

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00829

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His general (under honorable conditions) discharge be upgraded to honorable and his reentry (RE) code of 2B (Approved involuntary separation with less than honorable discharge) be changed.

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APPLICANT CONTENDS THAT:

He feels his discharge and RE code are unjust on the grounds of double jeopardy. His commander chose to court-martial him rather than follow the standard non-judicial punishment route for petty larceny of an item with no value. The incident was not a crime under the Uniform Code of Military Justice under Article 112(a) since it was an unactivated gift card. After the court-martial, he was punished again with a discharge, which was not a possible punishment of the court-martial. His defense attorney told him his discharge would be waiverable by other branches should he wish to reenlist.

The applicant submits no supporting documentation.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 18 July 2006. On 29 October 2008, the applicant was notified of his commander's intent to discharge him from the Air Force for Misconduct, a pattern of misconduct, conduct prejudicial to good order and discipline. Specifically, the applicant received a Letter of Reprimand for wrongfully appropriating a Playstation; he received a Letter of Counseling for failing to keep his room in a neat and orderly fashion; and he was convicted by Summary Court-Martial for stealing an XBOX 360 Live Points Card.

The applicant acknowledged his commander's intent to discharge him, and his rights to counsel and to submit statements on his

behalf. He consulted counsel; however, he declined to submit matters.

On 10 November 2008, the staff judge advocate found the discharge legally sufficient. On 18 November 2008, the commander approved the applicant's discharge. He was separated on 20 November 2008 with a general (under honorable conditions) discharge. His narrative reason for separation was listed as misconduct and his RE code was listed as 2B. He was credited with 2 years, 4 months and 3 days of active duty service.

On 5 April 2011, the Air Force Discharge Review Board denied the applicant's request to upgrade his discharge.

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AIR FORCE EVALUATION:

AFPC/DPSOS recommends denial. AFI 36-3208 states that airmen are subject to separation for misconduct that disrupts order, discipline or morale within the military community. As reflected in the applicant's discharge package, the applicant showed disregard for military standards and good order and discipline. Despite the unit's best efforts, the applicant did not respond to the counseling he received. Accordingly, a basis existed to support the applicant's separation.

The discharge was consistent with procedural and substantive requirements of the discharge instruction and within the discretion of the discharge authority. There is no evidence of an error or injustice in the applicants discharge.

The complete DPSOS evaluation is at Exhibit C.

AFPC/DPSOA recommends denial. The applicant's RE code, 2B, is required per AFI 36-2606, Reenlistments in the USAF, based on his involuntary discharge with general (under honorable conditions) character of service. The applicant provides no proof of an error or injustice regarding his RE code.

The complete DPSOA evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 30 May 2012, for review and comment within 30 days (Exhibit E). 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 timely filed.
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. Additionally, we found no error or injustice with regard to the applicant's RE code. 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 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-2012-00829 in Executive Session on 31 July 2012, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to BCMR Docket Number BC-2012-00829 was considered:

- Exhibit A. DD Form 149, dated 31 Aug 11.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOS, dated 23 Apr 12.
- Exhibit D. Letter, AFPC/DPSOA, dated 17 May 12.
- Exhibit E. Letter, SAF/MRBR, dated 30 May 12.