

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02801

JUN 12 1998

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

The fraudulent entry reason for discharge be dropped.

APPLICANT CONTENDS THAT:

Applicant's mother contends that her son (applicant) was charged with fraudulent entry into the military and it was her ignorance and negligence that caused his discharge. She stated applicant attended a graduation party in June 1995, where the police were called, and the applicant received a violation for underage drinking. He went to court, paid a fine, attended classes and received a three-year probation period (no probation officer).

She further stated she was the one who filled out his application papers. Where it asked about your police record, she answered "no" to the first three questions. When it asked about drug or alcohol charges she answered "yes." She looked for her son's court paper but didn't find it. She tried to remember when he went to court. She wrote the date, type of violation, and what court. She answered "no" to the criminal question because she did not know underage drinking was a criminal offense. She does not know how she wrote the wrong violation date.

In support of applicant's request, his mother provided her expanded comments, and four letters of character reference/recommendation from applicant's state representative and acquaintances. (Exhibit A)

STATEMENT OF FACTS:

On 5 March 1997, applicant contracted his enlistment in the Regular Air Force for a period of four years.

On 28 March 1997, the squadron commander initiated administrative discharge action against the applicant for defective enlistment. The specific reason for the proposed action was that applicant had been charged with underage drinking and paid a fine and court costs of approximately \$290 - \$300. (The date of the underage drinking

listed on the SF 86 (Questionnaire for National Security Positions) was incorrect. It should have read 1995 instead of 1990.) He was still on probation and the underage drinking offense was committed prior to his entry into the Delayed Enlistment Program. Had the Air Force known of the offense it could have rendered him ineligible to enlist. On 28 March 1997, applicant acknowledged receipt of the discharge notification. He waived his option to consult counsel and waived his right to submit statements for consideration. The attorney advisor reviewed the case file and found it to be legally sufficient to support separation. On 1 April 1997, the discharge authority approved an entry level separation.

On 3 April 1997, applicant received an uncharacterized entry level separation, under the provisions of AFI 36-3208, by reason of fraudulent entry into military service. He was credited with 'no active Federal service.

AIR FORCE EVALUATION:

The Programs and Procedures Branch, AFPC/DPPRS, reviewed this application and recommended denial. DPPRS stated the case was reviewed for separation processing and there are no errors or irregularities causing an injustice to the applicant. The reason for separation is correct because the basis for discharge was for fraudulent entry. The records indicate applicant's military service was reviewed and appropriate action was taken. (Exhibit C)

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant's mother provided a statement from the deputy clerk of the court explaining the violation and probation. Her son's probation was listed as "Inactive Probation" and he did not report to any probation officer. This is the reason he did not think his probation would cause any problems.

Being civilians, applicant and his parents were not aware that you could not join the military while on probation.

The complete response, with attachments, 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 timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. It appears that responsible officials applied appropriate standards in effecting applicant's discharge, and we do not find persuasive evidence that pertinent regulations were violated or that applicant was not afforded all the rights to which entitled at the time of discharge. However, we believe there may have been mitigating circumstances; specifically, the information provided on the Standard Form 86 (Questionnaire for National Security Positions) with respect to the applicant's police record was furnished by the applicant's mother, who completed the application for him. The applicant was required to report all of his arrests, regardless of whether the record in his case had been sealed or otherwise stricken from the court record, and the actions taken with respect to the arrest(s). However, we believe there is some doubt that applicant willfully intended to deceive the government by not disclosing the fact that he received three years of probation for an underage drinking offense in August 1995, and that he was still serving on probation at the time of his enlistment in the Air Force. In view of the foregoing, and in the absence of any other derogatory information, we believe it would be an injustice for the applicant to continue to suffer the adverse effects of the narrative reason for discharge. Therefore, we conclude that the applicant should be given the benefit of the doubt and that the narrative reason for discharge should be changed to "Convenience of the Government."

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 3 April 1997, he was discharged under the provisions of AFI 36-3208, by reason of "Convenience of the Government."

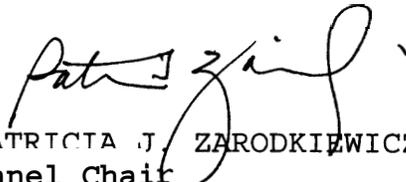
The following members of the Board considered this application in Executive Session on 10 March 1998, under the provisions of AFI 36-2603:

Ms. Patricia J. Zarodkiewicz, Panel Chair
Ms. Olga M. Crerar, Member
Mr. Kenneth L. Reinertson, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

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- Exhibit A. DD Form 149, dated 12 Sep 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRS, dated 9 Oct 97.
- Exhibit D. Letter, SAF/MIBR, dated 27 Oct 97.
- Exhibit E. Letter, Applicant's Mother, dated 20 Nov 97. w/atchs.


PATRICIA J. ZARODKIEWICZ
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

JUN 12 1998

Office of the Assistant Secretary

AFBCMR 97-02801

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] [REDACTED] are corrected to show that on 3 April 1997, he was discharged under the provisions of AFM 26-2208 by reason of "Convenience of the Government."

A handwritten signature in cursive script, appearing to read "Joe G. Lineberger".

JOE G. LINEBERGER
Director

Air Force Review Boards Agency