

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00736

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His bad conduct discharge (BCD) be upgraded to honorable.

APPLICANT CONTENDS THAT:

1. The characterization of service he received does not reflect the type of service he performed prior to being discharged. His one-time offense does not describe the individual he is and that he is sorry for the actions that led to his discharge.

2. At the time of his offense, he was going through a very nasty divorce and began spending time with the wrong people. He admits he engaged in a sexual relationship with an underage female, and that she misled him as to her age.

3. Since his discharge, he has spent his life educating and helping others from going down the same path of destruction.

In support of his request, the applicant provides a personal statement.

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

STATEMENT OF FACTS:

On 23 Jan 87, the applicant entered the Regular Air Force.

On 22 Dec 88, the applicant was tried and convicted by a general court-martial for one specification of carnal knowledge, in violation of Article 120, Uniform Code of Military Justice (UCMJ) and one specification of adultery, in violation of Article 134, UCMJ. He was sentenced by a military judge to a BCD, confinement for one year, reduction in grade to airman basic, and forfeiture of all pay and allowances. On 24 Feb 89, the convening authority approved the sentence as adjudged. On 5 May 89, the United States Air Force Court of Criminal Appeals affirmed the applicant's court-martial conviction and sentence.

The applicant declined to appeal the Air Force Court of Military Review's decision to the United States Court of Appeals for the Armed Forces, making the findings and sentence in his case final and conclusive under the UCMJ. On 4 Oct 89, the applicant's BCD was ordered to be executed.

Pursuant to the Board's request, the Federal Bureau of Investigations (FBI) Clarksburg, WV, states they were unable to identify an arrest record on the basis of the information furnished (Exhibit C).

On 27 Aug 12, the AFBCMR staff offered the applicant an opportunity to provide information pertaining to his activities since leaving the service (Exhibit F). As of this date, no response has been received by this office.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial based on the application being untimely and also on its merits.

JAJM states they are unable to review the applicant's Record of Trial, the applicant alleges no error in the processing of the general court-martial conviction against him. He pled guilty at trial to the charges and their specifications. Prior to accepting his guilty plea, as evidenced by the Staff Judge Advocate's (Review of Trial by Court-Martial, the military judge ensured the applicant understood the meaning and effect of his plea and the maximum punishment that could be imposed if his guilty pleas were accepted by the court. The military judge explained the elements and definitions of the offenses to which the applicant pled guilty. During the court-martial, the applicant admitted to knowingly engaging in sexual intercourse with a woman he knew was under the age of 16, while he was still married to his wife. On the court's acceptance of the applicant's guilty plea, it received evidence in aggravation, as well as in extenuation and mitigation, prior to crafting an appropriate sentence for the crimes committed.

The applicant's sentence to a BCD, confinement for one year, total forfeiture of all pay and allowances, and a reduction to the grade airman basic was well within the legal limits and was appropriate punishment for the offense committed. A BCD was and continues to be part of a proper sentence and properly characterizes his service.

Granting clemency in this case, in the form of upgrading his discharge characterization, 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. 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 a crime, such as the applicant while on active duty.

The complete 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 28 Jun 12 for review and comment within 30 days (Exhibit E). As of this 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 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 his conviction by general court-martial 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 general court-martial conviction which precipitated the discharge, and the seriousness of the offense to which convicted. However, we found no error or injustice with regard to the actions taken against the applicant and find no basis exists to grant favorable action on his request. In addition, based on the evidence of record, we are not persuaded the

characterization of the applicant's discharge warrants an upgrade to general on the basis of clemency.

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 Docket Number BC-2012-00736 in Executive Session on 4 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 7 Aug 11, w/atch.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Negative FBI Response, dated 28 Aug 12
- Exhibit D. Letter, AFLOA/JAJM, dated 13 Jun 12
- Exhibit E. Letter, SAF/MRBR, dated 28 Jun 12.
- Exhibit F. Letter, SAF/MRBC, dated 27 Aug 12.

Panel Chair