RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2006-02328

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His Bad Conduct Discharge (BCD) be upgraded to General (Under Honorable Conditions).

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APPLICANT CONTENDS THAT:

He would like to utilize the education and training he received while in the Air Force to give back to the community by working as a police officer, communications officer, paramedic, or firefighter. However, he is unable to secure employment in the public service with his current type of discharge.

In support of his request, the applicant provides copies of various character references, letters and certificates of appreciation, correspondence related to his BCD, correspondence related to the restoration of his civil rights, and, by amendment, a first responders training certificate.

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

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STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 19 Jan 00 and was progressively promoted to the grade of senior airman (E-4), effective and with a date of rank of 19 Jan 03.

On 26 Sep 03, the applicant was tried by General Court Martial (GCM) for the offenses of larceny and housebreaking. He was also charged with three specifications of unlawful entry into Air Force buildings with the intent to commit larceny. Pursuant to a plea agreement, he pled guilty to all charges and specifications and was sentenced to confinement for 10 months, reduction to airman basic, and a BCD. However, the General Court-Martial Convening Authority (GCMCA) subsequently granted his request for clemency and reduced his confinement to eight months.

On 22 Oct 04, the applicant’s appellate counsel (AFLOA/JAJA) filed an appellate brief on his behalf with the Air Force Court of Criminal Appeals (AFCCA). On 22 Nov 05, AFCCA published its final decision regarding the appeal, setting aside one of the housebreaking specifications and reassesing his sentence to eight months of confinement, reduction to the grade of airman basic (E-1), and a BCD. The AFCCA affirmed the remaining findings of guilty and the sentence as correct in law and fact.

On 23 Nov 05, AFLOA/JAJM notified the applicant of the AFCCA decision and of his right to petition the Court of Appeals of the Armed Forces (CAAF) within 60 days. In the interim, however, when his appellate counsel (AFLOA/JAJA) received the AFCCA decision, the case tracking system was not updated to reflect the court’s decision. Consequently, the applicant’s case was never placed on a list of cases awaiting petition to the CAAF, and his newly assigned counsel never filed a petition on his behalf.

The applicant did not petition the CAAF for review of his case within the statutory time period; as a result, the findings and sentence in his case became final and conclusive on 2 Feb 06. On 7 Mar 06, the GCMCA took final action and executed the BCD.

In an application to the Board, dated 2 Jul 06, the applicant requested he be reinstated to appellate leave status to complete his appeal process from the AFCCA to the CAAF, contending the noted administrative error cost him the opportunity to continue his appeal. On 8 Feb 07, by majority vote, the Board recommended denial of the applicant’s request, noting that while he may not have received timely notification of the AFCCA decision from his appellate counsel, he was concurrently notified of the decision and his right to appeal to the CAAF by AFLOA/JAJM.

In an application to the Board, dated 11 Feb 09, the applicant submitted his present case. On 1 Sep 10, the case was administratively closed in accordance with his request. On 14 Sep 10, the applicant provided additional documentation and requested his case be re-opened.

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 the applicant on 25 Apr 11 for review and 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 an error or injustice. We note that this Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. We find no evidence which indicates the applicant’s service characterization, which had its basis in his court-martial conviction and was a part of the sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). We have considered the applicant’s overall quality of service, the court-martial conviction which precipitated the discharge, the seriousness of the offenses to which convicted, and the documentation pertaining to the applicant’s post-service activities. Based on the evidence of record, we cannot conclude that clemency is warranted in this case. Therefore, we find no basis upon which to favorably consider this application.

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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 AFBCMR Docket Number BC-2006-02328 in Executive Session on 2 Jun 11, under the provisions of AFI 36-2603:

Ms. XXXXXXXXXX, Panel Chair

Mr. XXXXXXXXXX, Member

Ms. XXXXXXXXXX, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2006-02328 was considered:

Exhibit A.  DD Form 149, dated 11 Feb 09, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  FBI Report.

Exhibit D.  Letter, AFBCMR, dated 25 Apr 11, w/atch.

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Panel Chair