applicant's request is untimely and should be denied for failing to comply with the statute of limitations. Further, after reviewing the available records, I conclude that administrative relief by this office is not warranted. The applicant has failed to provide a sufficient basis for upgrading his bad conduct discharge to an honorable discharge. I recommend the Board deny this application based upon the statute of limitations, or, if waived, deny the application on its merits.



/ LOREN S. PERLSTEIN

Associate Chief, Military Justice Division
Air Force Legal Services Agency

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