RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-02237

 INDEX CODE: 46.00/106.00

 XXXXXXX 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 should be honorable.

The applicant’s complete submission is at Exhibit A.

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STATEMENT OF FACTS:

Applicant’s military records indicate he enlisted in the Regular Air Force on 24 Jun 80 as an airman basic (E-1) for a period of four years and was progressively promoted to the grade of airman first class (E-3) effective and with a date of rank of 24 Jun 81.

On 10 Feb 83, the applicant was notified by his commander of her intent to recommend his involuntary discharge from the Air Force for homosexual conduct in accordance with AFR 39-10, paragraph 5-35. The specific reasons for the action were that he was the subject of an Air Force Office of Special Investigation (AFOSI) Investigation in which he admitted to being bisexual.

On 17 Feb 83, after consulting with legal counsel, the applicant waived his right to an administrative discharge board. He did not challenge the basis of the action, but contended an Honorable discharge would be appropriate given his excellent performance in accordance with AFR 39-10, chapter 5, paragraph 5-36.

On 28 Feb 83, the case was found to be legally sufficient and the discharge authority approved the commander’s recommendation on 3 Mar 83, ordering the applicant’s involuntary discharge.

On 16 Mar 83, the applicant was furnished a General (Under Honorable Conditions) discharge and was credited with 2 years, 8 months, and 23 days of active service.

A request for post-service information was forwarded to applicant on 4 Aug 09 for comment within 30 days. As of this date, no response has been received by this office (Exhibit C).

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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.  Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We find no impropriety in the characterization of applicant's discharge. Considered alone, we conclude the discharge proceedings were proper and characterization of the discharge was appropriate to the existing circumstances. Consideration of this Board, however, is not limited to the events which precipitated the discharge. In this respect, it may base its decision on matters of equity and clemency rather than simply on whether rules and regulations which existed at the time were followed. Under this broader mandate and after careful consideration of all the facts and circumstances of applicant's case, a majority of the Board is persuaded that corrective action is appropriate as a matter of equity and on the basis of clemency. Therefore, a majority of the Board concludes the applicant's discharge should be upgraded to honorable.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that on 16 March 1983, he was honorably discharged and furnished an Honorable Discharge certificate.

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The following members of the Board considered AFBCMR Docket Number BC-2009-02237 in Executive Session on 20 Oct 09, under the provisions of AFI 36-2603:

 Ms. Rita S. Looney, Panel Chair

 Ms. Mary Jane Mitchell, Member

 Ms. Glenda H. Scheiner, Member

By majority vote, the Board voted to correct the records as recommended. Ms. Glenda H. Scheiner voted to deny the applicant’s request, but does not wish to submit a minority report. The following documentary evidence pertaining to AFBCMR Docket Number BC-2009-02237 was considered:

 Exhibit A. DD Form 149, dated 15 Jun 09.

 Exhibit B. Applicant's Master Personnel Records.

 Exhibit C. Letter, AFBCMR, 4 Aug 09, w/atch.

 RITA S. LOONEY

 Panel Chair

**DEPARTMENT OF THE AIR FORCE
WASHINGTON DC**



**Office Of The Assistant Secretary**

AFBCMR BC-2009-02237

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

 The pertinent military records of the Department of the Air Force relating to XXXXXXX, XXXXXXX, be corrected to show that on 16 March 1983, he was honorably discharged and furnished an Honorable Discharge certificate.

 JOE G. LINEBERGER

 Director

 Air Force Review Boards Agency