

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00597  
COUNSEL: NONE  
HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His rank of sergeant be reinstated.

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APPLICANT CONTENDS THAT:

He was suffering from a medical condition that caused him to fall asleep at his post. He is currently receiving treatment for his sleep disorder and believes he should not have been punished because of his medical condition.

In support of his request, the applicant provides excerpt of his personnel and medical records.

His complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The applicant was notified by his commander that he was recommending him for discharge from the Air Force under the provisions of paragraph 135, Manual for Courts-Martial 1969 and AFR 111-9, paragraph 4(c) and paragraph 8. The specific reasons for this action were: 1) failure to repair and 2) sleeping on post. He received two Article 15s. In a letter from his commander, dated 24 Dec 72, paragraph 1m. states, "Medical or other data meriting consideration: Individual has problems over sleeping which stems from neurological problems." In the same letter, paragraph 2 states, "Suspension of the reduction is not considered appropriate because the offense was committed while the installation was under threat of attack, during a month and in an area that Hostile Fire Pay was approved."

The applicant received an honorable discharge on 28 Sep 73 after serving 4 years, 3 months, and 2 days on active duty.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are at Exhibit B and C.

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AIR FORCE EVALUATION:

AFPC/DPSOE defers their recommendation by stating the applicant was promoted to sergeant on 1 Jun 71 and received a reduction to airman first class on 31 Dec 71. He was again reduced to the rank of airman basic on 8 Dec 72 for sleeping on post. The punishment was later mitigated to a reduction to airman on 20 Mar 73. Further, the applicant was promoted to the rank of airman first class effective 8 Aug 73, which was just prior to his honorable discharge.

The complete DPSOE evaluation is at Exhibit B.

AFLOA/JAJM recommends denial stating that the applicant's request is untimely. In the alternative, the application should be denied as the applicant has not shown a clear error or injustice. Further, the applicant does not make a compelling argument that the Board should overturn the commander's original non-judicial punishment decision based on an injustice. The applicant's commander made a decision based on the evidence of the case and the punishment decision was well within the limits of the commander's authority and discretion.

The complete JAJM evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 22 Aug 12 for review and comment within 30 days. As of this date, this office has received no response.

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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 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 Associate Chief of the Military Justice Division and adopt his 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.

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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.

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The following members of the Board considered AFBCMR Docket Number BC-2012-00597 in Executive Session on 16 Oct 12, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 9 Feb 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSOE, dated 13 Jul 12.
- Exhibit C. Letter, AFLOA/JAJM, dated 14 Jun 12.
- Exhibit D. Letter, SAF/MRBR, dated 22 Aug 12.

Panel Chair