

pay per month for two months and 30 days correctional custody. After appealing the punishment, the appellate authority mitigated the 30 days correctional custody to 30 days extra duty and suspended forfeitures in excess of \$200.00 per month for two months for 6 months, unless sooner vacated.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. Nonjudicial punishment is authorized by Article 15 of the UCMJ and governed by the Manual for Courts-Martial (MCM). This procedure permits commanders to dispose of certain offenses without trial by court-martial unless the service member objects. Accepting the proceedings is simply a choice of forum, not an admission of guilt. It also is not a criminal conviction.

The MCM provides for certain relief from punishment, specifically, mitigation, remission, suspension and set aside. A set aside of an Article 15 is the removal of the punishment from the record and the restoration of the service members rights, privileges, pay or property affected by the punishment. Setting aside an Article 15 restores the member to the position held before imposition of the punishment. Set aside should not be routinely granted, rather, it is used strictly in the rare and unusual case where a genuine question about the service member's guilt arises or where the best interest of the Air Force would be served.

The applicant alleges injustice in that the commander failed to accept his excuse for his failure to replace a damaged tire on an aircraft he was responsible for recovering. The applicant does not allege error in how the Article 15 was processed. A review of the applicant's record indicates the applicant's rights were observed throughout the Article 15 process. The commander had the best opportunity to evaluate the evidence of the case. He found nonjudicial punishment was appropriate.

Moreover, the commander's decision was scrutinized by the applicant's exercise of his appeal in which the appellate authority granted relief by mitigating and suspending the imposed punishment. The legal review shows the commander did not act arbitrarily or capriciously in making his decision.

The applicant does not make a compelling argument that the Article 15 should be overturned based on an injustice. The commander's ultimate decision on the Article 15 action is firmly based on the evidence of the case and was within the limits of his authority and discretion.

The applicant has not shown a clear error or injustice.

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 12 September 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 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 note of the applicant's complete submission in judging the merits of the case; however, we agree with the Air Force office of primary responsibility and adopt its rationale as the basis for our determination that the applicant has not been the victim of error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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 BCMR Docket Number BC-2012-02568 in Executive Session on 23 January 2013, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02568 was considered:

- Exhibit A. DD Form 149, dated 15 Jun 12, w/atch.
- Exhibit B. Letter, Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 19 Jul 12.
- Exhibit D. Letter, SAF/MRBR, dated 6 Jan 12.

Panel Chair