RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02514

 XXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His General (Under Honorable Conditions) discharge be upgraded to Honorable and his narrative reason for separation (Homosexuality—Act) be changed.

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APPLICANT CONTENDS THAT:

The record is in error because he does not feel that he is a gay man. At the time of the incident, he was facing a rather difficult time in his life with his grandmother’s death and brother’s cancer diagnosis. He was devastated and began drinking heavily. He was heavily intoxicated and blacked out during the incident in question. He has quit drinking since his discharge. He has been married to his wife for almost 20 years.

The applicant’s complete submission is at Exhibit A.

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate he enlisted in the Regular Air Force on 17 Jul 81 in the grade of airman basic (E-1) for a period of four years and was progressively promoted to the grade of sergeant (E-4), effective and with a date of rank of 1 Oct 84.

On 23 Oct 86, the applicant was notified by his commander of his intent to recommend his involuntary discharge from the Air Force for homosexuality under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were that he engaged in homosexual acts on 10 May 86 and 20 Aug 86.

On 24 Oct 86, after consulting with legal counsel, the applicant offered a conditional waiver of his rights to an administrative discharge board, provided he receive no less than a General (Under Honorable Conditions) discharge if the recommendation for his discharge was approved.

On 3 Nov 86, the case was found to be legally sufficient and the discharge authority approved the commander’s recommendation the same day, ordering the applicant’s involuntary discharge.

On 17 Nov 86, the applicant was furnished a General (Under Honorable Conditions) discharge and was credited with five years, four months, and one day of total active service.

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI) provided an Investigative Report indicating they were unable to locate an arrest record pertaining to the applicant based on the information furnished.

A request for post-service information was forwarded to the applicant on 1 Oct 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit C).

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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 an error or injustice. We took notice of the applicant’s complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge processing. Based on the available evidence of record, it appears the applicant’s General (Under Honorable Conditions) discharge for homosexuality was consistent with the procedural and substantive requirements of the discharge regulation and within the commander’s discretionary authority. He has provided no evidence which would lead us to believe otherwise. We considered upgrading the discharge based on clemency; however, we do not find the evidence presented is sufficient to convince us to recommend granting the relief sought on that basis. Therefore, in the absence of evidence to the contrary, we find no basis to recommend upgrading the applicant’s discharge or changing his narrative reason for separation.

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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.

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The following members of the Board considered AFBCMR Docket Number BC-2010-02514 in Executive Session on 27 Jan 11, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

 Exhibit A. DD Form 149, dated 1 Jul 10.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C. Letter, AFBCMR, dated 1 Oct 10, w/atch.