RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-04085

XXXXXXXXXX (DECEASED) COUNSEL: NONE

XXXXXXXXXX (APPLICANT) HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

Her deceased husband’s bad conduct discharge (BCD) be upgraded to honorable.

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APPLICANT CONTENDS THAT:

A fire destroyed her deceased husband’s records which show he was given the opportunity to continue his service in order to obtain an honorable discharge.

In support of her request, the applicant provides copies of her deceased husband’s death certificate, correspondence from the Department of Veterans Affairs (DVA) related to their denial of benefits due to his character of service, and an article related to the fire at the National Personnel Records Center (NPRC) in 1973.

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

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STATEMENT OF FACTS:

The relevant facts pertaining to the deceased former member’s discharge, extracted from his military personnel records, are contained in the letter prepared by the Air Force office of primary responsibility which is at Exhibit C. Accordingly, there is no need to recite these facts in this Record of Proceedings.

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AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial, indicating there is no evidence of an error or injustice. On 11 Oct 56, the applicant’s deceased husband faced a special court-martial where he was charged with absenting himself without proper authority from his place of duty from 24 Jan 56 to 17 Sep 56, in violation of Article 86 of the Uniform Code of Military Justice (UCMJ). He pled guilty to the charge and specification and was sentenced to a BCD, forfeiture of $55.00 pay per month for six months, and confinement for six months. The sentence was approved as adjudged on 9 Nov 56 and the BCD was ordered executed on 21 Jan 57. The applicant does not allege error or injustice with respect to the court-martial process, but rather with the fact that certain records may have been destroyed in the 1973 fire at NPRC. While the record of trial is not available for review, documents in the applicant’s deceased husband’s military personnel records indicate he had a fair trial and was afforded all of his rights. He was able to enter pleas of guilt and have his case heard by a court to determine an appropriate sentence. While clemency may be granted under the provisions of 10 USC 1552(f)(2), the applicant has not included sufficient information to warrant consideration on this basis. The sentence imposed by the court appears to have been appropriate for the offense, especially considering the fact the applicant’s deceased husband was absent without authority for almost nine months. The applicant did not include any documentation of medical problems or post-service accomplishments by her deceased husband after he left the service.

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 8 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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FINDINGS AND CONCLUSIONS OF THE BOARD:

After careful consideration of applicant’s request and the available evidence of record, we find the application untimely. The application was not filed within three years after the alleged error or injustice was discovered as required by Title 10, United States Code, Section 1552 and Air Force Instruction 36-2603. The applicant has not shown a plausible reason for the delay in filing, and we are not persuaded the record raises issues of error or injustice which require resolution on the merits. Thus, we cannot conclude it would be in the interest of justice to excuse the failure to file in a timely manner.

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DECISION OF THE BOARD:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

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The following members of the Board considered AFBCMR Docket Number BC-2010-04085 in Executive Session on 14 Jul 11, under the provisions of AFI 36-2603:

Ms. XXXXXXXXXX, Panel Chair

Ms. XXXXXXXXXX, Member

Ms. XXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 30 Apr 10, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Letter, AFLOA/JAJM, dated 24 Mar 11.

Exhibit D.  Letter, SAF/MRBR, dated 8 Apr 11.

XXXXXXXXXX

Panel Chair