

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-00586
COUNSEL: DAV
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

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

APPLICANT CONTENDS THAT:

He received an honorable discharge for his first enlistment. He was unfairly passed over for promotion and lost his bearing and received an UOTHC discharge. He completed all training and missions successfully and honorably. He is an elderly veteran who deserves and needs service connected disability.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

On 18 Jun 54, the applicant commenced his initial enlistment in the Regular Air Force.

The applicant was recommended for discharge from the Air Force under the provisions of Air Force Regulation (AFR) 39-22 for a conviction by a civil court. On or about 23 Oct 57 and 13 Dec 57, the applicant obtained 80 bottles of liquor from the Class VI liquor store and sold it to British Nationals. His punishment from the civil court was a fine of \$512.40. The maximum punishment under the Uniform Code of Military Justice (UCMJ) was a dishonorable discharge and confinement at hard labor for two years for each offense.

On 22 Nov 58, the applicant was furnished an under other than honorable conditions discharge. He was credited with four years, five months and five days of total active service.

The applicant appealed to the Air Force Discharge Review Board (AFDRB) to have his UOTHC discharge upgraded to honorable. On 4 Apr 60, the AFDRB considered and denied the applicant's request for an upgrade of his discharge.

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 11 Oct 12, a copy of the FBI Investigative Report was forwarded to the applicant along with a request for post-service documentation for review and comment within 30 days (Exhibit D). In response, the applicant states he was being considered for promotion to Airman First Class only to be passed over by someone who had less time in grade than him. He was angry and developed a bad attitude. He was married with a child and could use the increase in pay for his family. He admits to selling a few bottles of liquor to his civilian friends and that's what got him in trouble along with a bad attitude. While the FBI investigative report lists a drug charge, the drugs were not found on him, but in the truck he was driving. He does not now, nor has he ever done drugs. He does not even drink beer. The applicant's complete response, with attachments, 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 not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of injustice warranting some relief. After thoroughly reviewing the evidence of record and the applicant's complete submission, we are persuaded that it is in the interest of justice to upgrade the applicant's character of service from under other than honorable conditions (UOTHC) to general (under honorable conditions) on the basis of clemency. Although no evidence was provided to show that his discharge was improper or not in compliance with appropriate directives, in view of the passage of time and the applicant's successful post-service transition, we believe it would be an injustice for the applicant to continue to suffer the adverse effects of his UOTHC discharge. While we note the FBI report contained entries relative to an arrest in 1970, it appears as though he has led a stable and productive life in the more than 40 years since then. In this respect, we note the several supporting statements the applicant has provided attesting to his good character and standing in his community. In view of the above, we believe that it would be an injustice for him to continue to suffer the adverse effects of a UOTHC discharge. Therefore we believe an upgrade of his discharge to general (under honorable conditions) is warranted. Accordingly we recommend that his records be corrected as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 22 November 1958, he was discharged with service characterized as general (under honorable conditions).

The following members of the Board considered AFBCMR Docket Number BC-2012-00586 in Executive Session on 12 Mar 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 9 Feb 12.
- Exhibit B. Applicant's Master Military Personnel Records.
- Exhibit C. FBI Investigative Report.
- Exhibit D. Letter, AFBCMR, dated 1 Oct 12, w/atchs.
- Exhibit E. Letter, Applicant, undated, w/atchs

Panel Chair