

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01970

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His under other than honorable conditions (UOTHC) discharge be upgraded to general (under honorable conditions).

APPLICANT CONTENDS THAT:

Based on the time served in confinement, the length of time that has elapsed since his discharge, and his clean record, he is deserving of an upgrade of his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force, on 23 Sep 54, for a period of four years. He was promoted to the grade of airman second class (A2C/E-3) with a date of rank of 1 Oct 55.

On 5 Sep 56, the applicant was convicted by a Summary Court-Martial for wrongfully appropriating property of the United States valued at more than \$50.00. For this offense he was sentenced to reduction in grade to airman basic, confinement at hard labor for 30 days, forfeiture of \$50.00.

On 1 Jul 58, the squadron commander notified the applicant of administrative discharge action under the provisions of AFR 39-22, para 5, *Conviction by Civil Court*. The specific reason for the proposed action was based on his conviction by civil court for theft of a motor vehicle on a government reservation. He was sentenced to 2 years in a Federal institution.

On 18 Jul 58, the applicant was discharged under the provisions of AFR 39-22, *Discharge of Airmen Because of Unfitness*, with service characterized as UOTHC. He was credited with three years, eight months and four days of active duty service (including 47 days of lost time due to being AWOL and confinement at hard labor).

The applicant appealed to the Air Force Discharge Review Board (AFDRB) to have his discharge upgraded; however, the AFDRB denied his application. They concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority (see AFDRB Hearing Record at Exhibit B).

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 during the discharge process. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority. The applicant has provided no evidence which would lead us to believe the characterization of the service was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. In the interest of justice we considered the applicant's overall record of service, the seriousness of the offenses which led to his administrative separation and the lack of post-service documentation; however, we are not persuaded that an upgrade of the characterization of his discharge is warranted on the basis of clemency. Should the applicant provide additional information, e.g., post-service documentation to support his claim, we would be willing to reconsider his appeal. Therefore, in the absence of evidence to the contrary, we find no basis upon which to recommend granting the relief sought.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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-2012-01970 in Executive Session on 7 November 2012, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 25 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.

Panel Chair

