

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01729
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His bad conduct discharge (BCD) be upgraded to honorable.

APPLICANT CONTENDS THAT:

He has fought hard to become a productive member of his community. The sentence that was imposed by his court-martial was harsh when compared to civilian counterparts who, should they commit the same or similar offense, do not lose their jobs or source of retirement. Prior to the incident that led to his court-martial, he performed exceptionally while serving his country.

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

STATEMENT OF FACTS:

On 23 October 1998, the applicant, then a technical sergeant (E-6), was tried and convicted by a general court-martial for one specification of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ). He was sentenced to a BCD and a reduction to airman first class (E-3). On 5 January 1999, the United States Court of Criminal Appeals affirmed the court-martial conviction. On 7 October 1999, he petitioned for a grant of review before the United States Court of Appeals for the Armed Forces; however, his request was denied, making the findings and sentence final and conclusive under the UCMJ. As a result the applicant's BCD was ordered to be executed on 18 November 1999.

The applicant was discharged effective 11 January 2000 with a BCD and a narrative reason for separation of "Court-Martial." He served 20 years, 4 months, and 18 days on active duty.

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 is a productive member of his community, the punishment was severe, and otherwise he served his country honorably. He alleges no error in the processing of the court-martial conviction against him. The applicant pled guilty at 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.

Upon the court's finding of the applicant's guilt, it received evidence in aggravation, as well as in extenuation and mitigation, prior to crafting an appropriate sentence for the crimes committed. 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 dishonorable discharge, confinement for five years, total forfeitures of all pay and allowances, and reduction to the grade of airman (E-1).

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 Veteran 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 19 June 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 accordance with Title 10, United States Code, Section 1552(f), 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-2012-01729 in Executive Session on 15 February 2013, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01729 was considered:

- Exhibit A. DD Form 149, dated 2 May 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 15 Jun 12.
- Exhibit E. Letter, SAF/MRBR, dated 19 Jun 12.

Panel Chair