

By letter, dated 31 Aug 12, the applicant's counsel requests reconsideration of his case, because the advisory opinions were mailed directly to the applicant vice to his counsel and the applicant did not respond. This deprived the applicant of the opportunity to submit a rebuttal (Exhibit H).

Copies of the Air Force evaluations were forwarded to the applicant counsel, on 31 Oct 12, for review and comment within 30 days. (Exhibit I).

In his response, counsel notes the AFLOA/JAJM advisory provides the most thorough assessment of the applicant's request. AFPC/DPSOE defers its opinion to the JAJM advisory and AFPC/DPSID narrowly addresses the request to remove the contested report.

In addition, counsel notes that AFI 51-202, section 5.7.1 outlines two circumstances when the removal, or "setting aside", of an Article 15 is proper. The first circumstance is where there is a genuine question about the service member's guilt. The second circumstance for removal arises when the question of interest, specifically, will the best interest of the Air Force be served by removing the Article 15 from the service member's record.

The JAJM advisory opinion fails to engage the "interest" clause of AFI 51-202. The application does not challenge the manner in which the Article 15 was processed; rather, the application challenges the severity of the punishment in light of the applicant's total service to the USAF. The "interest" clause of AFI 51-202 applies this case because the drunk driving offense is the only blemish in his personnel record. The applicant develops a clear and compelling argument that based on his positive EPRs and because he was tentatively selected for promotion to Technical Sergeant (TSgt) during cycle 10E6 per Promotion Sequence Number 4151.0 (this fact is reflected in the AFPC/DPSOE advisory opinion) there was sufficient evidence for the Board to remove the Article 15 from his record. If the applicant's past service and promotion potential are objectively considered, it is clear that it is in the best interest of the USAF that his record be cleared so that he may continue to progress in his career and serve with honor and distinction.

With the discovery of the AFLOA/JAJM, AFPC/DPSOE and the AFPC/DPSID advisory opinions, and the arguments contained in counsel's memorandum, he respectfully requests the previous decision be overturned.

Counsel's complete response is at Exhibit J.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case. However, in our view, the Air Force office of primary responsibility and the Air Force Legal Operations Agency have adequately addressed the issues presented by the applicant and we are in agreement with their opinions and recommendations. We find no evidence of an error or injustice that occurred during the NJP proceedings; nor has the applicant provided any evidence which would lead us to believe the NJP was contrary to the provisions of the governing directives, unduly harsh, or disproportionate to the offenses committed. In an earlier finding, the Board determined there was insufficient evidence to warrant corrective action. We have reviewed the letter, with attachments, provided by the applicant's counsel in support of his appeal; however, the additional information did not, to our satisfaction, specifically substantiate his entitlement to the requested relief or to warrant overturning the earlier decision of the Board. In view of the above, we find no basis upon which to recommend favorable consideration of the applicant's request.
4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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 AFBCMR Docket Number BC-2011-04130 in Executive Session on 11 December 2012, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

- Exhibit G. Record of Proceedings, dated 18 Jul 12,
with Exhibit A through F.
- Exhibit H. Letter, Applicant's Counsel, dated 31 Aug 12.

Exhibit I. Letter, AFBCMR, dated 31 Oct 12, w/exhibits.
Exhibit J. Letter, Applicant's Counsel, dated 10 Oct 12.

