

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00868

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

The AF Form 2098, *Duty Status Change*, dated 24 Jul 90, be declared void and removed from his records.

APPLICANT CONTENDS THAT:

The AF Form 2098 in question has incorrect information. He never possessed, was charged with, or was convicted of possessing the illegal drugs that he was initially arrested for. The illegal drugs belonged to an American living in another apartment who was an "illegal citizen" in Japan. The Judge Advocate General (JAG) noted in his report on this case that the "illegal citizen" testified in open court that the illegal drugs were his alone, and the applicant had no involvement with them whatsoever. The applicant paid the price for this injustice by the Japanese authorities.

In support of his appeal, the applicant provides copies of his DD Forms 214, *Certificate of Release or Discharge from Active Duty*, and two AF Form 2098s.

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

STATEMENT OF FACTS:

The applicant initially entered the Air Force on 23 Nov 79.

On 15 Jun 89, while stationed in Japan, the applicant was unable to report for duty because he was in civil confinement in a Japanese jail awaiting trial, having been arrested for illegal drug use.

On 26 Feb 90, the applicant was sentenced to six years of hard labor by a Japanese civilian court.

On 25 Feb 96, the applicant was furnished a general (under honorable conditions) discharge for misconduct in accordance with AFI 36-3208, *Administrative Separation of Airman*, and credited with ten years, three months, and two days of total active service, six years of which was lost time.

Pursuant to the Board's request, the Federal Bureau of Investigation (FBI) provided a copy of an Investigative Report indicating they were unable to locate an arrest record on the basis of the information provided.

On 24 Aug 12, a request for post-service information was forwarded to the applicant for review and comment within 30 days. In response, the applicant submitted an expanded statement, two letters of recommendation, and his DD Form 214. (Exhibit D).

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 do not find the applicant's arguments or the documentation presented sufficient to conclude that he has been the victim of an error or injustice. While the applicant contends that his AF Form 2098 should be removed from his records because he was never charged with possession of illegal drugs, he has presented no evidence whatsoever which would lead us to believe that his records are somehow erroneous, he was deprived of rights to which he was entitled, or that there was an abuse of discretionary authority. Notwithstanding the above, even though the applicant did not initially request an upgrade to his discharge, he was offered the opportunity to submit information pertaining to his post-service activities for the purpose of the Board considering a discharge upgrade based on clemency. Therefore, in the interest of justice, we considered upgrading his discharge on the basis of clemency: however, we do not find the evidence presented is sufficient for us to recommend granting an upgrade to the applicants' discharge on the basis of clemency at this time. In view of the foregoing, and in the absence of evidence to the contrary, we conclude that no basis exists 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 issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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 AFBCMR Docket Number BC-2012-00868 in Executive Session on 28 Sep 12, under the provisions of AFI 36-2603:

Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 4 Mar 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, SAF/MRBR, dated 24 Aug 12.
- Exhibit D. Letter, Applicant, dated 5 Sep 12, w/atchs.

Panel Chair