

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-00740
COUNSEL:
HEARING DESIRED: NO

THE APPLICANT REQUESTS THAT:

She be reinstated back into the United States Air Force with back pay and allowances; or in the alternative, her character of service be changed from general (under honorable conditions) to honorable and her narrative reason for separation be changed to a neutral designation.

THE APPLICANT CONTENDS THAT:

Because of her demonstrated outstanding record of character and duty performance for over five years, the actions by her chain of command, resulting in her separation were unjust and unfair. She believes that the adverse actions taken against her in 2007 inaccurately depict a pattern of misconduct justifying administrative separation and misrepresents her character and duty performance.

In support of her appeal, the applicant provides a brief from counsel; copies of recent performance evaluations, and letters of character reference.

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

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 8 Jan 02. She received a Letter of Counseling (LOC), on or about 12 Jan 05, for failure to go to her appointed place of duty.

While serving in the grade of staff sergeant (SSgt/E-5), on or about 2 Jul 07, the applicant received a Letter of Reprimand (LOR) for knowingly forging the signature of a noncommissioned officer.

She received nonjudicial punishment, on 17 Jul 07, for on or about 3 Jul 07, failing to obey a lawful general order, by

wrongfully possessing pornography in the Central Command (CENTCOM) area of responsibility (AOR). Her punishment consisted of a reduction to the grade of Senior Airman (SrA/E-4).

On 2 Aug 07, the applicant received nonjudicial punishment, for on or about 1 Aug 07, she failed to obey a lawful order by wrongfully entering the sleeping quarters of a member of the opposite gender. Her punishment consisted of a reduction to the rank of Airman First Class (A1C/E-3) and a suspended reduction to the grade of Airman (Amn/E-2) until 1 Feb 08.

The squadron commander recommended her for administrative discharge action, on 17 Sep 07, for a pattern of misconduct, specifically, conduct prejudicial to good order and discipline. The specific reasons for the proposed action were based on the incidents cited above.

After consulting with counsel, the applicant waived her right to an administrative discharge board hearing and submitted statements in her own behalf. The staff judge advocate found the case file legally sufficient to support a discharge and recommended a general (under honorable conditions) service characterization, without Probation and Rehabilitation (P&R). The discharge authority approved the separation and directed a general discharge, without P&R.

The applicant was discharged under the provisions of AFI 36-3208, on 9 Oct 07, with service characterized as general (under honorable conditions), with a reason for separation of misconduct, and issued a reentry (RE) code of 2B. She was credited with five years, nine months, and two days of active duty service.

THE AIR FORCE EVALUATION:

AFPC/DPSOS recommends denial, stating, in part, based on the documentation on file in the master personnel records, the discharge to include her characterization of service was consistent with the procedural and substantive requirements of the discharge instruction and was within the discretion of the discharge authority.

According to the governing Air Force instruction, commanders will consider facts they find are material and relevant. The standard of proof required when considering a discharge is whether the basis is supported by a preponderance of the evidence. The applicant's misconduct was inconsistent with the self-discipline required for effective military service. Her behavior of disobeying general orders and forging signatures demonstrates an unwillingness to follow the rules and regulations that the Air Force has set out for all airmen. The

applicant has clearly failed to maintain high standards of personal conduct that the Air Force requires for continued service.

The complete AFPC/DPSOS evaluation is at Exhibit C.

AFLSA/JAJM recommends denial, stating, in part, the applicant has not shown a clear material error or injustice.

In the discussion of the case, JAJM notes that accepting nonjudicial punishment proceedings is simply a choice of forum, not an admission of guilt. By electing to resolve the allegation in the nonjudicial forum, the applicant placed the responsibility to decide whether she had committed the offenses with her commander. The commander had to weigh all the evidence, including the credibility of the various witnesses, and make his decision. He ultimately resolved the issues of whether the applicant committed the alleged offenses against her and her punishment was well within the commander's discretionary authority to impose.

In addition, they note, in the written presentation to the Article 15 proceedings, she did not, as in her BCMR application, assert that she had no knowledge of how the pornographic images came to be on her camera. Her written presentation states "[m]y boyfriend and I had taken some personal pictures with the camera on 17 May 2007." She clearly admits that at least one of the photographs is of herself, her boyfriend, or both. Further, the applicant now asserts, through counsel, that there is an exception to the order prohibiting possession of pornography in the CENTCOM AOR. It is, according to counsel, not a violation of the order if the pornographic image is stored on a personal device and access to the device is limited. That is, of course, inconsistent with the order and, simply, an incorrect statement of the law.

After reviewing the applicant's material, it is clear that her issue is not with the process, but the result. The system depends on the commander amassing the evidence on which to make a reasoned decision to begin the nonjudicial punishment process and the individual, with the aid and advice of her counsel, assisting the commander in making the decision by presenting evidence in defense, mitigation or extenuation. There is no evidence that the process did not work properly in this case, other than the applicant's natural disagreement with the results. Not surprisingly, she and her counsel did not and do not come to the same conclusions reached by the commander and the appeal authority. While a different fact finder may have come to a different conclusion, the commander's findings are not either arbitrary or capricious and should not be disturbed.

The complete AFLSA/JAJM evaluation is at Exhibit D.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 23 Dec 10 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 timely filed.
 3. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice warranting corrective action. We note the applicant's request for reinstatement, with back pay and allowances, and a change to her character of service to honorable. However, the discharge and the character of service appear to comply with the governing Air Force instructions and we found no evidence that her separation was inappropriate. Notwithstanding the above, while we do not condone the applicant's misconduct, we believe, based on her exceptional record of performance prior to the incidents which led to her administrative separation and the letters of character reference submitted in the applicant's behalf, that her narrative reason for separation should be changed to "Secretarial Authority." Therefore, in view of the above, we recommend the applicant's record be corrected to the extent indicated below.
-

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 9 October 2007, she was discharged under the provisions of AFI 36-3208, (Secretarial Authority), with a Separation Program Designator (SPD) code of "KFF."

The following members of the Board considered AFBCMR Docket Number BC-2010-00740 in Executive Session on 1 February 2011, under the provisions of AFI 36-2603:

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 17 Feb 10, w/atchs.

- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOS, dated 1 Sep 10.
- Exhibit D. Letter, AFLOA/JAJM, undated.
- Exhibit E. Letter, SAF/MRBR, dated 23 Dec 10.