

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02717
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

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

APPLICANT CONTENDS THAT:

He was young and immature when he enlisted in the Air Force. Since being discharged from the Air Force he has worked diligently to better his life and he is a productive citizen in his community.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 7 January 1975.

The applicant was tried and convicted by a general court-martial for being absent without leave (AWOL), possession of marijuana, and larceny of approximately \$2,600 in personal property of another military member.

He was sentenced to a bad conduct discharge, confinement at hard labor for 10 months, and a forfeiture of \$240.00 per month for 10 months. The convening authority approved the sentence.

On appeal, the Air Force Court of Criminal Appeals set aside the findings of guilty to the Article 92 offense (possession of marijuana) and dismissed the charge and specification.

On 7 March 1977, the applicant was discharged in the grade of airman basic with a UOTHC discharge under the provisions of AFM 39-12. He served 1 year, 3 months and 21 days on active duty. His dates of lost time consisted of 30 October 1975 through 15 November 1975; 19 January 1976 through 9 February 1976; and 27 April 1976 through 16 December 1976).

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states the applicant has identified no error or injustice related to his prosecution or the sentence he received for his crimes.

While it is laudable that the applicant has apparently turned his life around and has become a valuable and respected member of his community, it does not erase his past criminal conduct or make his bad conduct discharge any less appropriate. To overturn his punishment would require the Board to substitute its judgment for that rendered by the court and the convening authority over 35 years ago when the facts and circumstances were fresh. In a somewhat ironic twist, the applicant's apparent development into a prominent and influential role model makes it even more challenging to upgrade his discharge, as doing so will undermine the deterrent value of the stigma of receiving a bad conduct discharge for misconduct.

The applicant's desire to become more involved in his community and local VFW is commendable, but his request to join the ranks of those who have served honorably as an equal by erasing the blemishes from his own record would diminish the service and accomplishments of his fellow members. The applicant's time in military service was about two years, and a little less than half of that time was spent either AWOL or in confinement. His record of trial reflects that he washed out of initial technical training for poor performance and behavioral issues, and there is nothing to suggest that he distinguished himself through his service in any other manner. In sum a bad conduct discharge was and continues to be a proper sentence and properly characterizes his service.

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:

The applicant states during the contested time frame he was very young and reckless. He never received help/counseling to persuade him to change his way of life. He has paid the price for the crimes committed and has diligently worked to better his life. His work with law enforcement and other community affiliations shows that he works at lengths to better himself and

to help others. He believes if the military had rehabilitated and trained him, he would have become a better soldier.

The applicant's complete response 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. 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. In accordance with 10 USC 1552(f)(2), we considered upgrading the applicant's discharge on the basis of clemency, however, there was insufficient evidence submitted to compel us to recommend granting the request on that basis. 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 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-2012-02717 in Executive Session on 12 February 2013, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02717 was considered:

- Exhibit A. DD Form 149, dated 24 May 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLQA/JAJM, dated 23 August 2012.

Exhibit D. Letter, SAF/MRBR, dated 10 September 2012.
Exhibit E. Letter, Applicant, dated 26 December 2012.