

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01802

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

1. Her deceased son's bad conduct discharge be upgraded to general under honorable conditions.
2. Her deceased son's rank of airman first class be restored.

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APPLICANT CONTENDS THAT:

As a result of an Office of Special Investigations ring, her son was charged with possession of marijuana. Additionally, valium was found in his blood but not in his possession. He confessed to the charges. His commander agreed to impose non-judicial punishment and discharge him. However, before the paper work was completed a volcano erupted.

The emergency evacuation subjected her son to unfair treatment. Other members with the same offense were offered Article 15's and discharged.

Once he arrived at Hurlburt, his new commander did not agree with the former commander's disposition. Her son was tried by court-martial. Additionally, the former's commanders intended disposition was not introduced to the court-martial panel.

In support of the request, the applicant provides a personal statement, the deceased member's DD Form 214, *Certificate of Release or Discharge from Active Duty*, his death certificate, documents from his master personnel record and other supporting documentation.

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

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STATEMENT OF FACTS:

The decedent enlisted in the regular Air Force on 28 July 1988. Pursuant to his pleas, he was convicted of failing to obey a lawful order by possessing drug paraphernalia, in violation of Article 92, Uniform Code of Military Justice (UCMJ); wrongfully possessing and using marijuana; and wrongfully using valium, in violation of Article 112a, UCMJ. He was sentenced to a bad conduct discharge and reduction to the grade of airman basic. The sentence was approved on 22 February 1994. He was discharged 6 July 1994 with a bad conduct discharge.

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AIR FORCE EVALUATION:

AFLOA/JAJM recommends the application be time barred or denied on its merits. Title 10 U.S.C 1552(f) limits the Boards ability to correct court-martial records. Specifically, it permits the correction of a record to reflect actions taken by a reviewing authority and the correction of records related to action on the sentence of courts-martial for the purpose of clemency. Apart from these two limited exceptions, the Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction that occurred after 5 May 1950.

The applicant contends the trial judge erred by not allowing testimony regarding the decedent's former commander's indication that he would receive non-judicial punishment. The military judge ruled that testimony was inadmissible. The applicant contends it should have been introduced. The decedent's appellate defense counsel raised this very issue to the United States Air Force Court of Military Review. The Court determined the ruling was proper and affirmed the conviction and the sentence. The defense counsel raised the same issue to the United States Court of Appeals for the Armed Forces and that court also determined the military judge's ruling was proper. The appellate courts were the best venue to consider the merits of this argument and all determined it was without merit.

Rules for Court-Martial 1003(b)(8)(C) states that a bad conduct discharge is designed as punishment for bad conduct. It also indicates that a bad conduct discharge is more than just a service characterization; it is a punishment for crimes committed while a member of the Armed Forces. Additionally, the discharge was well within the legal limits and an appropriate sentence for the offenses committed.

Clemency in this case, in the form of upgrading the discharge characterization would be unfair to those individuals who honorably served their country while in uniform. Congress' intent in setting up the Veteran's Benefits Program was to express thanks for veterans' personal sacrifices, separations from family, facing hostile enemy action and suffering financial

hardships. All rights of a veteran under the laws are barred when the veteran was discharged or dismissed by reason of the sentence of a general court-martial. Upgrading the decedent's discharge is not appropriate.

The complete JAJM evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant maintains that similar offenses for which her son was convicted were so voluminous that the command changed the punishment from judicial to non-judicial because they were losing an unacceptable amount of valued personnel. During the court-martial, senior noncommissioned officers swore under oath that her son's commander intended to issue an Article 15 for his actions. She states that hundreds of other members with the same offense received Article 15s and went on with their lives. There is nothing that justifies the different degrees of punishment.

Her son's proven value in applying his genius IQ saved the Air Force millions of dollars. As a felon, he was no longer a candidate for government related employment. He was only able to find employment as a computer technician for a used car dealer for which he received minimum wage and no benefits. He remained drug free after his discharge.

This request is minimal compensation for the illegal treatment he received. It is time to correct this injustice.

The applicant's complete response is at Exhibit E.

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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 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 decedent's service characterization, which had its basis in his conviction by special 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 took note of the applicant's contention that others with the same offenses for which her son was convicted

were offered punishment under Article 15; however, the applicant's uncorroborated assertions, in and by themselves are not sufficient to override the rationale provided by the Military Justice Division. As stated by the Military Justice Division, these same issues were reviewed by the United States Court of Military Review and the United States Court of Appeals for the Armed Forces and both courts found the convictions and the sentence were proper. Therefore, we agree with the opinion and recommendation of the Military Justice Division and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. 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.

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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-2012-01802 in Executive Session on 6 December 2012, under the provisions of AFI 36-2603:

, Panel Chair  
, Member  
, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 3 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 10 Oct 12,
- Exhibit D. Letter, SAF/MRBR, dated 16 Oct 12.
- Exhibit E. Letter, Applicant's Response, 21 Oct 12.

Panel Chair