RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02418

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His Bad Conduct Discharge (BCD) be upgraded.

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APPLICANT CONTENDS THAT:

It has been over 25 years since his discharge and he would like it upgraded so he may obtain medical services.

In support of his request, the applicant provides a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty.*

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

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STATEMENT OF FACTS:

The relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices 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) indicated that on the basis of the information provided, they were unable to locate an arrest record.

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AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial, indicating there is no evidence of an error or injustice. On 5 Dec 81, the applicant was sentenced to a BCD, confinement for two years, forfeitures of $100.00 per month for six months and reduction to the grade of airman basic (E-1) for participating in the forcible gang rape of the wife of a Navy petty officer. On 29 Jul 82, the findings of guilty and the sentence were affirmed upon appellate review. The United States Court of Military Appeals denied the applicant’s petition for a grant of review. It is important to note the AFBCMR is without authority to reverse, set aside, or otherwise expunge a court-martial conviction that occurred on or after 5 May 50. Specifically, Title 10, United States Code, Section 1552(f)(1) permits the correction of a record to reflect actions taken by reviewing authorities under the UCMJ. Additionally, Section 1552(f)(2) of the same title permits the correction of records related to action on the sentence of courts-martial for the purpose of clemency. While clemency is an option, there is no reason for the Board to exercise clemency in this case as he has not provided any substantive argument or documentation in support of his request, and doing so would be unfair to those individuals who honorably served their country while in uniform.

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

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 23 Dec 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 14 Feb 11 for review and comment within 30 days. In response, he describes his experiences subsequent to his court-martial conviction. He acknowledges his involvement in the “incident” was a bad decision, but indicates he has been a productive citizen since his release. In support of his response, he provides an expanded statement and copies of four supporting statements (Exhibit F).

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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, and the seriousness of the offenses to which convicted. Based on the evidence of record, we cannot conclude that clemency is warranted. 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-2010-02418 in Executive Session on 22 Mar 11 and 24 Mar 11, under the provisions of AFI 36-2603:

Mr. XXXXXXXXXX, Panel Chair

Mr. XXXXXXXXXX, Member

Mr. XXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 28 Jun 10, w/atch.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFLOA/JAJM, undated.

Exhibit D. Letter, SAF/MRBR, dated 23 Dec 10.

Exhibit E. Letter, AFBCMR, dated 14 Feb 11, w/atch.

Exhibit F. Letter, Applicant, dated 23 Mar 11, w/atchs.

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Panel Chair