

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01083

INDEX CODE: 110.00

MARIO C. DECERDA

COUNSEL: DAV

573-76-5095

HEARING DESIRED: NO

FEB 26 1999

APPLICANT REQUESTS THAT:

His under other than honorable conditions (UOTHC) discharge be changed to general (under honorable conditions).

APPLICANT CONTENDS THAT:

The reasons the applicant believes the records to be in error or unjust and the evidence submitted in support of the appeal are at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The Separations Branch, Directorate of Personnel Program Management, HQ AFPC/DPPRS, reviewed this application and states that the discharge authority indicates the type of discharge was appropriate based on applicant's record during his current enlistment. Applicant did not submit any new evidence or identify any errors in the discharge proceedings. Therefore, they recommend denial of applicant's request.

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

The Staff Judge Advocate, HQ AFPC/JA, also reviewed this application and states that when applying the standards from the Air Force Instruction 36-3208, Administrative Separation of Airmen, Chapter 4, to applicant's approximate 40 days of service, they are unable to come to the conclusion that his service was

either honest or faithful. In fact, these 40 days of service were spread out over nearly 28 years and interrupted by three undisputed acts of misconduct, and Absent Without Leave (AWOL), an escape from correctional custody, and a more than 27-year desertion terminated by apprehension. In their opinion, an honorable discharge would be totally inappropriate. Likewise, they conclude that a general (under honorable conditions) discharge is also inappropriate. Applicant's 40 days of service marred as it was by three criminal acts simply does not meet the standard of honest and faithful as required for a discharge characterization of general (under honorable conditions). Without even considering applicant's arguments to the contrary, the commander's decision to discharge applicant under other than honorable conditions was appropriate based on the nature of applicant's service and the basis for the discharge. It was not only authorized, it was also the service characterization recommended by the appropriate governing directives and instructions.

Applicant would argue that because he was informed in October 1996, that his records contained a discharge certificate dated 28 June 1969, he was discharged on that date from active duty service. It seems incongruent that applicant's alleged discharge from active duty could have predated his return from his initial AWOL, his Article 15 punishment in correction custody, and his desertion from the Air Force. Given the date of the discharge applicant claims to have relied on, he could not, in good faith, have honestly believed that the Air Force had discharged him from active duty. A reasonably prudent individual would have questioned the validity of the discharge certificate and then inquired about outstanding arrest warrants. Applicant did not make these inquiries and, had he done so, he would have learned it was merely a certification of his separation from the Air Force Reserve pursuant to his entry into an active duty enlistment. This lack of due diligence overcomes applicant's claimed reliance on the representation that a discharge had occurred.

Applicant would have the Board believe that he deserted under duress. Even if applicant's story--that while in correctional custody a supervisor pushed his head through a window, is true, the incident would not justify escape from correctional custody and desertion for nearly 28 years. Such an incident would warrant a breach of correctional custody to report the offense to proper authorities and seek medical treatment, but not a flight of nearly three decades. While the incidents leading up to his desertion are relevant, they simply do not overcome the length of his desertion coupled with his earlier **AWOL**. Therefore, they recommend denial of applicant's request.

A complete copy of their Air Force evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the evaluations and states that HQ AFPC/JA states that "it seems incongruent that applicant's alleged discharged from active duty could have (asserted by applicant) predated his return from his initial AWOL, his Article 15 punishment in correction custody, and his desertion from the Air Force. Given the date of discharge applicant claims to have relied on, he could not, in good faith, have honestly believed that the Air Force had discharged from active **duty**." He finds that very condescending and implying a lack of intelligence. He states he wrote to the National Personnel Records Center (NPRC) to find out what his status was regarding the Air Force. He submitted to NPRC a detailed history of his Absent Without Leave (AWOL) status, leaving correctional custody, and he informed them that he moved to [REDACTED] NPRC sent him documentation stating that he received an honorable discharge.

AFPC/JA also states that "applicant would have the Board believe that he deserted under duress;" applicant states he does not know when a person is scared and distrustful of authority, except when the authority figure is the person threatening you. He believes correct or not, that while in correctional custody the sergeant meant to hurt him and he was scared and had no faith in the Air Force.

He escaped from correctional custody nearly three decades ago, found a home in [REDACTED] where he was accepted as a person not based on ethnic origin. He became a citizen, married to the same woman for 19 years, became an addictions counselor with the British Columbia Government, and a director of an outpatient alcohol and drug clinic.

He is not asking for an honorable discharge his request is for a general discharge, which according to the uniform code of military justice, is separation with honor but to a lesser degree than an honorable discharge. He claims he would not receive most veterans benefits because he lives in [REDACTED]. If a general discharge is not appropriate, he would like an entry level separation.

Applicant's complete response, with attachments, is attached at Exhibit F.

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. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice to warrant changing his separation from the Air Force to an entry level separation. After reviewing the circumstances of this case, we believe that applicant's discharge should be changed to "Uncharacterized" and the reason for separation changed to "Entry Level Separation". We note that the applicant was Absent Without Leave (AWOL) from 7 August 1969 to 15 May 1997 and based on documentation he had received, he believed he was honorably discharged in 1969. In view of the possibility that the applicant may have misunderstood the information received and to remove any doubt of an injustice, we recommend his separation be changed to an entry level separation. Applicant's request to have his discharge upgraded to general (under honorable conditions) was considered; however, in view of the fact that he only served 90 days on active duty, and based on current standards he most likely would have received an entry level separation, we do not believe that his discharge should be upgraded to general (under honorable conditions).

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 28 May 1997, he received an "Uncharacterized" entry level separation under the provisions of AFI 36-3208, by reason of entry level performance and conduct, with a Separation Program Designator Code of "JGA," and a Reenlistment Eligibility (RE) code of "2C."

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

Ms. Charlene M. Bradley, Panel Chair
Mr. Terry A. Yonkers, Member
Ms. Peggy E. Gordon, Member

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

- Exhibit A. DD Form 149, dated 27 March 1998, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPRS, dated 10 June 1998.
- Exhibit D. Letter, HQ AFPC/JA, dated 24 July 1998.
- Exhibit E. Letter, SAF/MIBR, dated 10 August 1998.
- Exhibit F. Applicant's Response, dated 27 August 1998.

Charlene M. Bradley
CHARLENE M. BRADLEY
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

FEB 26 1999

AFBCMR 98-01083

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 28 May 1997, he received an "Uncharacterized" entry level separation under the provisions of AFI 36-3208, by reason of entry level performance and conduct, with a Separation Program Designator Code of "JGA," and a Reenlistment Eligibility (RE) code of "2C."


JOE G. LINEBERGER
Director
Air Force Review Boards Agency