

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-01879

COUNSEL: NONE

JUN 26 1998

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

The narrative reason for his separation be changed to allow eligibility to be considered for a commission in the Air National Guard (ANG); or, eligibility to enlist in the ANG.

He be promoted to the grade of captain (O-3).

APPLICANT CONTENDS THAT:

The narrative reason for discharge negates the otherwise honorable nature of his eight years of service. His condition and state of mind at the time were not reflective of the way he conducted his life as a whole - either before or after the three incidents that seem now to define his entire Air Force career. He had three alcohol related incidents: December 1981, September 1982 and May 1983 - all within 17 months. He had a problem and did not deal with it until he got out of the Air Force. His life has been stable, productive and rewarding since 1985.

He was selected for and earned a promotion to captain.

In support of his request, the applicant submits two personal statements, with additional documents associated with the issues cited in his contentions. These documents are appended at Exhibit A.

STATEMENT OF FACTS:

Applicant's prior enlisted service is as follows: Air Force Reserve (25 April 1973-21 May 1973); Regular Air Force (22 May 1973-17 January 1977 - hardship discharge); and, [REDACTED] Air National Guard (21 July 1974-30 July 1979). Applicant's ANG/USAFR Point Credit Summary, prepared 20 September 1979, reflects 4 years, 7 months and 26 days of satisfactory service

The applicant's last enlistment was in the Regular Air Force on 31 July 1979 in the grade of sergeant (E-4) for a period of 4 years. On 4 November 1979, he was honorably discharged to accept a commission.

On 5 November 1979, applicant was appointed a second lieutenant, Reserve of the Air Force. On 16 March 1983, he accepted Indefinite Reserve Status (IRS) and agreed to remain on active duty for an indefinite period.

Applicant's OER profile, commencing with the report closing 28 March 1980, follows:

| <u>Period Ending</u> | <u>Evaluation</u> |
|----------------------|--------------------------------|
| 28 Mar 80 | Education/Training Report (TR) |
| 28 Sep 80 | 2-2-2 |
| 28 Mar 81 | 2-2-2 |
| 28 Sep 81 | 1-1-1 |
| 28 Mar 82 | 1-1-1 |
| # 17 Dec 82 | TR |
| * 31 Oct 83 | 3-5-5 |
| 30 Apr 84 | 3-0-3 |

* Referral OER

Top report at the time he was considered and selected for promotion to captain by the CY83A Captain Selection Board, which convened on 24 January 1983. However, on 3 November 1983, by order of the Secretary of the Air Force, the applicant's name was removed from the promotion list.

Top report at the time he was considered and nonselected for promotion to captain by the CY84A Captain Selection Board, which convened on 16 January 1984.

On 18 August 1983, the applicant was notified that his wing commander was initiating discharge action against him under AFR 36-2 because he conducted himself in a manner incompatible with exemplary standards of personal conduct, character and integrity by mismanagement of personal affairs to the discredit of the service, and recurrent misconduct. The misconduct applicant had committed was as follows: (a) Apprehended for fleeing the scene of an accident at ██████████ AFB, ██████████ on 18 December 1981; (b) Arrested for driving under the influence (DUI) in Lompoc, CA, on 29 September 1981; and (c) Arrested for DUI in Minot, ND, on 15 May 1983. As a result of the two alcohol-related incidents, he was permanently decertified from PRP (Personnel Reliability Program). The case was found legally sufficient to support discharge action. The applicant consulted with legal counsel and submitted a rebuttal statement.

The applicant's letter of initiation, dated 18 August 1983 was amended on 11 October 1983, to include a copy of the civil court conviction from ██████████ and a letter from his former squadron section commander concerning a Letter of Reprimand (LOR) issued as a result of the 29 September 1981 traffic incident; and, on 6 March

1984, to include a copy of his 16 February 1984 civil court conviction (DUI reduced to physical control) in .

On 21 November 1983, the applicant was notified of his selection to show cause for his retention in the Air Force. On 30 November 1983, applicant waived consideration by a Board of Inquiry; that his case would be processed under AFR 36-2; that he did not tender his resignation; and, he consulted legal counsel. On 16 April 1984, the Secretary of the Air Force ordered that the appointment of the applicant, as a Reserve officer, be terminated and he be issued an honorable discharge.

On 1 May 1984 the applicant was honorably discharged in the grade of 1st lieutenant (02) under the provisions of AFR 36-12 (Involuntary Discharge: Unfit, Unacceptable Conduct). He had completed a total of 8 years, 4 months and 26 days of active duty service and a total of 10 years, 5 months and 3 days military service at the time of his discharge.

AIR FORCE EVALUATION:

Applicant's request to change the reason for discharge was denied by the Air Force Discharge Review Board (AFDRB) on 20 May 1997. In accordance with policy, the application was forwarded to this Board for further consideration. A copy of the Air Force Discharge Review Board Hearing Record is appended at Exhibit C.

The Chief, Officer Promotion Operations, HQ AFPC/DPPPO, reviewed this application and recommended applicant's request for promotion to captain be denied. DPPPO indicated that the applicant met and was selected for promotion to captain by the CY83A Captain Selection Board. However, he was removed from the promotion list for cause by order of the Secretary of the Air Force. As a result of this action or first time nonselection for promotion, the applicant was considered by the next scheduled captain selection board. The applicant was considered and not selected by the CY84A Captain Selection Board as an above-the-promotion zone (APZ) eligible officer. The applicant's nonselection by the CY84A captain board constituted his second failure for promotion. Upon this second nonselection for promotion, applicant was no longer eligible to meet another promotion board. DPPPO stated that there are no provisions in law or Air Force policy to allow an officer twice nonselected for promotion and subsequently separated to be reconsidered for promotion by a board. Since the applicant was involuntarily separated from active duty, there is no basis for eligibility, reconsideration or selection. DPPPO indicated that the application is untimely. The applicant waited over 12 years to file and took no action on the claim before that. DPPPO stated that the applicant's unreasonably delay has also caused prejudice to the Air Force. The Air Force asserts that the applicant's unreasonably delay regarding a matter now dating back 12 years

has greatly complicated its ability to determine the merits of the applicant's position (Exhibit D).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and indicated that the evidence he presented supports that he was suffering from an "Adjustment Disorder." As to the untimeliness of his application, he considered his Air Force career to be over and did not believe there was any way to salvage any part of it. Another underlying reason he waited so long is that he wanted to be sure his life was in fact back on track. He was not selected for promotion because of his alcohol related behavior, which he believes was due to an "Adjustment Disorder." He has turned his life around since his discharge. Even if the Air Guard decides not to accept him for service, he believes he deserves better than to have his DD Form 214 read: "Involuntary Discharge: Unfit, Unacceptable Conduct." He believes he has much to offer and asks that he be given the chance to demonstrate his abilities and character in the ANG. He requests that the Board read the statements from his former commander she knew him better and longer than any member of any board who would look at the yellowed pieces of paper to sit in judgment to decide his fate. A complete copy of this response is appended at Exhibit G.

ADDITIONAL AIR FORCE EVALUATION:

Pursuant to the Board's request, the AFBCMR Chief Medical Consultant reviewed this application concerning the applicant's contention that he suffered from an Adjustment Disorder between 1981 and 1984 when he was separated from the service.

The Medical Consultant indicated that the applicant's medical records are incomplete, but the entries available for review do not allude to any such disorder. A note by his flight surgeon on 31 August 1993 notes that applicant recognized he had an alcohol problem and that he was determined to overcome this. Records reveal that he did participate in the local alcohol rehabilitation program. A mental health evaluation in March 1983 following a Social Action charge of sexual harassment found "no mental, emotional, or behavioral condition." Since discharge, applicant has sought advice of civilian professionals as to the likelihood of his having an adjustment disorder, and has been informed that the possibility existed. The Medical Consultant stated that it was not, and is not, possible to conjecture on the absolute existence of his disorder 13 years after the fact.

The Medical Consultant stated that records available for review do not support applicant's contention that he suffered from an Adjustment Disorder that triggered his alcohol-related problems. The only derogatory words noted on his performance reports relate

to the alcohol incidents, and the last two instruments did not recommend his promotion to captain. The Medical Consultant stated that whether or not such a disorder existed 13 years ago is a moot point, at best: people with such disorders are still held responsible for their misconduct. The Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied (Exhibit E).

APPLICANT'S RESPONSE TO ADDITIONAL AIR FORCE EVALUATION:

He stated that Adjustment Disorder is often overlooked in many cases where it is applicable because the one who suffers from the disorder is usually not aware of his situation. It takes a trained professional who is at least open to the possibility that the problem exists. He was responsible for his misconduct: he paid his fines, he did his time, and he accepted his untimely and embarrassing separation from the Air Force. Further, he came in terms with his problems and made peace with himself. The possibility is strong that the disorder existed over 13 years ago - the reason it was not determined has more to do with lack of assessment and diagnostic procedures than anything else. It is very relevant that the disorder (or the stressors that existed) was very much a factor in his strange and (for him) bizarre behavior. More in-depth diagnosis should have been done at the time. There is ample credible evidence to suggest a diagnosis of Adjustment Disorder. He has, with help, rehabilitated himself and requests clemency based on his previously established post-service activities. He is now fit for service and his military record should reflect his current level of fitness. A complete copy of this response is appended at Exhibit H.

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 probable 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 and adopt their rationale as the basis for the 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 compelling basis to recommend granting the relief sought in this application.
4. We also find insufficient evidence to warrant a recommendation that the narrative reason for his separation be

changed to allow eligibility to be considered for a commission in the Air National Guard (ANG); or, eligibility to enlist in the ANG on the basis of clemency. We have considered applicant's overall quality of service, the events which precipitated the discharge, and available evidence related to post-service activities and accomplishments. On balance, we do not believe that clemency is warranted.

5. 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 issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable 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 this application in Executive Session on 9 April 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
 Mr. Patrick R. Wheeler, Member
 Mr. Gary Appleton, Member
 Ms. Christine Yurkiewicz, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 2 Dec 86, w/atchs.
 Exhibit B. Applicant's Master Personnel Records,
 Exhibit C. AF/DRB Hearing Record.
 Exhibit D. Letter, AFPC/DPPPO, dated 22 Jul 97.
 Exhibit E. Letter, SAF/MIBR, dated 25 Jul 97.
 Exhibit F. Letter, Applicant, dated 12 Aug 97, w/atchs.
 Exhibit G. Memo, Medical Consultant, dated 30 Sep 97.
 Exhibit H. Letter, Applicant, dated 15 Oct 97.
 Exhibit I. Letter, Applicant, dated 10 Oct 97, w/atchs.


 HENRY C. SAUNDERS
 Panel Chair