

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00475

COUNSEL: NONE

AUG 21 1998

HEARING DESIRED: NO

Applicant requests that his dishonorable discharge be upgraded to an honorable. Applicant's submission is at Exhibit A.

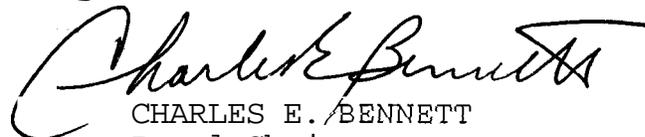
The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Charles E. Bennett, Mr. Michael P. Higgins, and Ms. Peggy E. Gordon considered this application on 6 August 1998, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


CHARLES E. BENNETT
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. AFBCMR Ltr Forwarding Advisory Opinion



DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

13 April 1998

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM (Maj Hogan)
112 Luke Avenue, Room 343
Bolling AFB, DC 20332-8000

SUBJECT: Correction of Military Records [REDACTED]

Applicant's request: In an application dated 24 February 1998, [REDACTED], the applicant, requests that his dishonorable discharge from the Air Force be upgraded to an honorable discharge. The applicant's dishonorable discharge went into effect on 14 August 1985. The application was not submitted within the three-year limitation provided by 10 U.S.C. 1552(b) and is untimely. The applicant states on the DD Form 149 that the reason his request was untimely was because he had just discovered he had a right to request the characterization of his discharge be upgraded.

Facts of military justice action: On or about 21 September 1984, a general court-martial panel consisting of officers found the applicant, contrary to his pleas, guilty of two specifications under Article 134 of the Uniform Code of Military Justice (UCMJ), specifically wrongful distribution of marijuana and wrongful distribution of cocaine. The basis for the charge and the specifications was the result of an OSI sting operation. An active duty government informant purchased marijuana and cocaine from the applicant at the applicant's off-base residence.

The members sentenced the applicant to a dishonorable discharge, confinement for two years, forfeiture of all pay and allowances and reduction to airman basic. The convening authority approved the sentence as adjudged. On 24 January 1985, the United States Air Force Court of Military Review affirmed the findings of guilty and the sentence. On 21 March 1985, the United States Court of Military Appeals denied the applicant's petition for review. On 9 May 1985, the Air Force Clemency and Parole Board did not approve clemency in the applicant's case. On 28 June 1985, a final court-martial order was issued ordering the dishonorable discharge to be executed. On 14 August 1985, the applicant was discharged with a dishonorable discharge.

Applicant's contentions: The applicant believes his discharge should be upgraded to an honorable discharge. The applicant alleges that during the time of his court-martial, Colonel [REDACTED] (the applicant did not indicate Colonel [REDACTED] status but it is assumed Colonel [REDACTED] a commander) stated during an officer's call that all officers will come up with guilty

98 00475

Recommendation: The applicant's request is untimely and should be denied for failing to comply with the statute of limitations. Further, after reviewing the available records, I conclude that administrative relief by this office is not warranted. The applicant has failed to provide a sufficient basis for upgrading his dishonorable discharge to an honorable discharge. I recommend the Board deny this application based upon the statute of limitations, or, if waived, deny the application on its merits.



Loren S. Perlstein

LOREN S. PERLSTEIN

Associate Chief, Military Justice Division
Air Force Legal Services Agency

qr 00475