

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01156

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His bad conduct discharge be upgraded to general (under honorable conditions).

APPLICANT CONTENDS THAT:

He requests his discharge be upgraded for good behavior. He has not been arrested or charged with any drug offenses since his discharge. He is truly sorry for his conduct while in the Air Force and wishes he had not done the things that brought on the bad conduct discharge.

In support of his request the applicant provides Standard Form 180, *Request Pertaining to Military Records*.

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

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 22 February 1982. On 4 October 1983, the applicant was convicted by general court-martial for seven specifications for wrongful use, possession, distribution and introduction of marijuana to a military installation, in violation of 134, Uniform Code of Military Justice (UCMJ); and one specification for conspiracy to introduce and distribute marijuana, LSD and cocaine to a military installation, in violation of Article 81, UCMJ. He was sentenced to a bad conduct discharge, confinement at hard labor for 13 months and reduction to airman basic. The applicant was discharged effective 14 August 1984 with a bad conduct discharge.

Pursuant to the Board's request for information, the FBI indicated that, on the basis of the evidence provided, they were unable to locate an arrest record pertaining to the applicant.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. The applicant offers no allegations of error or injustice with regard to the findings or the sentence of the court-martial. He also offers no new information regarding the offense. He pled not guilty at the trial, yet, was found guilty based on the evidence presented. The court received evidence in aggravation, extenuation and mitigation and took all those things into consideration when imposing the sentence.

Under Title 10 United States Code 1552(f), which amended the basic correction board legislation, the Board's ability to correct records relating to courts-martial is limited. Specifically, section 1552(f)(1) permits the correction of records relating to action on the sentence of courts-martial for the purpose of clemency. The Rules for Courts-Martial 1003(b)(8)(C) states a bad conduct discharge is designed as punishment for bad conduct. It is more than just a service characterization; it is a punishment for crimes committed while a member of the Armed Forces.

The applicant's sentence was well within the legal limits and was an appropriate punishment for the crime committed. A bad conduct discharge was and continues to be a proper sentence and properly characterizes his service.

The complete JAJM evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states that he truly loved his Air Force career. He began a downward spiral after learning his best friend was killed in a car accident. He began to drink heavily and eventually moved into an apartment with his dorm roommate. He and his roommate would make runs to pick up drugs from Norwich. The requests for drugs went from hash, to LSD and cocaine. He wanted to get out; however, it was too late. He takes full responsibility for his actions. He paid the cost with his freedom and his Air Force career.

Although this has hung over his head for 28 years, he has owned his own business for the past 25 years. He treats his customers with respect and honesty and strives to do a quality job for them. He has been married for 23 years and has 4 children and a granddaughter. He also received his license to preach in 1999. He regrets the choices he made that ended his career and for those, he apologizes.

The applicant's complete response, with attachments, is at Exhibit E.

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. After careful consideration of the applicant's request and the available evidence of record, we find no evidence which indicates that 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 court-martial conviction which precipitated the discharge, and the seriousness of the offense to which convicted. We considered whether it would be in the interest of justice to upgrade the applicant's discharge on the basis of clemency, but given the gravity of the offenses of which he was convicted, we find the evidence provided regarding his post service adjustment insufficient to grant relief on that basis. Therefore we find no basis to recommend granting the relief sought in this application.

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 AFBCMR Docket Number BC-2012-01156 in Executive Session on 2 October 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01156 was considered:

- Exhibit A. DD Form 149, dated 17 Mar 12, w/atch.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, 23 May 12.
- Exhibit D. Letter, SAF/MRBR, dated 29 May 12.
- Exhibit E. Applicant's Response, date 4 Sep 12, w/atchs.

Panel Chair