

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01820
COUNSEL:
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His undesirable discharge be upgraded to general (under honorable conditions) or honorable.

APPLICANT CONTENDS THAT:

He was a passenger in a vehicle that had a weapon in it; he had no knowledge of and/or connection to the weapon.

He appeared in court without an attorney, was found guilty and sentenced to 90 days in jail. He was unjustly discharged for being a passenger; he did nothing wrong.

In a letter, dated 17 Oct 12, the applicant states he appeared before a judge in Florida on an unrelated matter and was informed that since his 1959 arrest the Supreme Court ruled in *Gideon v. Wainwright* that defendants have a Constitutional right to legal assistance. The judge went on to say that many cases have been overturned since this ruling and his charge could possibly be removed from his record. The applicant states that his application for correction is based on the belief that legal precedents since his 1959 arrest and discharge should be considered. If he were afforded the opportunity of an attorney, he could have been found not guilty and finished his commitment to the Air Force.

In a letter, dated 20 Oct 12, the applicant states in 1977 he appeared in a Florida court on an unrelated matter without an attorney, just like in 1959.

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

STATEMENT OF FACTS:

On 7 Mar 57, the applicant enlisted in the Regular Air Force.

On 21 Oct 59, his commander notified him that he was recommending his discharge from the Air Force under the provisions of AFR 39-17, *Unfitness*. The specific reasons for

the action was unsatisfactory standards of conduct, attitude and character ratings, both present and past. The applicant acknowledged receipt of the notification of discharge. After consulting with counsel, the applicant waived his right to a hearing before an administrative discharge board and to submit a statement in his own behalf. For a full accounting of the offenses and punishments, please see Exhibit B.

On 18 Nov 59, the 25th Air Division commander reviewed the case and recommended the Western Air Defense Force commander (WADF/CC) approve the applicant's undesirable discharge.

On 4 Dec 59, the WADF/CC directed the applicant be discharged under the provisions of AFR 39-17 and be issued an undesirable discharge.

On 28 Dec 59, the applicant was discharged with service characterized as under other than honorable conditions (UOTHC) in the grade of airman basic and issued a DD Form 258AF, Undesirable Discharge Certificate. He served 2 years, 6 months and 19 days of total active service.

Pursuant to the Board's request, the Federal Bureau of Investigation (FBI) provided a copy of an Investigative Report, which is at Exhibit C.

On 25 Sep 12, a copy of the FBI report was forwarded to the applicant for review and comment within 30 days which is at (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 find no evidence of an error or injustice that occurred in the discharge processing. While the applicant states that he was not afforded legal counsel, based on the available evidence of record, it appears that responsible officials applied appropriate standards in effecting the separation, and we do not find persuasive evidence that pertinent regulations were violated or that the applicant was not afforded all the rights to which entitled at the time of discharge. Moreover, the evidence reveals military counsel was

made available to the applicant and he was notified of his right to employ civilian counsel if so desired. In addition, his case was reviewed by the Staff Judge Advocate and found to be legally sufficient. Therefore, we conclude that the discharge proceedings were proper and characterization of the discharge was appropriate to the existing circumstances. In the interest of justice, we considered upgrading the discharge on the basis of clemency; however, after considering the contents of the applicant's FBI report and his overall quality of service, we are not persuaded the characterization of the applicant's discharge warrants an upgrade to general (under honorable conditions) or to a fully honorable discharge on this basis. In view of the above and in the absence of evidence to the contrary, we find no basis upon which to favorably consider 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-2012-01820 in Executive Session on 14 Feb 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 24 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. FBI Identification Record, dated 13 Jun 12.
- Exhibit D. Letter, SAF/MRBC, dated 25 Sep 12.

Panel Chair