

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-02028

FEB 12 1999

COUNSEL: None

HEARING DESIRED: No

Applicant requests that his bad conduct discharge (BCD) be upgraded to general, under honorable conditions. Applicant's submission is at Exhibit A.

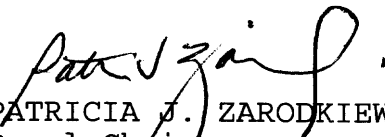
The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). Applicant's response to the advisory opinion is at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

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 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 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. Patricia J. Zarodkiewicz, Mr. William H. Anderson, and Mr. Joseph A. Roj considered this application on 11 February 1999 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


PATRICIA J. ZARODKIEWICZ
Panel Chair

Exhibits:

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



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

6 NOV 1998

MEMORANDUM FOR AFBCMR

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

SUBJECT: Correction of Military Records of [REDACTED]

Applicant's request: The applicant has submitted a DD Form 149, dated 18 July 1998, requesting that his Bad Conduct Discharge (BCD) be upgraded to a General, Under Honorable Conditions Discharge. The applicant was discharged from the Air Force on 1 March 1955. Accordingly, his application was not submitted within the three-year limitation provided by 10 U.S.C. 1552(b) and the criteria established by the case of Detwiler v. Pena. The delay is not addressed in the applicant's submission.

Facts of military justice action: The applicant enlisted in the Air Force on 19 December 1951 for a four-year enlistment. After basic and technical training, he was sent to [REDACTED]. While there, he was convicted by a summary court of being drunk and disorderly on station. After his 13 month [REDACTED] tour ended, he was re-assigned to [REDACTED] in total 1953. In April 1954 he was again convicted by a summary court for failure to go to work (June 1954), he was convicted by a summary court of breaking regulations and passing a false pass, for which he received a sentence of 6 months confinement. Shortly after [REDACTED] the public was given Article 5 for being drunk in [REDACTED] part of his sentence was two weeks restriction to the confines of [REDACTED]. During these two weeks [REDACTED] the [REDACTED] base. He was then [REDACTED] by a special court [REDACTED] of a [REDACTED] sentence. The court found him guilty of [REDACTED] restriction and sentenced him to a BCD, [REDACTED] of \$60 month for [REDACTED] and [REDACTED] at hard labor for three [REDACTED] of [REDACTED] for the conviction. His case was [REDACTED] sent to The Judge Advocate General, [REDACTED] [REDACTED] and sentence. On 1 [REDACTED] 1955, the BCD was executed.

Applicant's contentions: The applicant contends that he would like an upgraded discharge because his military service time has not been credited for "s.s." (which we presume stands for "social security"). On the DD Form 293s, the applicant indicates that he has on-going medical problems which he believes existed during his military service and for which he would like to receive medical treatment. The record of trial from the applicant's last court-martial indicates that at the time he was convicted, he believed that his repeated acts of misconduct resulted from alcohol abuse. The applicant has not alleged that the Government committed any errors in his case.

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Discussion: Although the applicant's Air Force career extended from 1951 to 1955, his credible service was only 2 years, 6 months and 5 days because of "bad time" resulting from confinement. This is because in less than four years, he was punished by one Article 15, two summary courts and **two** special courts. Six months of confinement from his first special court-martial did not dissuade him from committing **further** misconduct only days after his release. In the midst of his punishment for that offense, he again committed misconduct by disregarding a direct order. In short, the applicant was out of control. Despite **an** unusual number of attempts at rehabilitation by the applicant's commanders, the applicant showed a blatant disregard for military orders and an inability to comply with even the most rudimentary standards of military discipline.

Whether a military member's service ended yesterday or 43 years ago, the purpose of the discharge characterization is the same: to accurately reflect the nature of a member's military service. The fact that this applicant desires an upgraded discharge to enhance his veterans' benefits is not relevant **to** the accuracy of his discharge characterization. In this case, the records are clear that the member's military service was, in fact, bad. The applicant has not submitted anything to support his request for an upgraded discharge, nor has he offered any rationale for why his veterans' benefits should be enhanced.

Recommendation: After reviewing the available records, I conclude that administrative relief **by** this office is not possible. There are no legal errors requiring correction. Accordingly, the Board should consider whether the statute of limitations should be waived in this case and relief should be granted, **with** the understanding that **none is required by law**. Should the Board decide to grant relief, it is within the authority of the Board to do **so**. Should the Board decide that no relief is warranted, then the Board should consider interposing the statute of limitations or denying relief on the merits of the case.



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

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