

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWIN H. CROSBY, III,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE AIR
FORCE, ET AL.

Defendant.

COPY

6/17/86
JRM
76-CV-26

U. S. DISTRICT COURT
N. D. OF N. Y.

JUN 17 1986

APPEARANCES:

EDWIN H. CROSBY, III
Plaintiff, Pro Se
PO Box 429
Camden, NY 13316

OF COUNSEL: _____ O'CLOCK _____ M.
J. R. SCULLY, Clerk
SYRACUSE

HON. FREDERICK J. SCULLIN, JR.
United States Attorney
Northern District of New York
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PAULA RYAN CONAN
Assistant U.S. Attorney

HOWARD G. MUNSON, C.J.

ORDER

The plaintiff asserts in support of his motion to vacate judgment that the government has not corrected his military discharge records. At the trial on September 25, 1978, Judge Port stated that he had told the government to correct the records. This court, in its order of March 5, 1986, directed the government to show whether it had corrected the records.

The government now calls to the court's attention an affidavit by Captain Jon P. Bruinooge dated June 5, 1978 and filed June 20, 1978. Attached to the affidavit are a copy of the original discharge form with the incorrect discharge code and

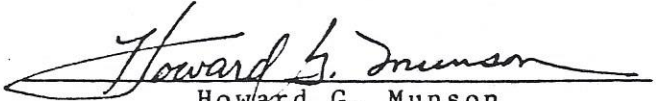
copies of two other discharge forms that do not contain the incorrect code. Captain Bruinooge stated that the forms without the incorrect code were prepared in order to correct the error in the original form and that the corrected forms were furnished to plaintiff so that he could use them in applying for jobs. Par. 4. The government also filed on May 5, 1986 an affidavit by Major James M. Kinsella dated April 29, 1986, which states that the corrected discharge forms are stapled on top of the incorrect form and that the incorrect form was marked "VOID" in April 1986. Par. 5.

In light of the evidence that the government has presented, the court finds that plaintiff's records had been corrected by the time of the trial on September 25, 1978. Furthermore, the court finds that in stamping plaintiff's original discharge form "VOID," the government has attempted to prevent any harm that may still result from the error in plaintiff's records. Therefore, the court finds that the government acted in good faith at the time of the trial and has continued to do so. Accordingly, plaintiff's motion to vacate the judgment on the basis of fraud on the court by the government is denied.

IT IS ORDERED.

Dated:

June 13, 1986
Syracuse, New York


Howard G. Munson
Chief U.S. District Judge