# RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-02290

COUNSEL: NONE

HEARING DESIRED: NO

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#### APPLICANT REQUESTS THAT:

His bad conduct discharge (BCD) be upgraded to a general discharge.

#### APPLICANT CONTENDS THAT:

He doesn't believe his record is unjust or erroneous; however, he has been unemployed for the last 18 months with no medical benefits, and has been suffering with medical issues for the past three years. He served his sentence while he was in the Air Force and has been drugfree for the past five and a half years. He has also been a productive member of society. He wishes to have his benefits reinstated.

A copy of the applicant's complete submission is at Exhibit A.

#### STATEMENT OF FACTS:

On 2 August 1989, the applicant, then an airman (E-2), was tried and convicted by general court-martial for one specification of wrongfully violating a lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); and three specifications of the wrongful use of marijuana, methamphetamine, and cocaine each, in violation of Article 112a, UCMJ. At the general court-martial and before a military judge alone, the applicant was found guilty, consistent with his pleas, to both charges and all specifications. He was sentenced to a BCD, 19 months confinement, forfeiture of all pay and allowances, and reduction to the grade of airman basic (E-1). On 10 October 1989, the convening authority approved the sentence as adjudged. On 10 January 1990, the United States Air Force Court of Military Review affirmed the applicant's court-martial conviction. As the applicant failed to submit a timely petition to the United States Court of Military Appeals, the findings and sentence in his case became final and conclusive under the UCMJ. As a result, the applicant's BCD was ordered to be executed on 1 May 1990.

The applicant was discharged effective 24 May 1990 with a BCD and a narrative reason for separation of "Conviction by Court-Martial (Other than Desertion)." He served 3 years, 5 months, and 18 days on active duty with lost time from 2 August 1989 through 24 May 1990.

On 16 January 2013, the applicant was given an opportunity to submit comments about his post service activities (Exhibit E). As of this date, this office has received no response.

#### AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states the applicant offers no allegation of error or injustice. He simply requests his BCD be upgraded so he can obtain veteran's medical benefits. He alleges no error in the processing of the court-martial conviction against him. The applicant pled quilty at trial to the charge and specifications. Prior to accepting his guilty plea, as evidenced by the record of trial, the military judge ensured the applicant understood the meaning and effect of his plea and the maximum punishment that could be imposed if his guilty plea was accepted by the court. military judge explained the elements and definitions of the offenses to which the applicant pled guilty, and the applicant explained in his own words why he believed he was guilty. On the court's acceptance of the applicant's guilty plea, it received evidence in aggravation, as well as in extenuation and mitigation, prior to crafting an appropriate sentence for the crimes committed. military judge took all of these factors into consideration when imposing the applicant's sentence. Both the adjudged and the approved sentences were below the maximum possible sentence of a dishonorable discharge, confinement for twelve years, total forfeiture of all pay and allowances, and reduction to the grade of airman basic.

It is JAJM's opinion that clemency in this case would be unfair to those individuals who honorably served their country while in uniform. It addition, it would be offensive to those who served honorably to extend the same benefits to someone who committed crimes such as the applicant's while on active duty.

The complete JAJM evaluation is at Exhibit C.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 3 August 2012, for review and comment within 30 days (Exhibit E). As of this date, this office has received no response.

### 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 an 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 office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, the applicant's request is not favorably considered.

#### 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-2012-02290 in Executive Session on 5 March 2013, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02290 was considered:

Exhibit A. DD Form 149, dated 21 May 12.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFLOA/JAJM, dated 24 Jul 12.

Exhibit D. Letter, SAF/MRBR, dated 3 Aug 12.

Exhibit E. Letter, AFBCMR, dated 16 Jan 13, w/atch.