

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 5 1999

IN THE MATTER OF:

DOCKET NUMBER: 98-01210

COUNSEL: [REDACTED]

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His undesirable discharge be upgraded to honorable.

APPLICANT CONTENDS THAT:

An unconstitutional process was used against him based on racism. A court-martial was convened and he was found innocent. After the charges were dismissed, he was administratively discharged.

In support of his appeal; the applicant provided several personal statements (Exhibit A).

STATEMENT OF FACTS:

The applicant initially enlisted in the Regular Air Force on 16 Sep 47 for three years. He reenlisted on 3 Nov 50 for six years. He was honorably discharged on 10 Nov 55 under the provisions of AFR 39-13 (Hardship). He was credited with 8 years, 1 month, and 24 days of active duty service.

On 6 Aug 57, the applicant enlisted in the Regular Air Force for four years in the grade of airman second class.

On 14 Mar 58, the applicant was convicted by summary court-martial of one of two specifications of failure to repair on or about 5 Mar 58. He was restricted to the limits of the base for 15 days and ordered to forfeit \$25.00.

On 11 Jun 58, the applicant's commander requested that he be separated from the Air Force with an undesirable discharge. The commander indicated that the applicant had lied to him regarding his family status. The commander indicated that the applicant had stated that he was married to a L--- W--- and E--- S--- both at the same time. The applicant further admitted to him that he had lied to the Air Police Division Chief about getting married

in Jan 58 in order to secure an emergency leave. He further lied to the commander by stating that he had a degree from the Agricultural and Technical College of North Carolina, when, in fact, he had not received any credits from the college. According to the commander, the applicant's work performance was so substandard as to cause the Air Police Division Chief to relieve him of his regular Air Police duties and assign him as a Barracks Orderly. The commander further indicated that the applicant was such a chronic liar as to render his "word" completely worthless to the commander.

On 16 Jun 58, the discharge authority approved the discharge action and directed that the applicant be furnished an undesirable discharge.

The applicant was discharged on 19 Jun 58 under the provisions of AFR 39-21 (Fraudulent Entry in the Air Force--Concealment of Dependents) and furnished an other than honorable conditions (undesirable) discharge.

Pursuant to the Board's request, the Federal Bureau of Investigation, Washington, D.C., provided an investigative report which is attached at Exhibit C.

AIR FORCE EVALUATION:

The Separation Branch, AFPC/DPPRS, reviewed this application and recommended denial. DPPRS indicated that the case was reviewed and the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority, and that the applicant was provided full administrative due process. The records indicated that the applicant's military service was reviewed and appropriate action was taken. The records also indicated that the applicant was court-martialed and found guilty of only one of the two specifications and charges. However, his discharge was not based on the reasons for the court-martial action. DPPRS stated that the applicant did not submit evidence or identify any errors in the discharge processing nor provide facts which would warrant an upgrade of the discharge he received almost 40 years ago.

A complete copy of the DPPRS evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel indicated that given the applicant's total period of service and the reason he was separated, the discharge was excessively harsh. In counsel's view, the applicant would not have received an undesirable discharge under current standards

for the offense of concealment of dependents. Therefore, the discharge should be changed to honorable or general (Exhibit F).

By letter, dated 7 Jul 98, the Franklin County Veterans Service Commission, provided a statement from the applicant (Exhibit G).

By letter, dated 29 Jul 98, the Franklin County Veterans Service Commission, provided two statements from the applicant and several supportive statements (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. The evidence of record reflects that the applicant was discharged for fraudulent entry in the Air Force. We find no evidence that the applicant's discharge was improper or contrary to the governing regulation under which it was effected. We took note of the post-service documentation provided in support of this appeal. However, we did not find it sufficient to warrant upgrading his discharge based on clemency in view of the seriousness and multiplicity of his misconduct. Accordingly, we conclude that no basis exists to recommend favorable action on the applicant's request that his undesirable discharge be upgraded to honorable.

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 1 Dec 98, under the provisions of AFI 36-2603:

Mr. Michael P. Higgins, Panel Chair
Mr. Patrick R. Wheeler, Member
Mr. William E. Edwards, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 15 Apr 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. FBI Report.
- Exhibit D. Letter, AFPC/DPPRS, dated 20 May 98.
- Exhibit E. Letters, SAF/MIBR, dated 15 Jun 98.
- Exhibit F. Letter, counsel, undated.
- Exhibit G. Letter, Franklin County Veterans Service Commission, dated 7 Jul 98, w/atrch.
- Exhibit H. Letter, Franklin County Veterans Service Commission, dated 29 Jul 98, w/atchs.



MICHAEL P. HIGGINS
Panel Chair