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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02548

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be transferred to military authorities to stand General Court-Martial proceedings and be awarded back pay.

APPLICANT'S CONTENTIONS

His honorable discharge was issued in Mar 18 but backdated to Apr 84 and is invalid and illegal, therefore, he is still on temporary duty (TDY) subject to military jurisdiction. He was not made aware of this until 2018 when he requested back pay and the manufactured discharge document was provided to him.

He has made numerous attempts throughout the years to avail himself of his military rights, protections and privileges afforded under the Uniform Code of Military Justice (UCMJ) without success. He filed complaints, petitions and/or inquiries with the proper authorities and asks the Board to conclude he fulfilled the exhaustion requirement as required. He would have submitted his application prior to Nov 20 if it weren't for the time it took to exhaust all his available avenues of relief and the delays caused by the Covid-19 pandemic, as well as the closure of the law library at the prison.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force technical sergeant (E-6).

On 13 Apr 84, according to documentation provided by the applicant, the applicant entered civilian confinement pursuant to a sentence of two life terms for conviction of the crimes of first-degree murder and conspiracy to commit murder.

According to Reserve Order Work-P..., dated 1 Jun 84, the applicant received an honorable discharge from the Air Force Reserve on an illegible date.

According to Document and Fiche List, dated 6 Oct 84, Reserve Order Work-P... was published on 1 Jun 84.

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On 12 Mar 18, according to documentation provided by the applicant, the National Personnel Records Center (NPRC) responded to the applicant's request and notified him a DD Form 214, *Report of Separation*, was not issued because he had no active service or less than 90 consecutive days of active duty for training. NPRC provided the applicant with an AF Form 256, *Honorable Discharge from the Armed Forces of the United States of America*, indicating he received an honorable discharge from the Air Force on 10 Apr 84.

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

AIR FORCE EVALUATION

DAF/JAJI recommends denying the application. After careful review, DAF/JAJI finds no evidence to substantiate any of the applicant's allegations of error. Under AFI 51-201, *Administration of Military Justice*, the only time the military has exclusive jurisdiction – meaning it does not share jurisdiction with civilian authorities – is when the offenses in question are purely military offenses. For the offense of murder, a military member is subject to both the UCMJ and state jurisdiction. Pursuant to AFI 51-201, the Air Force will ordinarily not pursue a trial if the civilian authorities have not relinquished jurisdiction. If the Air Force had taken jurisdiction of the case, then that would have triggered certain processes and obligations under the UCMJ, including some of the specific authorities cited by the applicant. In the present case there is no evidence to suggest the Air Force and not the state had jurisdiction of the crimes. Furthermore, there is no law or regulation that either requires or permits the military to wrest away jurisdiction from civilian authorities. As a result, AF/JAJI concludes there was no obligation owed to the applicant under the UCMJ, and consequently no error as alleged.

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 23 Mar 23 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of DAF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. While it appears the NPRC re-accomplished the applicant's AF Form 256, it is clear the applicant was discharged from the Air Force Reserve in 1984 by direction of Reserve Order Work-P... dated 1 Jun 84. Furthermore, there is no evidence the Air Force assumed nor was required to take jurisdiction of the applicant's offense of murder in accordance with AFI 51-201 and consequently, the Board finds no error on the part of the Air Force. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find

it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02548 in Executive Session on 11 Apr 23 and 23 Apr 23:

Work-Product, Panel Chair
 Work-Product, Panel Member
 Work-Product, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 24 May 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, DAF/JA, dated 6 Feb 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Mar 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.

6/13/2025

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Board Operations Manager, AFBCMR
 Signed by: USAF

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