RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-03038

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

Her mandatory separation date (MSD) extension request be approved and she be reinstated into the Air National Guard (ANG), with constructive credit for all missed drill periods.

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APPLICANT CONTENDS THAT:

Her MSD extension request was unjustly denied. The ANG Chief of Chaplains and members of his staff devised an evaluative method to deny her right to an extension.

In support of her request, the applicant provides a copy of her original MSD extension request and correspondence related to the matter under review.

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

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate she served in the ANG in the grade of lieutenant colonel (O-5), effective and with a date of rank of 4 May 96.

On 11 Aug 08, the applicant requested a two-year extension of her 5 May 09 MSD. On 15 Dec 08, NGB/A1POE recommended approval; however, the ANG Chief of Chaplains (NGB/HC) subsequently recommended denial, indicating the applicant’s retention was not in the best interests of the Air Force. SAFPC denied the request on 23 Apr 09.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibits C and E.

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AIR FORCE EVALUATION:

NGB/A1POE recommends relief be granted, indicating the applicant was not afforded an opportunity to appeal the NGB/HC decision to recommend denial of her MSD extension request. The request was originally submitted to NGB/HC on 15 Dec 08. NGB/HC non-concurred with the request on 17 Mar 09. Their rationale relied on ANGRC/HC Directive 52-01, dated 1 Mar 09. Although the rationale indicates she had the right to appeal the decision, it is not made clear what avenues she was to take to do so.

A complete copy of the NGB/A1POE evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 8 Jan 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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ADDITIONAL AIR FORCE EVALUATION:

SAFPC recommends denial, indicating there is no evidence of an error or injustice. The applicant applied for a two-year extension of her MSD. In their endorsements to her request, her commander, the Assistant Adjutant General for Air, and the Adjutant General recommended approval based on the needs of the ANG, specifically, the unit’s inability to recruit a replacement for the applicant. NGB/A1POE also recommended approval; however, NGB/HC non-concurred, ultimately indicating they had identified a replacement for the applicant. On 23 Apr 09, SAFPC unanimously denied the applicant’s request based on the information provided and NGB/A1POE’s acknowledgement that a replacement had been identified for her Unit Manning Document (UMD) position.

A complete copy of the SAFPC evaluation is at Exhibit E.

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APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

The applicant refutes the SAF/MRBP position, indicating it is inconsistent with the facts surrounding the case, the findings of the investigation authority, and the recommendation of the National Guard Bureau corporately. She contends the evidence provided proves she was the victim of an abuse of authority, malicious activity, injustice, and fraudulent activity. Furthermore, it should also be noted the individual who now occupies her UMD position was placed in it after the determination of the fallacious board and, therefore, has no bearing on her reinstatement. Although her position is still occupied, the UMD for her wing will show that all three of the chaplain positions are currently vacant. In support of her response, the applicant provides an expanded statement and copies of documentation related to her IG complaint (Exhibit F).

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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 timely filed.

3.  Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends that her request to extend her mandatory separation date (MSD) was unjustly denied due to the personal animus on behalf of members of the ANG Chief of Chaplains Office. After a thorough review of the evidence of record and the applicant’s complete submission, to include her response to the SAF/MRBP evaluation, we believe she has raised sufficient doubt as to whether the recommendation to deny her request was tainted by the personal feelings of the parties involved. In this respect, we note the documentation from NGB-IG describing how the ANG Chief of Chaplains Office delayed action on her request for four months while they developed procedures which were never published to the field, only to abandon those procedures and issue the contested recommendation just two months prior to her established MSD without ever notifying the applicant or her command. While we note the comments by SAF/MRBP indicating that her mandatory MSD extension request was appropriately denied based on the needs of the ANG, we cannot be certain the ultimate decision to do so was not tainted by the noted animus toward the applicant. Therefore, we believe it is appropriate to resolve doubt in favor of the applicant and recommend some form of relief. We note that reinstatement in the ANG is among the applicant’s requests. However, inasmuch as the Board lacks the authority to reinstate applicants into the ANG, we believe the proper and fitting relief in this case would be to correct her records to reflect that competent authority approved her request for an MSD extension to 5 May 11. Additionally, we find it appropriate to credit her with the pay and points required to ensure the period 6 May 10 through 5 May 11 is satisfactory service for retirement purposes. In arriving at the appropriate amount of credit to be awarded, we calculated the average of her participation during the five years preceding her original MSD. With this recommendation, the applicant is free to pursue her reappointment to the Chaplain Corps of the ANG or Air Force Reserve, provided she is otherwise qualified, in accordance with AFI 36-2005, *Appointment in Commissioned Grades and Designation and Assignment in Professional Categories – Reserve of the Air Force and United States Air Force.* Therefore, to preclude any further injustice to the applicant, we recommend her records be corrected to the extent indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT, be corrected to show that:

a.  On 4 May 2009, her request for retention in an active status until 5 May 2011 was approved by competent authority.

b.  On 5 May 09, she was not transferred to the Retired Reserve, but on that date she continued to serve as a member of the Air National Guard.

c.  She be awarded an additional seven paid active duty points, 24 paid inactive duty training (IDT) points, and 15 membership points for the retention/retirement (R/R) year 19 December 2008 through 18 December 2009, resulting in 79 total retirement points and one year of satisfactory Federal service for retirement.

d.  She be awarded an additional 16 paid active duty points, 44 paid IDT points, and 15 membership points for the R/R year 19 Dec 09 through 18 December 2010, resulting in 79 total retirement points and one year of satisfactory Federal service for retirement.

e.  She be awarded an additional six paid active duty points, 18 paid IDT points, and six unpaid membership points for the R/R year beginning 19 December 2010 through her newly established MSD of 5 May 2011, resulting in 30 total retirement points and 4 months and 16 days of satisfactory Federal service for retirement.

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The following members of the Board considered AFBCMR Docket Number BC-2009-03038 in Executive Session on 16 Nov 10 and 6 Dec 10, under the provisions of AFI 36-2603:

All members of the Board voted to correct the records as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2009-03038 was considered:

Exhibit A. DD Form 149, dated 10 Aug 09, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, NGB/A1POE, dated 23 Dec 09.

Exhibit D. Letter, SAF/MRBR, dated 8 Jan 10.

Exhibit E. Letter, SAFPC, dated 8 Jul 10.

Exhibit F. Letter, AFBCMR, dated 20 Oct 10.

Exhibit G. Letter, Applicant, dated 15 Nov 10, w/atchs.