

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01524
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His bad conduct discharge (BCD) be upgraded to a Under Other Than Honorable Condition (UOTHC) discharge.

APPLICANT CONTENDS THAT:

For the past 28 years since his discharge, he has regretted making the mistakes that led to his discharge. He has led an honorable life since leaving the service.

The applicant does not provide any evidence in support of his appeal.

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

STATEMENT OF FACTS:

On 24 July 1985, the applicant, then an airman first class (E-2), was tried and convicted by special court-martial for three specifications of wrongful distribution of marijuana in violation of Article 112a, Uniform Code of Military Justice (UCMJ). At the special court-martial and before a panel of officer members, consistent with his pleas, the applicant was found guilty of all three specifications. He was sentenced to a BCD, confinement for six months, forfeiture of \$200 pay per month for six months, and reduction to the grade of airman basic (E-1). On 4 September 1985, the convening authority approved the sentence as adjudged. On 17 October 1985, the Air Force Court of Military Review affirmed the applicant's court-martial conviction. The applicant did not submit a timely petition to the United States Court of Military Appeals for a grant of review of the decision of the Court of Military Review making the findings and sentence in his case final and conclusive under the UCMJ.

The applicant was discharged effective 24 December 1985 with a BCD and a narrative reason for separation of "Conviction by Court-Martial (Other than Desertion)." He served 3 years, 2 months, and 15 days on active duty with lost time from 24 July 1985 through 24 December 1985.

On 15 January 2013, the applicant was given an opportunity to submit comments about his post service activities (Exhibit E). In response, the applicant provided three unsigned character references.

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 because he regrets the mistakes he made 28 years ago and his conduct and appreciation for his country have been honorable ever since. The record of trial shows no error in the processing of the court-martial. The applicant pled guilty 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. 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 members of the panel 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 BCD, confinement for six months, forfeiture of two-thirds pay per month for six months, 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. In 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 8 August 2012, for review and comment within 30 days (Exhibit D). 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. In the interest of justice, we considered upgrading the discharge based on clemency; however, we do not find the evidence presented is sufficient to compel us to recommend granting the relief sought on that basis. 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 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-2012-01524 in Executive Session on 12 February 2013, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01524 was considered:

- Exhibit A. DD Form 149, dated 19 Apr 12.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 10 Jul 12.
- Exhibit D. Letter, SAF/MRBR, dated 8 Aug 12.
- Exhibit E. Letter, AFBCMR, dated 15 Jan 13, w/atch.
- Exhibit F. Letter, Applicant, dated 25 Jan 13, w/atchs.