

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

JAN 26 1999

IN THE MATTER OF:

DOCKET NUMBER: 97-03252

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He be entered into the Return to Duty Program (RTDP).

APPLICANT CONTENDS THAT:

Due to circumstances beyond his control, his RTDP application was not submitted in a timely manner.

The applicant states that he applied for entry into the RTDP; however, his Area Defense Counsel (ADC) moved to a new assignment, and his request was not forwarded to the appropriate agency until after the required time-frame.

In support of the appeal, applicant submits a statement from the ADC indicating that it was entirely her fault.

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

On 11 October 1995, the applicant enlisted in the Regular Air Force for a period of 4 years.

On 1 June 1997, the applicant pled guilty to 5 specifications of larceny. He was convicted by a military judge sitting as a special court-martial and sentenced to a Bad Conduct Discharge (BCD), 4 months confinement, forfeiture of \$637 per month for 6 months, and reduction to the grade of airman basic.

On 21 July 1997, applicant's military defense attorney petitioned for clemency requesting that either applicant be entered into the RTDP or the BCD be suspended for a period of one year.

On 22 July 1997, the request for clemency was denied by the convening authority, and the findings and sentence were approved.

AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, AFLSA/JAJM, reviewed this application and states the military defense attorney's failure to assist the applicant process his appeal in a timely manner constitutes material error. Therefore, the Board is within its authority to look at the substance of his request, and, if appropriate, take whatever action it deems necessary to place him into the RTDP. The question becomes whether placing him into the RTDP is appropriate. According to the governing regulation, RTDP offers selected court-martialed enlisted personnel with exceptional potential the opportunity to be returned to active duty and have their punitive discharges remitted. Although they concede the case is a prime candidate for review by the Board, they do not concede that applicant is a prime candidate for the RTDP. In this respect, they note that he committed numerous separate and distinct acts of larceny against many victims, over several months. The crimes were not a result of spontaneous poor judgment or easy opportunity, but rather were pre-conceived and consciously executed. While they regret that applicant's RTDP request was mishandled, they believe it would be a further mistake to grant his request without regard to normal RTDP admission standards. Therefore, they strongly recommend his case be presented to the RTDP Screening Board for further evaluation before final action is taken.

A complete copy of the Air Force evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the Air Force evaluation was forwarded to the applicant on 9 February 1998, for review and response within 30 days. However, 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 timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We note that Return to Duty Program (RTDP) offers selected court-martialed enlisted personnel with exceptional potential the opportunity to be returned to active duty and have their punitive discharges remitted. The applicant submitted a request for participation in the RTDP as part of his clemency package to the

convening authority, but the request was denied. According to AFI 31-205, prisoners who are denied entry into the RTDP by the convening authority may apply to the Air Force Clemency and Parole Board within 30 days of convening authority action. However, the applicant's military defense attorney was reassigned prior to the convening authority action and neglected to follow-up on the applicant's appeal within 30 days. The Associate Chief, Military Justice Division, has indicated the military defense attorney's failure to assist the applicant process his appeal in a timely manner constitutes material error. In view of this, and since through no fault of the applicant, he was denied an opportunity to have his appeal of the convening authority action considered by the Air Force Clemency and Parole Board, the applicant's request for entry in the RTDP was forwarded to the Return to Duty Screening Board (RTDSB). The RTDSB reviewed the applicant's appeal and indicated that they would have recommended approval of his request for entry in the RTDP. Prior to rendering a recommendation on this application, a statement from the applicant was obtained indicating his agreement to voluntary return to a confinement facility and that completion of the program requirements does not guarantee his return to duty (Exhibit F). Therefore, we recommend his records be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 26 June 1998, he requested entry in the Return to Duty Program and his request was approved by competent authority.

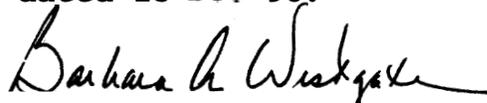
The following members of the Board considered this application in Executive Session on 26 June 1998 and 16 December 1998, under the provisions of AFI 36-2603:

Mrs. Barbara A. Westgate, Panel Chair
Ms. Rita S. Looney, Member
Ms. Dorothy P. Loeb, Member
Mr. Phillip E. Horton, Examiner (without vote)

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

Exhibit A. DD Form 149, dated 18 Sep 97, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFLSA/JAJM, dated 27 Jan '98.

- Exhibit D. Letter, AFBCMR, dated 9 Feb 98.
Exhibit E. Letter, AFSFC Det 3/CC, dated 24 Jun 98, w/atch.
Exhibit F. Letter, Applicant, dated 15 Dec 98.



BARBARA A. WESTGATE
Panel Chair



DEPARTMENT OF THE AIR FORCE

WASHINGTON, D. C.

Office of the Assistant Secretary

AFBCMR 97-03252

JAN 20 1999

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] be corrected to show that on 26 June 1998, he requested entry in the Return to Duty Program and his request was approved by competent authority.


JOE G. LINEBERGER
Director

Air Force Review Boards Agency