

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02845

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

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

APPLICANT CONTENDS THAT:

He only made one mistake in his 15 year Air Force career; he should have been given a chance for rehabilitation; one mistake should not scar him for life, and he needs to regain his veteran benefits.

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

STATEMENT OF FACTS:

On 3 May 83, the applicant entered the Regular Air Force.

On 24 May 88, the applicant was tried and convicted by a general court-martial for one specification of drug abuse, in violation of Article 112, Uniform Code of Military Justice (UCMJ). He was sentenced to a BCD, confinement for 15 months, reduction in grade to airman basic (E-1), and forfeiture of \$200 pay per month for 15 months.

On 24 May 88, the convening authority approved the sentence as adjudged. On 11 Aug 88, the United States Air Force Court of Military Review approved and affirmed the findings and sentence. The applicant declined to appeal the Air Force Court of Military Review's decision to the United States Court of Appeals for the Armed Forces, making the findings and sentence in his case final and conclusive under the UCMJ. On 17 Jan 89, the applicant's BCD was ordered to be executed. He served 14 years and 13 days of total active duty.

On 14 Dec 12, the AFBCMR staff offered the applicant an opportunity to provide information pertaining to his activities since leaving the service (Exhibit E).

In response to the request, the applicant provided a personal statement. The applicant states that prior to being court-martialed he was an outstanding noncommissioned officer (NCO). He admits he made a mistake; however, he believes everyone should be given a second chance. He has tried to be an upstanding member of the community.

The applicant's complete response is at Exhibit F.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial based on the application being untimely and also on its merits. JAJM states the applicant offers no allegation of injustice. He simply requests an upgrade to his BCD because in his mind, it was a onetime mistake that should not scar him for the rest of his life. The applicant alleges no error in the processing of the general court-martial conviction against him and his record of trial shows no error in the processing of the court-martial. In addition, he pled guilty at trial. The applicant, who was represented by military counsel, had the opportunity to demand the government prove the offenses against him. The court received evidence in aggravation, as well as in extenuation and mitigation, prior to crafting an appropriate sentence for the crimes committed.

The applicant's sentence to a BCD, confinement for 15 months, forfeiture of \$200 pay per month for 15 months, and a reduction to the grade of E-1 was both well within the legal limits and was appropriate punishment for the offense committed. A BCD was the terms of the applicant's pretrial agreement. A BCD was and continues to be part of a proper sentence and properly characterizes his service.

Granting clemency in this case, in the form of upgrading his discharge characterization, would be unfair to those individuals who honorably served their country while in uniform. Congress' intent in setting up the Veterans' Benefits program was to express thanks for veterans' personal sacrifices, separations from family, facing hostile enemy action and suffering financial hardships. All rights of a veteran under the laws administered by the Secretary of Veterans Affairs are barred where the veteran was discharged or dismissed by reason of the sentence of a general court-martial. This makes sense if the benefit program is to have any real value. It would be offensive to all those who served honorably to extend the same benefits to someone who committed a crime, such as the applicant 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 25 Sep 12, for review and comment within 30 days (Exhibit D). As of this date, this office has not received a 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 error or injustice. We note that this Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), our actions are limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. We find no evidence which indicates the applicant's service characterization, which had its basis in his court-martial and was a part of the sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). We considered upgrading the discharge on the basis of clemency; however, after considering the applicant's overall quality of service, the court-martial conviction which precipitated the discharge, and the seriousness of the offense of which convicted, we cannot conclude that clemency is warranted. In view of the above, we cannot recommend approval based on the current evidence of record.
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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 Docket Number BC-2012-02845 in Executive Session on 7 Mar 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 Jun 12, w/atc.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 17 Sep 12.
- Exhibit D. Letter, SAF/MRBR, dated 25 Sep 12.
- Exhibit E. Letter, SAF/MRBC, dated 14 Dec 12.

Panel Chair