RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2016-01852

 COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His General (Under Honorable Conditions) discharge be upgraded to Honorable, and his separation program designator (SPD) code of “JKK” (Misconduct drug abuse) be changed.

APPLICANT CONTENDS THAT:

The Air Force labelled him as a drug addict, then refused to treat him. Because he was black, he was never invited to the other fire fighters’ homes and they would never spend time with him. So, he found the only people who would accept him, and became involved in marijuana use. After his arrest, he asked for treatment, but was told it was too late, the Air Force released drug addicts, and he had to figure it out alone. Now he has been drug free for over 18 years, has a clean criminal record, and a credit rating over 800. In support of his request, he submits two character references, and financial documentation.

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

STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force on 27 Jun 80.

On 17 Dec 83, the applicant was arrested after being observed smoking marijuana in his car on base.

On 19 Jan 84, the applicant’s commander notified him he was recommending the applicant for discharge for misconduct. The reason for taking this action was the applicant, on or about 17 Dec 83, wrongfully used and possessed marijuana, for which he received non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCJM). The applicant acknowledged receipt of the notification of discharge, was provided with legal counsel, and was given the opportunity to submit statements in his own behalf. The base legal office reviewed the package and found it legally sufficient to support separation.

On 1 Feb 84, the discharge authority directed the applicant be discharged with a General (Under Honorable Conditions) discharge, without an opportunity for probation or rehabilitation.

On 3 Feb 84, the applicant was furnished a General (Under Honorable Conditions) discharge, with a SPD Code of “JKK,” a narrative reason for discharge of “Misconduct Drug Abuse,” and was credited with three years, seven months, and six days of active service.

On 28 Apr 92, the Air Force Discharge Review Board (AFDRB) reviewed the applicant’s case and denied his request to upgrade his discharge.

On 17 Aug 16, a request for post-service information was forwarded to the applicant for review and comment within 30 days. The applicant submitted an FBI Report and two character references with his original application. No additional response has been received by this office (Exhibit D).

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:

AFPC/DP2STM recommends denial indicating there is no evidence of an error or an injustice. In accordance with AFR 39-10, *Administrative Separation of Airmen,* drug abuse is “incompatible with military service and airmen who abuse drugs one or more times are subject to discharge for misconduct. Drug abuse for the purpose of this regulation is the illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug. This includes improper use of prescription medication.” Further AFR 39-10, states airmen are given a General (Under Honorable Conditions) service characterization when an airman’s service “has been honest and faithful, this characterization is warranted when significant negative aspects of the airman’s conduct or performance of duty outweigh positive aspects of the airman’s military record.”

The applicant’s drug abuse was compelling enough for the discharge authority to conclude this incident outweighed any positive aspects of the applicant’s military career. The applicant’s discharge to include SPD code, narrative reason for separation, and characterization of service was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority. There is no evidence of an error or injustice in the discharge processing. The character of service and SPD code reflected on the applicant’s DD Form 214, *Certificate of Release or Discharge from Active Duty,* are correct.

A complete copy of the AFPC/DP2STM 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 28 Feb 17 for review and comment within 30 days (Exhibit E). As of this date, no response has been received by this office.

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 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 discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority. The applicant has provided no evidence which would lead us to believe the characterization of the service was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. In the interest of justice, we considered upgrading the discharge based on clemency; however, the documentation the applicant submitted concerning his post-service activities was insufficient for the Board to determine his accomplishments since leaving the service are sufficiently meritorious to overcome the misconduct for which he was discharged. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

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 issues 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-2016-01852 in Executive Session on 25 Jul 17 under the provisions of AFI 36-2603:

 Panel Chair

 Member

 Member

The following documentary evidence was considered:

 Exhibit A.  DD Form 149, dated 2016-05-04, w/atchs.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C.  Memorandum, AFPC/DP2STM, dated 27 Jul 16.

Exhibit D.  Letter, AFBCMR, dated 17 Aug 16, w/atch.

 Exhibit E.  Letter, AFBCMR, dated 28 Feb 17.

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 the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.