RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-03613

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His General (Under Honorable Conditions) discharge be changed to an Honorable discharge.

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APPLICANT CONTENDS THAT:

He did not have proper counsel to advise him of his options prior to his discharge; therefore, he did not have the opportunity to have his case reviewed prior to discharge. His record should be corrected based on his clean record since his discharge.

The applicant’s complete submission is at Exhibit A.

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate that he enlisted in the Regular Air Force on 8 Feb 77 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 7 Sep 79.

On 8 Jan 80, the applicant’s commander notified him of his intent to recommend him for discharge from the Air Force for apathy, defective attitude, and inability to expend efforts constructively in accordance with AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*. The reasons for the action included his diagnosis of situational adjustment reactions, repeated threats of physical violence to his spouse, threatening and disrespectful behavior towards a non-commissioned officer, arrest by civil authorities for tampering with an automobile, being absent without leave (AWOL), 17 incidences of charging long distance calls to third parties without authorization to do so, and failure to launch an aircraft.

On 13 Feb 80, the applicant acknowledged receipt of the action and, after consulting with legal counsel, waived his right to a hearing and elected not to submit statements on his behalf.

On 19 Feb 80, the case was found to be legally sufficient and the discharge authority approved the applicant’s discharge on 21 Feb 80. On 26 Feb 80, he was furnished a General (Under Honorable Conditions) discharge and was credited with 2 years, 11 months, and 21 days of total active service.

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI) provided a copy of an Investigative Report, which is attached at Exhibit C.

A copy of the FBI Report of Investigation and a request for post-service information was forwarded to applicant on 11 Jan 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 took notice of the applicant’s complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge process. Based on the available evidence of record, it appears the applicant’s General (Under Honorable Conditions) discharge was consistent with the substantive requirements of the discharge regulation and within the discharge authority’s discretion. He has provided no evidence which would lead us to believe otherwise. We considered upgrading the discharge based on clemency; however, in the absence of any evidence pertaining to the applicant’s post-service activities, we find no basis to compel us to recommend granting the relief sought on that basis. Therefore, in the absence of evidence to the contrary, we find no basis to recommend upgrading the applicant’s General (Under Honorable Conditions) discharge.

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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-2010-03613 in Executive Session on 25 May 11, under the provisions of AFI 36-2603:

Ms. XXXXXXXXXX, Panel Chair

Mr. XXXXXXXXXX, Member

Mr. XXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 27 Sep 10.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  FBI Report.

Exhibit D.  Letter, AFBCMR, dated 11 Jan 11.

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Panel Chair