RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02912

XXXXXXXXXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

His discharge be upgraded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

He requested an upgrade of his discharge some years ago, but never received the results.

In support of his appeal, the applicant provides an expanded statement.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

The relevant facts pertaining to the applicant’s discharge, extracted from his military personnel records, are contained in the letter prepared by the appropriate office of the Air Force which is attached at Exhibit C. Accordingly, there is no need to recite these facts in this Record of Proceedings.

On 2 Nov 10, AFPC/DPSOY notified the applicant of their determination that his DD Form 214, *Report of Separation from Active Duty*, incorrectly reflected he received an Under Other Than Honorable Conditions (UOTHC) character of service and of their action to administratively correct his DD Form 214 to reflect his Bad Conduct Discharge (BCD).

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial, indicating there is no evidence of an error or injustice. On 1 Apr 75, the applicant was tried by a special court-martial at Shaw Air Force Base, SC. He was charged with one charge with two specifications of absence without leave (AWOL), in violation of Article 86, Uniform Code of Military Justice (UCMJ); one charge with one specification of larceny for stealing two money orders, in violation of Article 121, UCMJ; one charge with two specifications of forgery of two money orders in violation of Article 123, UCMJ; and one charge with one specification of housebreaking with intent to commit larceny, in violation of Article 130, UCMJ. The applicant pled not guilty to all charges and specifications, waived his right to present his case to a panel of military members, and instead asked to be tried by the military judge alone. The judge found the applicant guilty of the AWOL and forgery charges, acquitted him of larceny and housebreaking, and sentenced him to a BCD, confinement at hard labor for three months, and his reduction to the grade of airman basic (E-1). The Air Force Court of Military Review upheld the findings and the sentence upon their review. On 7 Nov 75, the United States Court of Military Appeals declined to review the applicant’s case, making the findings and sentence final and conclusive under the UCMJ. As a result, his discharge was ordered to be executed on 21 Nov 75. The applicant has identified no error or injustice related to his prosecution or the sentence and the record shows he was afforded all of the procedural rights offered by the court-martial and appellate process. While clemency in this case can be granted, it is not warranted as it would be unfair to those who honorably served their country while in uniform.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 12 Nov 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

A request for post-service information was forwarded to the applicant on 25 Apr 11 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 note that this Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, United States Code, Section 1552(f), actions by this Board are limited to corrections to the record to reflect actions taken by the reviewing officials and action on the sentence of the court-martial for the purpose of clemency. We find no evidence which indicates the applicant’s service characterization, which had its basis in his court-martial conviction and was a part of the sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). We have considered the applicant’s overall quality of service, the court-martial conviction which precipitated the discharge, and the seriousness of the offenses to which convicted. Based on the evidence of record, and the absence of any documentation describing the applicant’s post-service activities, we cannot conclude that clemency is warranted in this case. We note the applicant’s DD Form 214 erroneously reflects he received an Under Other Than Honorable Conditions (UOTHC) character of service in conjunction with his discharge. We have been advised that his records will be corrected administratively by the office of primary responsibility (OPR) to correctly reflect his Bad Conduct Discharge (BCD). As this character of service accurately reflects the circumstances of his discharge, we agree with the administrative correction. Therefore, we find no basis upon which to favorably consider this application.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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-2010-02912 in Executive Session on 25 May 11, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 9 Aug 10, w/atch.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Letter, AFLOA/JAJM, dated 29 Oct 10.

Exhibit D.  Letter, SAF/MRBR, dated 12 Nov 10.

Exhibit E.  Letter, AFBCMR, dated 25 Apr 11, w/atch.

r