RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-00948

INDEX CODE: A93.01/02

XXXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His General (Under Honorable Conditions) discharge be upgraded to Honorable.

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APPLICANT CONTENDS THAT:

His discharge was based on one isolated incident in 18 months of service during his enlistment. At that time, he was 19 years old and fraternizing with airmen from a different upbringing. Being away from home and the guidance of his parents, he affiliated with older airmen and made unwise decisions. He was a model airman and loved his job. Since being discharged, he has worked in the private sector without incident and has no criminal record or history. He is now a mature 29 year-old citizen and father. The legacy of military service is strong in his family and he wants to uphold these standards for future generations.

The applicant’s complete submission is at Exhibit A.

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STATEMENT OF FACTS:

Applicant’s military personnel records indicate he enlisted in the Regular Air Force on 3 Jun 98 for a period of six years. He was progressively promoted to the grade of airman first class effective and with a date of rank of 18 Jul 98.

On 17 Nov 99, the applicant was notified by his commander of his intent to recommend his involuntary discharge from the Air Force for Misconduct based on drug abuse under the provisions of AFI 36-3208. The reason for the action was the applicant’s repeated wrongful use of marijuana between on or about 1 Jan 99 and on or about 28 Feb 99 in violation of Article 112a of the Uniform Code of Military Justice (UCMJ).

On 19 Nov 99, the applicant acknowledged receipt of the notification of discharge, consulted legal counsel and waived his right to submit any statements in his behalf.

On 24 Nov 99, the case was found to be legally sufficient and the discharge authority approved the commander’s request for involuntary discharge on 9 Dec 99.

On 15 Dec 99, the applicant was discharged under the provisions of AFI 36-3208 (Misconduct) and furnished a general (under honorable conditions) discharge. He was credited with 1 year, 6 months, and 18 days of active service.

On 29 Mar 00, the Air Force Discharge Review Board (AFDRB) considered and denied the applicant’s request for an upgrade of his general discharge to honorable.

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AIR FORCE EVALUATION:

AFPC/DPSOS recommends denial because the applicant has not demonstrated an error or injustice. Based on the documentation on file, the discharge was consistent with the procedural and substantive requirements of the discharge instruction and was within the discretion of the discharge authority. The applicant did not submit any evidence of any error or injustice in the discharge processing. He provided no facts warranting a change to his discharge.

A complete copy of the DPSOS evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 21 Aug 09 for comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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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 applicant’s General (Under Honorable Conditions) discharge for misconduct based on drug abuse was consistent with the substantive requirements of the discharge instruction and within the commander’s discretionary authority. He has provided no evidence which would lead us to believe the characterization of his service was improper or contrary to the provisions of the governing instruction. In view of the foregoing, and in the absence of evidence to the contrary, we conclude that no basis exists to upgrade the applicant’s general discharge or change his reason for separation.

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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 AFBCMR Docket Number BC-2009-00948 in Executive Session on 23 Sep 09, under the provisions of AFI 36-2603:

Mr. Anthony P. Reardon, Panel Chair

Ms. Janet I. Hassan, Member

Mr. Mark J. Novitski, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 16 Mar 09.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSOS, dated 27 Jul 09.

Exhibit D. Letter, SAF/MRBR, dated 21 Aug 09.

ANTHONY P. REARDON

Panel Chair