

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02624
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

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

APPLICANT CONTENDS THAT:

The alleged misuse of his assigned Government American Express Card was totally false. He was told he could use it on his travels. He was held accountable for two bad checks which were paid. He believes false allegations were made against him. He was coerced into pleading guilty, forced to sign a plea agreement, and was represented by an inexperienced court appointed attorney.

The applicant provides no documentation in support of his appeal.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 9 September 1992.

The applicant was tried and convicted by a general court-martial for the misuse of his government travel card, writing multiple checks with insufficient funds to pay, and using the name and social security number of another military member to open a fraudulent credit card account.

He was sentenced to a bad conduct discharge, confinement for 15 months, and a reduction in grade to airman basic. On 26 August 1996, the convening authority approved the adjudged sentence. On appeal, the applicant raised certain issues regarding reduction in rank prior to convening authority action and the imposition of automatic forfeitures pursuant to Articles 57(a) and 58(b) of the UCMJ, respectively, but neither his findings nor sentence were challenged. On 7 July 1998, the applicant's appellate review was completed and his findings and sentence were affirmed. A final court-martial order was issued

on 4 August 1998 restoring lost pay and allowances through premature reduction in grade and forfeitures, but his findings and sentence were executed as adjudged.

On 14 August 1998, the applicant was discharged in the grade of airman basic with a BCD under the provisions of General Court-Martial Order Number 160. He served 4 years, 10 months and 27 days on active duty. His dates of lost time consisted of 23 April 1996 through 1 May 1997.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states the applicant offers no specific allegation of injustice or any documentation to support his claims of having been coerced or forced into pleading guilty to the charges against him. To the contrary, his record of trial clearly establishes that he freely and willingly pled guilty because he believed that he committed the offenses he was charged with and his responses to the judge's care inquiry questions stand in direct opposition to the allegations in his petition. Furthermore, his guilty pleas are corroborated by ample evidence in the record of trial of his misconduct. Neither the findings nor sentence were challenged after trial or on appeal, and both were found to be correct in law and fact by the Air Force Court of Criminal Appeals, and the result of trial was affirmed by the U.S. Court of Appeals for the Armed Forces. Thus, the outcome of the applicant's trial should remain undisturbed due to the absence of any new information or clear demonstration of error.

Clemency may be granted, but aside from his assertion that his BCD has tremendously affected his life, the applicant has not provided any information to support clemency by the Board. The applicant's sentence and punishment was within legal limits and the terms of the applicant's pretrial agreement. To modify his punishment now would require the Board to substitute its judgment for that rendered by the court and the convening authority nearly 15 years ago when the facts and circumstances were fresh.

Additional clemency in this case would be unfair to those individuals who honorably served their country while in uniform. Upgrading the applicant's discharge is not appropriate.

The complete JAJM evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 30 August 2012, a copy of the Air Force evaluation was forwarded to the applicant for review and response within 30 days (Exhibit D). As of this date, no response has been received by this office.

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 Chief, Military Justice Division and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an 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.
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 issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of an error or injustice; the application was denied without a personal appearance; and 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-2012-02624 in Executive Session on 23 January 2013, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02624 was considered:

- Exhibit A. DD Form 149, dated 12 June 2012.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 22 August 2012.
- Exhibit D. Letter, SAF/MRBR, dated 30 August 2012.