

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01251  
COUNSEL: NONE  
HEARING DESIRED: NOT INDICATED

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APPLICANT REQUESTS THAT:

The reduction in rank to technical sergeant (TSgt, E-6) that he received pursuant to a nonjudicial punishment action on 8 Dec 1977 be set aside and his rank be restored to master sergeant (MSgt, E-7).

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APPLICANT CONTENDS THAT:

While he was in technical school for eight weeks his unit was under investigation. When he returned to his unit he was told he would be offered an Article 15. His supervisor, a second lieutenant (2Lt), told him not to say anything as the commander was already upset. He received the charges one day prior to his Article 15 hearing. He respectfully declined the commander's offer when asked if he had anything to say. He was subsequently reduced for "dereliction of duty."

He was railroaded by a 2Lt who was afraid of the commander. He loved being in the Air Force, had an outstanding work ethic, as reflected in his military service record, and always strove to do the right thing.

The applicant provides no submission in support of his request.

His complete submission is at Exhibit A.

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STATEMENT OF FACTS:

The applicant entered the Regular Air Force on 13 Sep 1960 and was progressively promoted to the grade of MSgt with a date of rank of 1 Sep 2005.

In 1977, while the applicant supervised the Noncommissioned Officer's Club, an investigation into the Club's finances revealed he allowed friends who worked at the Club to be overpaid by one hour per day; allowed guests, employees, and himself to eat for free; removed two cases of liquor from the Club; removed one bottle of liquor from the Club; and often distributed free pitchers of beer, without accounting for them.

On 5 Dec 1977, he was offered nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ). He was charged with five specifications of dereliction of duty, in violation of Article 92, UCMJ.

On 29 Dec 1977, the commander decided that the applicant had committed the charged offenses and imposed punishment consisting of a reduction to the rank of TSgt and a forfeiture of \$418 pay per month for two months.

On 9 Jan 1978, the applicant appealed only the punishment portion of the Article 15, claiming that the punishment was unduly severe based on the nature of his offenses. His commander granted the applicant's appeal in part and imposed punishment consisting solely of a reduction to the rank of TSgt. The Article 15 action was reviewed and determined to be legally sufficient.

On 1 Oct 1980, he was honorably retired from active duty in the grade of TSgt.

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AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states the applicant had the choice to turn down the Article 15 and demand trial by court-martial, where he would have been able to defend himself against the allegations in a court-martial forum; however, he declined to do so and accepted the Article 15. Furthermore, he made an oral presentation to his commander before the commander found that he committed the offenses and imposed punishment accordingly. The applicant appealed the punishment portion of the Article 15 and his commander granted relief by decreasing the punishment to a reduction in rank to TSgt.

The evidence underscores that the commander at the time of the Article 15 had the best opportunity to evaluate the evidence in the case. With that perspective, the commander exercised the discretion that the applicant granted him when the applicant accepted the Article 15 and found nonjudicial punishment appropriate in his case. The legal review process showed that the commander did not act arbitrarily or capriciously in making his decision. The applicant does not allege error in how the Article 15 was processed. A review of the AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates that the applicant's rights were observed throughout the process of the Article 15. He does not make a compelling argument that the Board should overturn the commander's original, nonjudicial punishment decision on the basis of injustice. The commander's ultimate decision on the Article 15 action is firmly based on the evidence of the case and the punishment decision was well within the limits of the commander's authority and discretion.

The complete JAJM evaluation is at Exhibit C.

AFPC/DPSOE defers to JAJM's recommendation of denial. DPSOE states JAJM has reviewed the applicant's case and found no error or injustice.

The complete DPSOE evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 8 Aug 2012, copies of the Air Force evaluations were forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

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FINDINGS AND CONCLUSIONS OF THE BOARD:

After careful consideration of the evidence of record, we find the application untimely. The applicant did not file within three years after the alleged error or injustice was discovered as required by Title 10, United States Code, Section 1552 and Air Force Instruction 36-2603. The applicant has not shown a sufficient reason for the delay in filing on a matter now dating back almost 35 years, which has greatly complicated the ability to determine the merits of his position. He has not provided evidence that supports he is the victim of error or injustice. We are also not persuaded the record raises issues of error or injustice which require resolution on the merits. Therefore, in view of the above, we cannot conclude it would be in the interest of justice to excuse the applicant's failure to file in a timely manner.

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DECISION OF THE BOARD:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

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The following members of the Board considered this application in Executive Session on 7 Nov 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered in AFBCMR BC-2012-01251:

- Exhibit A. DD Forms 149, dated 19 Jan 2012.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 13 Jun 2012.
- Exhibit D. Letter, AFPC/DPSOE, dated 9 Jul 2012.
- Exhibit E. Letter, SAF/MRBR, dated 8 Aug 2012.

Panel Chair