RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2016-00371

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His DD Form 214, *Certificate of Release or Discharge from Active Duty,* be changed to reflect his grade as sergeant (Sgt).

APPLICANT CONTENDS THAT:

He was promoted to Sgt through an official document, dated 1 Mar 80.

The applicant’s complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force on 21 May 76.

On 24 Jan 78, the applicant’s commander punished him through non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ). For this, he was reduced in grade to Airman (suspended) and ordered to pay a fine.

According to the documentation submitted by the applicant, under Special Order PA-21, dated 1 Mar 80, he was to be promoted to the grade of Sgt, effective 1 Mar 80.

On 26 Aug 80, the applicant commander notified the applicant he was intending to punish him through NJP under Article 15 of the UCMJ for importing 35 pieces of citizen band (CB) radio transmitters, and related items of equipment, which was not for the sole use of the applicant, in violation of UCMJ Article 92. In addition, the 35 radio transmitters were capable of transmitting on frequencies whose use was in violation of UCMJ Article 92. The applicant waived his right to a court-martial, indicated that he desired to make an oral presentation to his commander and to submit a written presentation. The applicant’s commander determined he committed the alleged UCMJ violations, reduced him in grade to A1C, effective 26 Aug 80, and imposed a fine. The applicant chose not to appeal his commander’s decision. The applicant noted that he accepted the Article 15 not as an admission of guilt, but because he needed to hurry his request for a hardship separation.

The applicant’s commander entered a memorandum into the applicant’s official military record in order to make several issues a matter of the official record. First, he was recommending approval of the applicant’s request for a hardship separation, but upon completion of the NJP action. In addition, the commander noted:

a.  If the physical condition of the applicant’s father was so serious as to warrant the applicant managing his father’s business, why was his request only submitted after he was being investigated by British Customs and OSI for illegal importation?

b.  Despite medical statements about the father’s physical condition, he seemed in reasonable health upon finding out his son was under investigation. He flew to London, then drove to RAF Mildenhall to discuss the matter with British Customs agents. The customs agents reported he showed no signs of physical impairment.

c.  The preoccupation of the applicant with processing his separation request so quickly seemed unusual. His father’s health had not deteriorated to the point where his life was in jeopardy.

On 3 Sep 80, the applicant was furnished an honorable discharge in the grade of Airman First Class (A1C), with a narrative reason for separation of “Hardship Reasons,” and was credited with 4 years, 3 months, and 13 days of active service.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force office of primary responsibility (OPR), which is attached at Exhibit C.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial indicating there is no evidence of an error or an injustice. NJP is authorized by Article 15 UCMJ (10 U.S.C. § 815). This procedure permits commanders to dispose of certain offenses without trial by court-martial unless the service member objects.

The applicant was promoted to Sgt in Mar 80; however, on 26 Aug 80 his commander imposed NJP for violating two lawful general orders relating to the applicant bringing unlawful goods into the United Kingdom and violating customs regulations. As punishment the commander reduced the applicant in rank to A1C, effective 16 Aug 80. The applicant had previously received NJP in 1978. The applicant has not raised any new evidence or raised an allegation of error or injustice that undermines the NJP he received in Aug 80. We see no basis in law to suggest the applicant’s reduction in rank as a result of NJP is an injustice warranting correction by this Board.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In further support of his original request, the applicant submitted a rebuttal response to the AFLOA/JAJM advisory, in which he takes exception to their conclusions. He contends he does not have any NJP records or documents which indicate he was reduced in rank. The allegation of his bringing unlawful goods into the United Kingdom is false. And, he does not recall ever receiving NJP in 1978. In addition:

a.  His four-year contract with Air Force ended 21 May 80, and he was extended by the Air Force when the alleged NJP occurred in Aug 80.

b.  His father had been diagnosed with a debilitating disease. Thus, he needed a hardship extension.

c.  The Air Force failed to explain why it was necessary to extend him for additional service.

d.  He was precluded from exercising all his options, such as consulting with defense counsel.

e.  In 1978, he received a Certificate of Recognition and Certificate of Commendation for BEST in the USAF—1978.

He has also received a number of citation and awards for his work since separating from the Air Force, to include one from (then) Senator Joseph R. Biden, Jr. (Exhibit E)

FINDINGS AND CONCLUSIONS OF THE BOARD:

Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a careful review of the applicant's contentions, documentation submitted in support of the request, and the available evidence of record, we are not convinced the applicant has provided sufficient evidence for us to conclude he is the victim of an error or injustice. We also note the applicant did not file the application within three years after the alleged error or injustice was discovered, or should have been discovered, as required by Title 10, United States Code, Section 1552 and Air Force Instruction 36-2603. Therefore, because we do not find it would be in the interest of justice to recommend granting relief, and the applicant has offered no plausible reason for the delay in filing the application, we cannot conclude it would be in the interest of justice to excuse the failure to timely file the application. Accordingly, we find the application untimely.

THE BOARD DETERMINES THAT:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered AFBCMR Docket Number BC-2016-00371 in Executive Session on 21 Mar 17 under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 22 Jan 16, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Memorandum, AFLOA/JAJM, dated 18 Aug 16.

Exhibit D.  Letter, SAF/MRBR, dated 7 Sep 16.

Exhibit E.  Letter, Applicant, dated 5 Oct 16, w/atchs.

Pursuant to paragraph 1 of AFI 36-2603 (Title 32 Code of Federal Regulations, Part 865.1), it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.