

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00443

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her bad conduct discharge (BCD) be upgraded.

APPLICANT CONTENDS THAT:

Her misconduct was a one-time mistake. She has matured since the incident and is productive. She served her country honorably.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

On 28 Apr 80, the applicant contracted her initial enlistment in the Regular Air Force.

On 9 Aug 89, the applicant was tried and convicted by a special court-martial for one specification of the wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). The applicant was found guilty and sentenced to a BCD, confinement for four months, and a reduction to airman basic (AB). The applicant's bad conduct discharge was ordered to be executed on 22 May 90.

On 13 Mar 97, the AFDRB considered and denied the applicant's request for an upgrade of her BCD to honorable.

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

On 18 Jul 12, a copy of the FBI Investigative Report and a request for post-service information was forwarded to the applicant for review and comment within 30 days (Exhibit F). As of this date no response has been received by this office.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial, indicating there is no evidence of an error or injustice. The applicant offers no allegation of injustice; she simply requests an upgrade to her BCD because misconduct was a one-time mistake. She alleges no error in the processing of the court-martial conviction against her. She pled guilty at trial to the charge and its specification. Prior to accepting the applicant's guilty plea, the judge ensured she understood the meaning and effect of her plea and the maximum punishment that could be imposed if her plea was accepted by the court.

While clemency may be granted under 10 U.S.C § 1552(f)(2), clemency is not warranted in this case. The applicant's sentence to a BCD, reduction in rank, and confinement for four months was well within the legal limits and was an appropriate punishment for the offense committed. Congress' intent in setting up the Veteran's Benefits Program was to express thanks for veterans' personal sacrifices, separations from family, facing hostile enemy actions, and suffering financial hardship. All rights of a veteran under the laws administered by the Secretary of the Veterans Affairs are barred where the veteran was discharged or dismissed by reason of the sentence of a general court-martial. The applicant's service time was punctuated by cocaine use, which should not be rewarded by the granting of veteran's benefits. Upgrading the applicant's BCD is not appropriate.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 24 May 12, for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

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 her 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. However, in the absence of any evidence related to the applicant's post-service activities, we are not inclined to upgrade the applicant's discharge on that basis. Therefore, in view of the above, 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-2012-00443 in Executive Session on 6 Sep 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 2 Feb 12.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. FBI Investigative Report.
- Exhibit D. Letter, AFLOA/JAJM, dated 21 May 12.
- Exhibit E. Letter, SAF/MRBR, dated 24 May 12.
- Exhibit F. Letter, AFBCMR, dated 18 Jul 12, w/atch.

Panel Chair