

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00732
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

The reduction in rank to sergeant (Sgt, E-4) that he received pursuant to a nonjudicial punishment action be set aside and his rank be restored to staff sergeant (SSgt, E-5).

APPLICANT CONTENDS THAT:

His record had been outstanding for seven years.

The punishment was overly severe and harsh. At the time of the Article 15, the Numbered Air Force determined that the punishment was overly severe and therefore returned the Article 15 for corrections. However, all of their records on the matter have been destroyed. Even with the amount of time that has passed the injustice of his reduction in rank needs to be corrected.

In support of his request, the applicant provides a personal statement, copies of his DD Form 214, *Report of Transfer or Discharge*; AF Forms 1098, *Personnel Action Request*, and his Airman Performance Reports.

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

STATEMENT OF FACTS:

On 5 Jun 1964, the applicant entered the Regular Air Force and was progressively promoted to the rank of SSgt with a date of rank of 1 Aug 1967.

On 5 Dec 1967, his commander changed his status from present for duty to absent without leave (AWOL).

The applicant remained on AWOL status until 8 Dec 1967 when he voluntarily returned to duty.

On 13 Dec 1967, he was reduced in rank from SSgt to Sgt as a result of an Article 15 action.

On 7 Jun 1968, he was honorably discharged at the expiration of his term of service in the rank of Sgt.

The remaining relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force at Exhibit D.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends the Board deny the applicant's request as untimely or on the merits. JAJM states he does not assert that his Article 15 was unjust or inappropriate, but instead merely advocates that his rank should be restored because the punishment was overly harsh and severe. He also claims that the Numbered Air Force returned the Article 15 action because of the punishment's severity. Despite his assertions, there is nothing in his case file to suggest that the Article 15 was found legally insufficient because the Numbered Air Force determined it was overly severe. Instead, his records indicate that he was reduced in rank because of an Article 15. If the Article 15 was declared legally insufficient, then this reduction in rank would not be reflected in his records. The commander at the time of this nonjudicial punishment action had the best opportunity to evaluate the evidence in this case. With that perspective, the commander exercised the discretion that the applicant granted him when the applicant accepted the Article 15 and found the nonjudicial punishment appropriate in this case.

The applicant does not make a compelling argument that the Board should overturn the commander's original, nonjudicial punishment decision on the basis of injustice. The commander's punishment decision was well within the limits of the commander's authority and discretion.

The complete JAJM evaluation is at Exhibit C.

AFPC/DPSOE defers to JAJM's recommendation of denial. DPSOE states the application has not been filed within the three-year time limitation imposed by AFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. In addition to being untimely under the statute of limitations, the applicant's request may also be dismissed under the equitable doctrine of laches, which denies relief to one who has unreasonably and inexcusably delayed asserting a claim. Laches consists of two elements: Inexcusable delay and prejudice to the Air Force resulting there from. In the applicant's case, he waited over 44 years after discharge before he petitioned the AFBCMR.

The complete DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 6 Nov 2012, copies of the Air Force evaluations were forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

FINDINGS AND CONCLUSIONS OF THE BOARD:

After careful consideration of the evidence of record, we find the application untimely. The applicant did not file 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 sufficient reason for the delay in filing on a matter now dating back almost 45 years. We are also not persuaded the record raises issues of error or injustice which require resolution on the merits. Despite his assertions, there is nothing in his case file to suggest that the Article 15 was found legally insufficient because the Numbered Air Force determined it was overly severe. Instead, his records indicate that he was reduced in rank because of an Article 15. Therefore, in view of the above, we cannot conclude it would be in the interest of justice to excuse the applicant's failure to file in a timely manner.

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.

The following members of the Board considered this application in Executive Session on 11 Dec 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered in AFBCMR BC-2012-00732:

- Exhibit A. DD Forms 149, dated 22 Feb 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 11 Oct 2012.
- Exhibit D. Letter, AFPC/DPSOE, dated 17 Oct 2012.
- Exhibit E. Letter, SAF/MRBR, dated 6 Nov 2012.

Panel Chair