

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01814
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His separation code of "JKM" which denotes "Misconduct - Prejudicial to Good Order and Discipline" be changed.

APPLICANT CONTENDS THAT:

His separation code is affecting his ability to find employment. He was informed that after six months from his discharge his separation code would be automatically upgraded.

In support of his request, the applicant provides a copy of his DD Form 214.

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

STATEMENT OF FACTS:

On 6 Jun 84, the applicant enlisted in the Regular Air Force.

On 1 Apr 88, the applicant was notified of his commander's intent to recommend that he be discharged from the Air Force under the provisions of AFR 39-10, for Misconduct, specifically, Conduct Prejudicial to Good Order and Discipline. The applicant acknowledged receipt of the notification of discharge, consulted with counsel and waived his right to submit a statement on his own behalf. The specific reasons for the proposed action were:

1) He received two Article 15s, Uniform Code of Military Justice; one for unlawfully striking a British civilian in the face and about the body and one for failure to go to his appointed place of duty.

2) He received four letters of reprimand; two for failure to go; one for failure to properly execute his assigned duties, and one for assault.

3) He received three records of counseling; one for failure to maintain his dormitory room in a satisfactory manner and two for failure to go to his appointed place of duty.

On 4 May 98, the Staff Judge Advocate (SJA) reviewed the case and found it legally sufficient to support the discharge and recommended that he receive a general (under honorable conditions) discharge without probation and rehabilitation.

On 9 May 88, the discharge authority approved his discharge. On 16 May 88, the applicant was discharged with service characterized as general (under honorable conditions) in the grade of airman first class. He served 3 years, 11 months and 11 days of total active service.

On 13 Jul 01, the Air Force Discharge Review Board denied the applicant's request for upgrade of his general (under honorable conditions) discharge to honorable.

AIR FORCE EVALUATION:

AFPC/DPSOS recommends denial. DPSOS states there is no automatic upgrade of service characterization due to the passage of time and each request for upgrade is decided by the evidence presented and the individual merits of the case.

DPSOS states that based on documentation on file in the master personnel records, the applicant's discharge to include the service characterization was appropriately administered and within the discretion of the discharge authority.

The complete DPSOS evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states that had he known his records would have been so tarnished, he would not have signed many of the forms that ended up discrediting him. He did not have any problems prior to arriving to RAF Mildenhall and Shaw Air Force Base, South Carolina. His enlisted performance reports were exceptional.

The applicant states that in accordance with *Casey v. U.S. 8 CL. Ct 234* he was denied due process of law.

The applicant's complete response 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 timely 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 agree with the opinion and recommendation of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. While the applicant contends he was denied due process; based on the evidence of record, it appears the applicant's discharge was in compliance with the governing instruction and that he was afforded all due process rights. Therefore, we conclude that the applicant has failed to sustain his burden of proof that he has been the victim of an error or injustice. In the absence of evidence to the contrary, 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-2012-01814 in Executive Session on 20 Dec 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01814 was considered:

- Exhibit A. DD Form 149, dated 4 May 12, w/atch.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOS, dated 7 Jun 12.
- Exhibit D. Letter, SAF/MRBC, dated 28 Jun 12.
- Exhibit E. Letter, Applicant, undated.

Panel Chair