

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-05095
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Article 15 be expunged from his record along with the charges that have been reported to the National Crime Intelligence Service (NCIS) Database.

APPLICANT CONTENDS THAT:

He was steered by his government appointed defense counsel to accept Article 15 punishment as opposed to electing a trial by court-martial. He was told that if he accepted the Article 15, these charges would not appear on his civilian record. However, these charges do appear on his record when he applies for jobs, making him unable to find a job in this tough economy.

In support of his appeal, the applicant provides copies of two interview statements made through his Area Defense Counsel's office.

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

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force who was released from active duty on 8 July 2010, with a general (under honorable conditions) discharge. During his time on active duty status, the applicant received three nonjudicial punishment actions.

First, the applicant was offered nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) for one specification of false official statement, in violation of Article 107, UCMJ; one specification of fleeing apprehension, in violation of Article 95, UCMJ; one specification of controlling a vehicle while intoxicated, in violation of Article 111, UCMJ; and one specification of being drunk and disorderly, in violation of Article 134, UCMJ. The applicant was afforded the opportunity to

consult with defense counsel, accepted the Article 15, and waived his right to demand trial by court-martial. He elected to present written matters and make a personal appearance before the commander. On 11 February 2009, the commander decided the applicant had committed the charged offenses and imposed punishment consisting of reduction to the rank of senior airman (E-4), a suspended forfeiture of \$200 pay per month for two months, and a reprimand. The applicant appealed the commander's decision. On 13 February 2009, the appellate authority granted the applicant's appeal in part and remitted the suspended forfeiture of pay. The Article 15 action was reviewed and found to be legally sufficient.

Second, in December 2009, the applicant, who had regained the rank of staff sergeant, used the radiology on-call cellular phone for personal use. Due to this misconduct, he was again offered nonjudicial punishment under Article 15, UCMJ. He was charged with one specification of dereliction of duty, in violation of Article 92, UCMJ. Again, the applicant was afforded the opportunity to consult with defense counsel, accepted the Article 15, and waived his right to demand trial by court-martial. He elected to present written matters and make a personal appearance before his commander. On 27 April 2010, the commander decided that the applicant committed the charged offense and imposed punishment consisting of reduction to the rank of senior airman, forfeiture of \$1,146, and a reprimand. The applicant appealed the punishment, which was denied by the appellate authority. The Article 15 action was reviewed and determined to be legally sufficient.

Third, in June 2010, the applicant, who was then a senior airman, engaged in a late night verbal altercation with his wife. As the verbal altercation accelerated, the applicant pinned his wife down on the floor, causing his wife to struggle to escape. When the applicant's wife escaped, she ran to a neighbor's home and called police. The applicant was then observed driving away from the house before the police arrived. Once the applicant returned home, the police searched his vehicle and found an unregistered firearm in his vehicle. Based on this incident, the applicant was offered nonjudicial punishment under Article 15, UCMJ, for the third time. He was charged with one specification of dereliction of duty for possessing an unregistered firearm and one specification of disobeying a lawful order for violating his commander's order not to have any contact with his wife, both in violation of Article 92, UCMJ and, one specification of being disorderly, in violation of Article 134, UCMJ. The applicant was afforded the opportunity to consult with defense counsel, accepted the Article 15, and waived his right to demand trial by court-martial. He declined to present written matters or make a personal appearance before his commander. On 24 June 2010, the commander determined the applicant had committed the charged offenses and imposed punishment consisting of reduction to the

rank of airman basic (E-1), and a reprimand. The applicant declined to appeal the commander's decision. Subsequently a legal review of the Article 15 determined the action was legally sufficient.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states that although the applicant does not distinguish which Article 15 he is referring to, each nonjudicial punishment was reviewed and found to be legally sufficient. Furthermore, the applicant does not allege error in how the Article 15s were processed. A review of the available documentation for each Article 15 indicates that the applicant's rights were observed through the process of each Article 15. He made personal appearances before his commander on three separate occasions and appealed three of the actions. One of the appeals, relief was granted. The commanders at the time of these nonjudicial punishment actions had the best opportunity to evaluate the evidence in these cases. With that perspective, the commanders exercised the discretion that the applicant granted them when he accepted the Article 15s and found the nonjudicial punishments appropriate in these cases. The legal review processes showed that the commanders did not act arbitrarily or capriciously in making these decisions. The commanders' ultimate decisions on the Article 15 actions are firmly based on the evidence of each case and the punishment decisions were well within the limits of the commanders' authority and discretion.

The complete JAJM evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 1 March 2012 for review and comment within 30 days (Exhibit C). As of this date, this office has received no response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice

of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that 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-2011-05095 in Executive Session on 31 July 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2011-05095:

- Exhibit A. DD Form 149, dated 21 Dec 11, w/atchs.
- Exhibit B. Letter, AFLOA/JAJM, dated 8 Feb 12.
- Exhibit C. Letter, SAF/MRBR, dated 1 Mar 12.

Panel Chair