RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02191

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

His bad conduct discharge (BCD) be upgraded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

There is no error or injustice in his military records, he is requesting his discharge be upgraded in order to help his civilian career. Obtaining an upgraded discharge will allow him to buy back the few years he spent in the military.

In support of his request, the applicant provides copies of excerpts from his military personnel records and three supporting statements.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

The relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI) provided a copy of an Investigative Report indicating they were unable to locate an arrest record pertaining to the applicant based on the information provided.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial, indicating there is no evidence of an error or injustice. On 5 Dec 88, the applicant was tried at a general court-martial at Kadena Air Base, Japan. Between Jul and Aug 88, he wrongfully uttered five checks, totaling $8,450.00, with the intent to defraud, in violation of Article 123a of the Uniform Code of Military Justice (UCMJ). He was also accused of being absent without leave during the period 5 Oct through 8 Oct 88, in violation of Article 86, UCMJ. The applicant pled guilty to all of the charges and specifications and was sentenced by a military judge to a dishonorable discharge, confinement for 18 months, and forfeiture of all pay and allowances. The convening authority subsequently approved the findings, albeit with the following changes: the date of one of the specifications was altered; the total amount of the forged checks was reduced by $250; and one specification of wrongfully uttering a check was changed to making a worthless check by dishonorably failing to maintain funds. Pursuant to the pretrial agreement, the convening authority approved only so much of the sentence as provided for a BCD and confinement for 13 months. His conviction and sentence were affirmed on appeal and, as a result, his BCD was executed on 29 Aug 89. The applicant has identified no error or injustice related to his prosecution of the sentence and, in fact, admits there was none. While clemency in this case can be granted, it is not warranted as it would be unfair to those who honorably served their country while in uniform.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit C.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 3 Sep 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

A request for post-service information was forwarded to the applicant on 25 Oct 10. In response, the applicant provides an expanded statement and copies of four supporting statements and excerpts from his military personnel records (Exhibit F).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following members of the Board considered AFBCMR Docket Number BC-2010-02191 in Executive Session on 16 Feb 11, under the provisions of AFI 36-2603:

Mr. XXXXXXXXXX, Panel Chair

Mr. XXXXXXXXXX, Member

Ms. XXXXXXXXXX, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2010-02191 was considered:

Exhibit A. DD Form 149, dated 3 Jun 09, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFLOA/JAJM, dated 23 Aug 10.

Exhibit D. Letter, SAF/MRBR, dated 3 Sep 10.

Exhibit E. Letter, AFBCMR, dated 25 Oct 10, w/atch.

Exhibit F. Letter, Applicant, undated, w/atchs.

XXXXXXXXXX

Panel Chair