RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-01811

INDEX CODE: A92.19/20

XXXXXXX 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:

It has been 17 years since his discharge. His achievements, military education, and eight years and ten months of service (six years of it continuous service) should warrant the upgrade of his discharge, conferring veteran status upon him.

He was recently laid off and sought medical care through the Department of Veterans Affairs (DVA), but was denied access due to his discharge characterization.

In support of his request, the applicant provides a copy of his DD Form 214.

The applicant’s complete submission, with attachment, is at Exhibit A.

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STATEMENT OF FACTS:

Applicant’s military record indicates that he enlisted in the Regular Air Force on 3 Feb 83. He was progressively promoted to the grade of sergeant (E-4) effective and with a date of rank of 21 Mar 87. Applicant was subsequently reduced in rank to airman basic (E-1) via two actions under Article 15, Uniform Code of Military Justice (UCMJ).

On 23 Dec 91, the applicant was notified by his commander of his intent to recommend his involuntary discharge from the Air Force for Misconduct—Discreditable Involvement with Military or Civil Authorities under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The reasons for the action were:

a.  He did, between Oct 90 and Dec 91, utter 23 dishonored checks collectively worth over $1400.00 in violation of Article 134, UCMJ, for which he twice received nonjudicial punishment under Article 15, UCMJ, and two letters of reprimand.

b.  He twice failed to report to his appointed place of duty at the time prescribed for which he received two letters of reprimand.

c.  He did, on 23 Dec 91, report for duty with an earring and an unkempt uniform in violation of AFR 35-10, Dress and Appearance of Air Force Personnel.

On 3 Jan 92, the applicant acknowledged receipt of the notification of discharge, consulted legal counsel and submitted an unconditional waiver of his right to an administrative discharge board, also electing to not submit statements in his defense.

On 17 Jan 92, the case was found to be legally sufficient and the discharge authority accepted the applicant’s unconditional waiver, directing his discharge on 21 Jan 92.

On 22 Jan 92, the applicant was furnished a UOTHC discharge. He was credited with 8 years, 11 months, and 20 days of active service.

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI) provided a copy of an investigative Report, which is at Exhibit C.

A copy of the FBI Report of Investigation and a request for post-service information was forwarded to applicant on 23 Jul 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 UOTHC discharge for misconduct based on discreditable involvement with military or civil authorities 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 and reason for his discharge was improper or contrary to the provisions of the governing instruction. We considered upgrading the discharge based on clemency; however, we do not find the evidence presented is sufficient to compel us to recommend granting the relief sought on that basis. 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 UOTHC discharge.

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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-2009-01811 in Executive Session on 7 Oct 09, under the provisions of AFI 36-2603:

Mr. James W. Russell III, Panel Chair

Mr. Noble K. Eden, Member

Mr. Mark J. Novitski, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 15 May 09, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. FBI Report, dated 12 Jun 09.

Exhibit D. Letter, AFBCMR, 23 Jul 09.

JAMES W. RUSSELL III

Panel Chair