

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02210

XXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His NGB Form 22, *Report of Separation and Record of Service*, Block 26, *Reenlistment Eligibility*, be amended from "6U" to a reenlistment eligibility code which will allow for his reenlistment.

### APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contended he was not afforded due process to complete his 5-skill level training within the 36 months he was briefed he had before his reenlistment was denied, based on his non-completion of his 5-skill level training.

The applicant received his primary Air Force Specialty Code (AFSC) of 2R031 on 5 Apr 17, with an effective start date of 6 Apr 17. Around this time, he was counseled on the 36-month timeline for completing his 5-level Career Development Course (CDC) exam. Specifically, Air Force Instruction (AFI) 60-2201 [sic<sup>1</sup>], *Air Force Training Program*, and AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, provide 36 months for a trainee to complete 5-level CDCs, which provided him until 6 Apr 20. Subsequently, he began his on-the-job training with his supervisor for 30 days on 10 Apr 17.

The applicant received several incorrect performance evaluations in 2017 and 2018. Contrary to the guidance, his Aug 17 and Oct 17 evaluations stated he "missed CDC completion milestone notification"; however, his Jan 18 evaluation stated he "completed CDC test" with a rating of 80 percent within AFI timelines and his Dec 18 evaluation stated he was "improving skills in 2R1 career field." The applicant actually took his CDC test on 2 Dec 17.

On 3 Mar 19 [sic<sup>2</sup>], he reenlisted in the [State] Air National Guard (ANG) for one year. On 4 Mar 19, his supervisor and commander requested he enlist for a 5-year contract in order to reach his 20-year retirement. The applicant informed them he anticipated mobilizing overseas for his civilian employment in the fall of 2019 and he reenlisted for one year for his civilian employment not to interfere with his service. His Jun 19 performance evaluation reflected he was "meeting requirements"; however, this changed when he received confirmation he was going overseas for his civilian employment, and he informed his supervisor and section chief. Immediately thereafter, all task training stopped with his supervisor who told him, "I am in a new PS&D position and have a lot to learn. Why should we waste my time and your time training you, if you plan on getting out of the Air Guard?" The applicant's journal shows his tasks stopped within a 2-month window of his notifying his unit of his overseas deployment with his civilian job and he was denied the opportunity to complete his training tasks.

On 4 Sep 19, six months after he reenlisted, the AF Form 418, *Selective Reenlistment Program (SRP) Consideration for Airmen*, was signed by his section chief and commander alleging he

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<sup>1</sup> AFI 36-2201, *Air Force Training Program*

<sup>2</sup> Applicant reenlisted on 6 Mar 19.

was not fulfilling his 5-level commitment timeline, without informing the applicant until almost two months later. The section chief and commander failed to follow AFI 36-2606, paragraph 11.5.8.2. which requires notice to the airman within 30 days, counseling with the airman, and notification of the appeal process. The applicant attended Unit Training Assembly (UTA) in Sep 19 and Oct 19; however, neither the section chief nor the commander spoke with him or counseled him regarding the AF Form 418. Rather, on 1 Nov 19, his supervisor emailed him with the decision to deny his reenlistment via his civilian employer email address while the applicant was serving overseas with his civilian employer. The AFI requires his commander to provide counseling in person, and if unable to complete within 30 days, the commander must state where the airman is and an expected return date. The form must then be completed within three days of the airman's return. The commander failed to follow guidance. The AFI also requires supporting proof, which was not provided.

On 30 Nov 19, the applicant emailed his supervisor requesting to appeal the 6U reenlistment code with the commander upon his arrival in Feb 20 to make up his quarterly drills. During discussion with the section chief regarding the potential effects of the 6U reenlistment code, the section chief stated the 6U would only prevent him from coming back into the [State] ANG but would not disqualify him from joining the ANG in other states or joining other military branches, which the applicant subsequently learned was incorrect. On 4 Mar 20 [sic<sup>3</sup>], he received an honorable discharge, but with a 6U reenlistment code.

The commander's denial of his reenlistment was erroneous and an abuse of discretion. The commander denied his reenlistment based on the allegation that he failed to meet the training timelines for his 5-skill level. While the AFI provides discretion to commanders for recommendations on reenlistment, those recommendations must follow the guidance in AFI 36-2606, paragraph 2.6.8.. None of the factors listed as a basis for denying reenlistment were included on the AF Form 418. It did not raise allegations about his enlisted performance report ratings, any substantiated unfavorable information, unwillingness to comply with standard, or fitness for duty. Given that he was denied the ability to complete his training and still had over seven months to complete that training, this does not raise to the level of "ability (or lack of) to meet required training levels."

Prior to preventing him from reenlisting, the applicant was not afforded due process to progress in training. He did not fail to complete training; he was not afforded the 36 months provided in the initial counseling to complete his training. He still had several months to complete training at the time his commander signed the AF Form 418 on 4 Sep 19. His 36 months would have ended on 5 Apr 20. The time allotted to complete his training was especially important considering the command acknowledged the travel commitments of the applicant's civilian job. His civilian job required him to spend several months overseas which is why he made up his drills prior to leaving and made up missed training once he returned from his civilian job as well.

According to AFI 36-2606, paragraph 11.3., "Being rendered ineligible to reenlist can impact an Airman's opportunity to be selected for an assignment, promotion, and/or retraining and may impact the Airman's future eligibility to be retained." Due to this recommendation, the applicant is not able to transfer or reenlist in any other unit at any other ANG installation. The commander and section chief were not aware of the lasting impact of the 6U reenlistment code on an airman's career. They were under the wrong impression that an airman with a 6U could reenlist with another unit with a waiver. That is incorrect.

The applicant submitted an inquiry regarding the 6U code on his NGB Form 22, and the response from his unit clearly indicates, "The 6U RE code on the member's NGB 22 does not disqualify him from enlisting in a new unit when he returns from overseas..." For these reasons,

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<sup>3</sup> Applicant was discharged from the ANG on 5 Mar 20.

the applicant's reenlistment code is unduly harsh, and he respectfully requests his 6U reenlistment code be changed allowing him to finish out his last five years before retirement.

The applicant's complete submission is at Exhibit A.

## **STATEMENT OF FACTS**

The applicant is an honorably discharged [State] Air National Guard staff sergeant (E-5).

On 6 Mar 16, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the ANG for a period of three years.

On 5 Apr 17, according to AF Form 2096, *Classification/On-the-Job Training (OJT) Action*, the applicant was awarded the 2R031 AFSC, and entered into OJT for 2R031 [sic<sup>4</sup>], effective 6 Apr 17.

On 6 Mar 19, according to DD Form 4, the applicant reenlisted in the ANG for a period of one year.

On 11 Jun 19, according to Journal Entries, provided by the applicant, "[the applicant] came in Feb 27 – Mar 4 for drills, during this drill he reenlisted for an additional year so we discussed the training progression we have seen up to this point, and what we would like to see going forward. [Applicant] is currently 24 months into his 5-level training with 32 TBA 5-level required tasks still open. Our training standard is 36 months in training to complete these."

On 4 Sep 19, according to AF Form 418, signed by the commander, the applicant was not selected for reenlistment.

On 4 Feb 20, according to AF Form 418, the applicant acknowledged receipt, by signature, and elected to appeal the decision.

On 5 Feb 20, according to AF Form 418, Section VIII. *MPS Action*, the Airman's Appeal Date is: 20191207 and Airman's Appeal: Was Not Received by Appeal Date. Remarks: Appeal documents were not received by appeal date.

On 5 Mar 20, according to NGB Form 22, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, Paragraph 3.13.14. Not Selected for Reenlistment – Expiration Term of Service//Less Than 120 MSO//No MSO, SPD: JBK [Completion of Required Active Service].

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

## **APPLICABLE AUTHORITY**

In accordance with AFI 36-2606:

2.6.8. Commander/civilian director considerations on SRP. Commander/civilian directors will consider the following before making a decision: (T-1).

2.6.8.1. Enlisted Performance Report (EPR) ratings.

2.6.8.2. Unfavorable information from any substantiated source.

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<sup>4</sup> Should be 2R051, for 5-skill level upgrade training, Training Status (TS) Code B.

2.6.8.3. The Airman's willingness to comply with Air Force standards (i.e. fitness, dress/appearance, timeliness, etc.).

2.6.8.4. The Airman's ability (or lack of) to meet required training and duty performance levels.

2.6.8.5. A fit for duty finding by a Physical Evaluation Board does not automatically entitle an Airman to reenlist upon completion of their required active service. However, an Airman may not be denied reenlistment on the basis of the same condition for which a Physical Evaluation Board found the Airman fit for duty.

### 11.3. *SRP Authority.*

11.3.1. Commander/civilian directors have total SRP selection authority as long as no other factors barring immediate reenlistment exist. Commander/civilian directors may non-select any Airman for reenlistment at any time outside of the SRP window. Being rendered ineligible to reenlist can impact an Airman's opportunity to be selected for an assignment, promotion, and/or retraining and may impact the Airman's future eligibility to be retained. The selection/non-selection decision will not be based on Airman's career intent and will be consistent with other qualitative decisions.

### 11.5.8. *Commander Action on AF Form 418.*

11.5.8.1. The unit commander signs and dates the form and attaches any supporting documentation to substantiate the reenlistment eligibility decision. Supervisor recommendation is optional.

#### 11.5.8.2. *For Airmen non-selected under SRP:*

11.5.8.2.1. The commander discusses the non-selection with the Airman's supervisor before making the final decision. The commander discusses the following items with the Airman:

11.5.8.2.1.1. Specific reasons for non-selection. (T-3).

11.5.8.2.1.2. Areas needing improvement. (T-3).

11.5.8.2.1.3. Promotion ineligibility. (T-3).

11.5.8.2.1.4. Possibility of future reconsideration. (T-3).

## **AIR FORCE EVALUATION**

NGB/A1PP recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice.

On 4 Mar 16 [sic<sup>5</sup>], the applicant enlisted in the [State] ANG in the Civil Engineer career field and was transferred to the Maintenance Operations Flight when he was unable to meet the commitment for Civil Engineer. On 5 Apr 17, the applicant completed 3-level technical school. On 19 Apr 17, an AF Form 2096 was accomplished and signed by the commander entering the applicant into 5-level upgrade training [effective 6 Apr 17]. The commander initiated an AF Form 418 for non-selection for reenlistment for failure to progress in 5-level upgrade training on 4 Sep 19.

The applicant acknowledged receipt of the AF Form 418 upon his return from an overseas assignment with his civilian employer, on 4 Feb 20, and elected to submit an appeal. The AF Form 418 stated the applicant did not provide appeal documentation by the appeal date and he was not selected for reenlistment.

The applicant acknowledged the AF Form 418 on 4 Feb 20 and his Expiration Term of Service (ETS) was 5 Mar 20. In accordance with AFI 36-2606, paragraph 2.8.10.1, "Airmen must submit an appeal to the MPS no later than 10 calendar days (for Drill Status Guardsmen [DSG],

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<sup>5</sup> Applicant enlisted in the ANG on 6 Mar 16.

submit the appeal during the next UTA) from the day they complete AF Form 418, Section V.” The applicant was not provided due process to submit an appeal on his own behalf due to his ETS expiring prior to his next UTA date. Additionally, the AF Form 418 listed an incorrect date for the applicant’s appeal deadline. The appeal deadline was listed as 7 Dec 19 and should have been 10 calendar days after the applicant acknowledged and signed Section V on the AF Form 418. Based on the documentation provided, the applicant’s NGB Form 22 should be corrected to read the next appropriate reenlistment code of 6B [Eligible to reenlist/extend – Member elected separation or discharge] instead of 6U.

The complete advisory opinion is at Exhibit C.

### **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 2 Oct 23 for comment (Exhibit D), and the applicant replied on 7 Oct 23. In his response, the applicant contended he agreed with the advisory opinion and asked that the Board move forward with his case at this time. He provided a summarized timeline of events and also requested the case be expedited as he has a small window to reenlist before he can retire.

The applicant’s complete response is at Exhibit E.

### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant’s rebuttal, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/A1PP and finds a preponderance of the evidence substantiates the applicant’s contentions. The applicant was not provided due process in accordance with AFI 36-2606 as his ETS did not allow sufficient time for appeal consideration of his reenlistment denial. Additionally, the “Airman’s Appeal Date Is: 20191207” reflected on the AF Form 418 is clearly erroneous as it pre-dates the applicant’s acknowledgement of receipt. Therefore, the Board recommends correcting the applicant’s records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board’s understanding of the issues involved.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show his NGB Form 22, *Report of Separation and Record of Service*, issued in conjunction with his 5 Mar 20 discharge, is amended to reflect:

- a. Block 23. *Authority and Reason*: AFI 36-3209, PARAGRAPH 3.12.: EXPIRATION TERM OF SERVICE//LESS THAN 120 MSO//NO MSO, SPD: KBK
- b. Block 26. *Reenlistment Eligibility*: 6B

## CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02210 in Executive Session on 20 Dec 23:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 13 Apr 21.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory opinion, NGB/A1PP, w/atch, dated 22 Aug 23.  
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 2 Oct 23.  
Exhibit E: Applicant's response, w/atchs, dated 7 Oct 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR