

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02331

COUNSEL:

HEARING DESIRED: NO

---

APPLICANT REQUESTS THAT:

His bad conduct characterization of service be upgraded to general.

---

APPLICANT CONTENDS THAT:

There are no errors in his discharge. He served in Operations IRAQI and ENDURING FREEDOM and made mistakes when he got home. He has been diagnosed with post-traumatic stress disorder (PTSD) by four doctors including a military psychiatrist. He has medical problems and is respectfully asking for a general discharge so that he may have some benefits for his service.

The applicant did not submit any documents in support of his request.

The applicant's complete submission is at Exhibit A.

---

STATEMENT OF FACTS:

According to documents extracted from the automated records management system (ARMS), the applicant is a former member of the Regular Air Force who entered active duty on 15 May 2002. He served as an Aerospace Maintenance Apprentice and was progressively promoted to the grade of airman first class, E-3.

On 30 June 2004, the applicant was tried by a general court-martial for:

a. one specification of wrongful use of cocaine, on or about 15 January 2004 and on or about 17 March 2004, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), *Wrongful Use, Possession, etc., of Controlled Substances*.

b. two specifications of absenting himself, from his unit, without authority on 10 March 2004 through 11 March 2004 and from 24 March 2004 through 27 March 2004, in violation of Article 86, UCMJ, *Absence without leave*.

c. one specification of stealing five hundred and fifteen dollars, (\$515.00), between on or about 10 March 2004 and on or about 12 March 2004, in violation of Article 121, UCMJ, *Larceny and Wrongful Appropriation*.

d. one specification of falsely making three checks from the Pentagon Credit Union checking account of another individual, in the combined amount of five hundred and fifteen dollars, (\$515.00), on or about 10 March 2004, in violation of Article 123, UCMJ, *Forgery*.

The applicant pled guilty to all specifications and was found guilty of the charges and specifications. The sentence adjudged by the military court on 30 June 2004, was a bad conduct discharge, confinement for 36 months, reduction to the grade of airman basic, and forfeiture of all pay and allowances for 36 months. The sentence approved on 20 September 2004, was a bad conduct discharge, confinement for 18 months, reduction to the grade of airman basic, and forfeiture of all pay and allowances for 18 months.

The applicant was released from active duty on 16 November 2006, with a bad conduct characterization of service and was credited with 4 years, 3 months and 1 day of active duty service.

---

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states On 26 May 2006, the United States Air Force Court of Criminal Appeals, by written opinion, affirmed the applicant's court-martial conviction. On 27 September 2006, the applicant's petition for a grant of review through the United States Court of Appeals for the Armed Forces was denied, making the findings and sentence in his case final and conclusive under the UCMJ. As a result, the applicant's bad conduct discharge was ordered to be executed on 30 October 2006.

Under Title 10 U.S.C., section 1552(f), which amended the basic corrections board legislation, the Board's ability to correct records related to courts-martial is limited. Specifically, section 1552(f) (1), permits the correction of a record to reflect actions taken by a reviewing authority under the UCMJ. Additionally, section 1552(f) (2), permits 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 effect of section 1552(f) is that the Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction that occurred on or after 5 May 1950, (the effective date of the UCMJ).

The applicant alleges, without substantiation, that four doctors have diagnosed him with PTSD, including a military doctor. He alleges no error in the processing of the court-martial conviction against him. He pled guilty at trial to the charges 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. The 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. The military judge took all of these factors into consideration when imposing the applicant's sentence. Both the adjudged and approved sentences were below the maximum possible sentence of a dishonorable discharge, confinement for 15 years and two months, total forfeitures of all pay and allowances, a fine, and reduction to the grade of E-1.

Rules for Courts-Martial 1003(b), (8), (C), state that a bad conduct discharge "is designed as punishment for bad conduct." It also indicates that a bad conduct discharge is more than merely a service characterization; it is a punishment for the crimes the applicant committed while a member of the armed forces. The applicant's sentence to a bad conduct discharge, confinement for 18 months, and a reduction to the grade of airman basic, were well within the legal limits and was an appropriate punishment for the offense committed. A bad conduct discharge was and continues to be part of a proper sentence and properly characterizes his service.

Additionally, clemency in this case would be unfair to those individuals who honorably served their country while in uniform. Congress' intent in setting up the Veterans' 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 administered by the Secretary of Veterans' Affairs are barred where the veteran was discharged or dismissed by reason of the sentence of a general court-martial. See 38 U.S.C. 5303(a). This makes sense if the benefit program is to have any real value. It would be offensive to all 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 AFLOA/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 17 July 2012, for review and comment within 30 days (Exhibit D). To date, this office has not received a 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 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 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. The applicant's discharge was based on his trial and conviction by a general court-martial. Evidence has not been provided to show that the applicant's discharge was erroneous or unjust. While we are precluded by law from reversing a court-martial conviction, we are authorized to correct the records to reflect actions taken by reviewing officials and to take action on the sentence of a military court based on clemency. In view of the seriousness of the misconduct he committed (i.e., the use of illegal substances, being absent without leave, and committing theft and forgery), there is nothing in the available record which would cause us to disturb the actions of the reviewing officials in this case. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.
4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing 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 this application in Executive Session on 18 December 2012, under the provisions of AFI 36-2603:

, Panel Chair  
, Member  
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02331 was considered:

Exhibit A. DD Form 149, dated 1 June 2012.  
Exhibit B. Applicant's Master Personnel Records  
Exhibit C. Letter, AFLOA/JAJM, dated 28 June 2012.  
Exhibit D. Letter, SAF/MRBR, dated 17 July 2012.

Panel Chair