

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00741

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His under other than honorable conditions (UOTHC) characterization of discharge be upgraded to honorable.

APPLICANT CONTENDS THAT:

1. He meritoriously served his country for one full tour and was given an honorable discharge but his second discharge was under other than honorable conditions because he was unjustifiably charged with possession of drugs. He was offered an under other than honorable discharge and, unknowingly, accepted the offer thinking he would be given a general (under honorable conditions) discharge because of his good record. He was told his discharge would be changed to honorable in so many years.

2. After his discharge from the Air Force he worked for a bank then a pigment plant in East St. Louis until he was gunned down and paralyzed. He has several military related, service connected problems from the time he was in the military but has been denied veterans benefits because of the characterization of his discharge. He is confined to a wheelchair, his father has passed away, and his mother is ill.

The applicant did not submit any documents in support of his request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant initially enlisted in the Regular Air Force on 1 September 1972 and was progressively promoted to the grade of Sergeant (Sgt), E-4, with a date of rank of 01 November 1974. He was released from active duty with an honorable characterization of service and credited with completing 3 Years, 3 months and 18 days of active duty service. He reentered the Regular Air Force for his second tour of active duty on 18 December 1975.

On 2 March 1978, the applicant sold 60.43 grams of marijuana for \$120.00 to a special agent and an unnamed source. The sale took place in the applicant's on-base quarters. In the course of the investigation into the marijuana sale, sometime in July 1978, the applicant threatened the life of a witness, telling him if he were to testify against the applicant he would be killed.

On 17 August 1978, the applicant, after consultation with legal counsel, submitted a letter of request for a general discharge under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, September 1, 1966, section F., in lieu of further processing by court-martial. In the letter, the applicant pointed out that the marijuana sale was an isolated incident; he had no previous nonjudicial or judicial punishments in almost six years of service; and his conduct was good ever since March 1978, the time of the offense. He asserted that if he were convicted by court-martial, he would be required to cross-train into a new career field and that outcome would not be in his or the Air Force's best interest.

On 6 September 1978, the applicant's commander recommended the request for discharge be approved based on the seriousness of the applicant's recent misconduct and the apparent failure of continued rehabilitation efforts and his seriously questionable future potential. The commander stated the applicant's continued presence in the organization was not conducive to good order and discipline and recommended the applicant be given a discharge with an under other than honorable conditions characterization of service.

Subsequent to the file being found legally sufficient, the discharge authority approved the request for discharge and directed the applicant be discharged with an under other than honorable conditions characterization of service. The applicant was released from active duty on 7 November 1978, and credited with 2 years, 10 months and 20 days of active duty service.

On 6 April 1979, the applicant submitted an appeal for upgrade of his discharge to the Air Force Discharge Review Board (DRB). The applicant was offered and declined a personal appearance before the DRB, with counsel. The board found no evidence to substantiate the applicant's contention that his discharge was too harsh. His prior service was considered as being very favorable, however, the Board was not persuaded that it overshadowed his misconduct, including the transfer of marijuana (although the applicant claimed special consideration be given that this was an isolated instance) and communicating a threat to kill. On 13 August 1979, the DRB concluded that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was

provided full administrative due process. In view of the forgoing findings the Board further concluded there was no legal or equitable basis for upgrade of discharge, thus, the applicant's discharge should not be changed. The applicant did not establish the existence of factors rendering his discharge improper or inequitable and no such factors were discovered by the Board.

On 30 August 1979 the applicant was advised that since his case was denied by the AFDRB he had the right to appeal to the Air Force Board for Correction of Military Records (AFBCMR). The applicant submitted a request for correction of his records to the AFBCMR. His request was considered and denied by the Board, on 19 February 1981. For an accounting of the facts and circumstances surrounding the application, and the rationale of the decision by the previous Board, see the Record of Proceedings at Exhibit B.

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 10 July 2012, a copy of the FBI Investigative report was forwarded to the applicant along with a request for post service documentation for review and comment within 30 days (Exhibit D). 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 find no evidence of an error or injustice that occurred during the discharge process. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority. The applicant has provided no evidence, which would lead us to believe the characterization of the service was contrary to the provisions of the governing regulation, or unduly harsh. In the interest of justice, we considered upgrading the discharge based on clemency; however, there was no evidence submitted to compel us to recommend granting the relief sought on that basis. Therefore, in the absence of evidence to the contrary, we find no basis upon which to recommend granting the relief sought.

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-2012-00741 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 20 February 2012.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. FBI Report

Panel Chair