

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00735

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His bad conduct characterization of service be upgraded to accurately reflect his 18 years of service.

APPLICANT CONTENDS THAT:

As a result of his general court martial he was given a bad conduct discharge. He believes this to be in error because it does not accurately reflect his service to the US Air Force. He was by all reports; a credit to the Air Force for 18 years. In all those years he never received as much as a complaint on any of his reviews. In fact, not only were there no complaints in his evaluations but his superiors raved about his performance.

There is no counting the number of drug tests he passed during the time he was a member of the Air Force. He made one mistake after 18 years of excellent service. If you look at the reviews from his supervisors, the numerous merit awards won, and take into account this was a one-time mistake, the general court martial and bad conduct discharge does not accurately reflect his service. The discharge has detrimentally affected his life in a way that is inequitable considering his Air Force service.

In support of his request, the applicant provides a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty*, and copies of his enlisted performance reports, as well as documents pertaining to federal awards, medals and recognition.

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

STATEMENT OF FACTS:

According to documents extracted from his military personnel records, the applicant is a former member of the Regular Air Force who entered active duty on 10 May 1985. He served as a Turboprop Propulsion Mechanic and was progressively promoted to the grade of Technical Sergeant, E-6.

On 24 October 2004, the applicant was tried by a general court-martial for one specification of wrongful use of cocaine and one specification of wrongful use of marijuana. He pled not guilty to both specifications, but was found guilty of both specifications in violation of Article 112a, Uniform Code of Military Justice (UCMJ), *Wrongful Use, Possession, etc., of Controlled Substances*. His sentence was a bad conduct discharge, confinement for 60 days, and reduction to the grade of airman basic.

The sentence was approved as adjudged on 2 March 2005, by the convening authority. On 7 April 2006, the US Air Force Court of Military Appeals affirmed the court-martial conviction. The applicant's petition for a grant of review through the US Court of Appeals was denied and his sentence became final on 20 March 2007.

The applicant was released from active duty on 3 July 2007, with a bad conduct characterization of service and was credited with 22 years and 9 days of active duty service. His grade at the time of release was Airman Basic, E-1, with an effective date of pay grade of 12 November 2004.

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

A copy of the FBI Investigative Report was forwarded to the applicant on 22 August 2012, along with a request for post-service documentation for review and comment within 30 days (Exhibit F). To date, this office has not received a response.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states the applicant offers no allegation of injustice. He simply requests his bad conduct discharge be upgraded to more accurately reflect the true nature of his 18 years of service. He alleges no error in the processing of the court-martial conviction against him. At the trial the applicant pled not guilty; nevertheless, the court adjudged guilt beyond a reasonable doubt based on the evidence presented by the prosecution. The applicant was convicted by a general court-martial, consisting of a panel of officer members. The panel took all factors into consideration when imposing the applicant's sentence. Both the adjudged and the approved sentences were below the maximum possible sentence of a dishonorable discharge, confinement for five years, total forfeitures of all pay and allowances and reduction to the grade of airman basic.

Rules for Courts-Martial 1003(b), (8), (C), state that a bad conduct discharge "is designed as punishment for bad conduct." It also indicates that a bad conduct discharge is more than merely a service characterization; it is a punishment for the crimes the applicant committed while a member of the armed forces. The applicant's sentence to a bad conduct discharge, confinement for 60 days, and a reduction to the grade of airman basic, were well within the legal limits and was an appropriate punishment for the offense committed. A bad conduct discharge was and continues to be part of a proper sentence and properly characterizes his service.

Additionally, clemency in this case would be unfair to those individuals who honorably served their country while in uniform. Congress' intent in setting up the Veterans' Benefits Program was to express thanks for veterans' personal sacrifices, separations from family, facing hostile enemy action, and suffering financial hardships. All rights of a veteran under the laws administered by the Secretary of Veterans' Affairs are barred where the veteran was discharged or dismissed by reason of the sentence of a general court-martial. See 38 U.S.C. 5303(a). This makes sense if the benefit program is to have any real value. It would be offensive to all those who served honorably to extend the same benefits to someone who committed crimes such as the applicant's while on active duty.

The complete 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 by way of counsel on 12 March 2012, for review and comment within 30 days (Exhibit E). To date, this office has not received a response.

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 Military Justice Division and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. The applicant's discharge was

based on his trial and conviction by a general court-martial. Evidence has not been provided to show that the applicant's discharge was erroneous or unjust. While we are precluded by law from reversing a court-martial conviction, we are authorized to correct the records to reflect actions taken by reviewing officials and to take action on the sentence of a military court based on clemency. Notwithstanding his otherwise good service record, in view of the seriousness of the misconduct he committed (i.e., the use of illegal substances), there is nothing in the available record which would cause us to disturb the actions of the reviewing officials in this case. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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 this application BC-2012-00735 in Executive Session on 2 October 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 February 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records
- Exhibit C. FBI Report.
- Exhibit D. Letter, AFLOA/JAJM, dated 2 April 2012.
- Exhibit E. Letter, SAF/MRBR, dated 12 May 2012.
- Exhibit F. Letter, AFBCMR, dated 22 August 2012.

Panel Chair