RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2008-02590

INDEX CODE: 106.00

XXXXXXXXXXXXXXXXX. COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

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APPLICANT CONTENDS THAT:

He was never arrested or taken into custody. At no time were drugs ever found in a search of his room, car, or on his person. The charges against him were circumstantial, as he did not test positive for cocaine or amphetamines, and he has no indication that he tested positive for marijuana. Further, he was not reduced in rank.

Another airman was tried by a court-martial and was acquitted of substantially the same charges that were filed against him. The conclusion letter clearly states the government witnesses who testified against that airman were not believable, and these were the same witnesses that were set to testify against him. Additionally, the fact this airman was acquitted was never disclosed to him and, had he known of this acquittal, he would have requested trial by court-martial.

He recently requested a copy of his file from the National Personnel Records Center (NPRC), and only then did he discover the errors, omissions, and injustices. He was young and scared, and his lawyer told him the entire weight of the Air Force was against him and his command had completely deserted him. He was a good airman, had every intention of making the Air Force a career, and believes that his discharge was expedited for the convenience of the government and that he was the scapegoat because the other airman was acquitted.

In support of his appeal, he has provided a copy of a letter from NPRC transmitting his entire discharge case file.

Applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force (RegAF) for four years on 25 October 1984, and served as an aircraft environmental system mechanic until his discharge. On 28 July 1987, the applicant requested that he be discharged in lieu of trial by court-martial. At the time, he was pending trial by court-martial and charged with, on divers occasions, possessing and using marijuana, amphetamines, and cocaine. The applicant acknowledged that he had received legal counseling, and that he understood that if his request was approved, he might receive a discharge under other than honorable conditions and be deprived of veterans’ benefits.

On 11 August 1987, the commander recommended the applicant’s request be approved and that he be furnished a UOTHC discharge, and stated that he had not been led to believe the discharge issued would be anything except the worst authorized.

On 19 August 1987, the Staff Judge Advocate advised that since another airman had been acquitted of substantially the same charges as those brought against the applicant, and since it appeared the acquittal occurred because the court members did not find the testimony of the government witnesses to be believable beyond a reasonable doubt, there was a strong possibility that a court in the applicant’s case would reach the same conclusion since these were the same witnesses that would testify against him. They further advised that if the applicant were tried and acquitted, he could then not be discharged based upon the same charges, except by special consent of the Secretary of the Air Force, and that if discharged by Secretarial consent, he must receive a discharge under honorable conditions. They recommended the applicant’s request be approved and that he receive a UOTHC discharge. On 26 August 1987, the discharge authority approved the applicant’s request and directed that his service be characterized as UOTHC due to the seriousness of the charges.

On 4 September 1987, the applicant was discharged in the grade of airman first class (E-3) under the provisions of AFR 39-10, with a UOTHC service characterization. He served a total of 2 years, 10 months and 10 days of net active service.

The Applicant’s Airman Performance Report profile follows:

PERIOD ENDING EVALUATION

24 Oct 1985 9

24 Oct 1986 9 (firewall)

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI), Clarksburg, WV, provided a copy of an Investigation Report which is at Exhibit C. On 14 August 2008, a copy of the FBI report and a request for post-service information were forwarded to the applicant for review and comment within 30 days. However, as of this date, no response has been received by this office.

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge processing. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority. The applicant has provided no evidence which would lead us to believe the characterization of the service was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. We considered upgrading the discharge based on clemency; however, based on the evidence of record and in the absence of documentation pertaining to his post-service accomplishments, we cannot conclude that clemency is warranted. Moreover, it appears that he has not overcome the behavior traits which caused the discharge based on the report provided by the FBI. Therefore, in the absence of evidence to the contrary, we find no basis upon which to recommend granting the relief sought.

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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered Docket Number BC- 2008-02590 in Executive Session on 16 October 2008, under the provisions of AFI 36-2603:

Ms. Patricia J. Zarodkiewicz, Vice Chair

Ms. Janet I. Hassan, Member

Ms. Judith B. Oliva, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 10 Jul 08, w/atchs.

Exhibit B. USDOJ FBI Report.

Exhibit C. Letter, AFBCMR, dated 14 Aug 08**,** w/atch.

PATRICIA J. ZARODKIEWICZ

Vice Chair