ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-1998-03153

 XXXXXXXXXXX COUNSEL: RAYMOND J. TONEY

 HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

1.  The two nonjudicial punishment (NJP) actions he received under Article 15, Uniform Code of Military Justice (UCMJ), and the vacation of the suspended NJP, be declared void and removed from his records.

2.  He be administratively reinstated to his previous rank of staff sergeant (E-5).

3.  He be credited with active service, backpay, and allowances from the date of his separation from active duty to the date on which he would have attained 20 years of active service for retirement under 10 USC 3914; or he be credited with satisfactory reserve service for this period for the purpose of retirement under 10 USC 12731.

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RESUME OF CASE:

On 1 Dec 99, the Board considered and denied the applicant’s original request to set aside his Article 15, dated 22 Aug 96; Article 15, dated 6 Sep 96; and vacation of suspended nonjudicial punishment (NJP), dated 4 Nov 96. In the initial case, he contended that all three actions were initiated by the same commander who failed to follow the advice of the legal office on these matters and refused to consider clear and convincing evidence that he was the victim of domestic violence, not the perpetrator of it. Furthermore, the vacation of the suspended NJP was based on an incident which should not have been held against him; it took place when he was in an extreme emotional state when he was at the mental ward of the hospital in the aftermath of his suicide attempt. His commander also failed to consider his excellent duty performance when he made these decisions.

In a new DD Form 149, dated 11 May 10, and a subsequent Statement of Counsel, with attachments, Counsel requests reconsideration based upon additional documentation the applicant has obtained since the Board’s initial decision. Counsel respectfully submits the original AFBCMR panel did not enjoy a fully developed argument and evidence showing the applicant was actually innocent of the charge of domestic violence. He respectfully requests the Board accept this application and issue a decision on the merits of the arguments and evidence contained herein in the interest of fairness and justice.

The applicant’s complete submissions, with attachments, are at Exhibits G and H.

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THE BOARD CONCLUDES THAT:

1.  After again reviewing this application and the evidence provided in support of his appeal, we remain unconvinced the applicant has been a victim of an error or injustice. We have previously determined the NJP actions rendered upon the applicant were appropriate to the circumstances and within the commander’s discretionary authority. While he has provided a voluminous submission describing the volatility of his relationship with his former spouse, we do not find it sufficient to convince us otherwise. In this respect, we note that a substantial portion of the applicant’s instant submission includes various supporting statements, excerpts from his military personnel records, and character references rendered on behalf of the applicant during the NJP proceedings. However, we note that these documents were a matter of record and originally considered by the commander during the NJP proceedings. Absent evidence to the contrary, we presume he acted in good faith and used his knowledge of events and circumstances at the time in arriving at the appropriate punishment for the applicant’s misconduct. Therefore, absent a strong showing the commander abused his discretionary authority; we choose not to substitute our judgment for that of officials who were closer to the events in question. We also note the applicant provided copies of medical documentation, a supporting statement from his current spouse, and various studies regarding the effects of domestic abuse as further evidence he was the victim of domestic abuse. Nevertheless, we remain unconvinced the applicant did not commit the acts which formed the bases of the NJP actions. Therefore, in the absence of evidence the punishment was disproportionate to the circumstances, his commander exceeded his discretionary authority, or he was denied rights to which he was entitled, we find no basis to recommend granting the requested relief.

2. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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 the applicant’s request for reconsideration of AFBCMR Docket Number BC-1998-03153 in Executive Session on 27 Apr 11, under the provisions of AFI 36-2603:

 Ms. XXXXXXXXXX, Panel Chair

 Ms. XXXXXXXXXX, Member

 Ms. XXXXXXXXXX, Member

The following additional documentary evidence was considered:

 Exhibit F.  ROP, dated 30 Dec 99, w/atchs.

 Exhibit G.  DD Form 149, dated 11 May 10, w/atchs.

 Exhibit H.  Letter, Counsel, undated, w/atchs.

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 Panel Chair