
RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03400

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The separation code listed on her DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected from MND, *Miscellaneous/General Reasons*, to MDB, *Hardship*.

APPLICANT'S CONTENTIONS

She was released on a hardship. Her current separation code is preventing her from receiving a Department of Veterans Affairs home loan. She did not realize the error until she applied for the loan.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman (E-2).

On 22 May 90, according to DD Form 214, provided by the applicant, she was released from active and transferred to United States Air Force Reserve (USAFR) with an honorable service characterization. Her separation code and corresponding narrative reason of separation of is MND, *Voluntary – Miscellaneous Reasons*, and her reentry code is ¹3A. She completed 11 months and 22 days of her 4-year term of enlistment.

On 14 Dec 94, according to Reserve Order **Work-Product**, provided by the applicant, she received an honorable discharge from the USAFR.

On 18 Oct 21, the applicant submitted a DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, without supporting documentation. On 15 Apr 22, the Board notified the applicant her case could not be processed as a viable application because her Military Human Resources Record from the National Personnel Record Center contained only one document, which was not relevant to her request and she did not provide any supporting documentation. On 18 Apr 22, the applicant provided supporting documentation to include copies of her DD Form 214, USAFR point credit summaries, and a USAFR discharge order.

¹ First term airman who separates before completing 36 months (60 months for a 6-year enlistee) on current enlistment and who has no known disqualifying factors or ineligibility conditions except grade, skill level, and insufficient TAFMS.

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, Section 3B - *Reasons for Voluntary Convenience of the Government (COG) Separation*, paragraph 3.15. *Miscellaneous Reasons*. Airmen who do not qualify for separation for another reason may ask for separation under this provision. As a rule, applications are approved when the airman's early separation will serve the best interest of the Air Force.

Table 1.4. *Type of Separation for Airman with Unfilled Military Service Obligation*. If the reason for separation is Miscellaneous Reasons, and the first character of the reentry code is 1, 3, or not applicable, then the Airman is released and transferred to the USAFR.

Section 3C, *Dependency or Hardship*. Airmen may request discharge when genuine dependency or undue hardship exists. Military Personnel Flight personnel counsel airmen about the conditions for, and evidence needed to support separation for hardship or dependency. Written statements of the facts of the case support the application for discharge. Airmen separated for hardship or dependency are discharged.

Title 38, United States Code (38 U.S.C.) *Veterans' Benefits*; AFI 36-3208. Statutory provisions do allow for some exceptions to the length of service (LOS) requirement, especially in circumstances where the discharge was beyond the control of the Veteran. For example, Veterans discharged due to a condition that interfered with their service (AFI 36-3208 paragraph 5.11; 38 U.S.C. § 3702(a)(2)(D), 38 U.S.C. § 5303A(b)(3)(G)(iv)), Sole Survivorship (AFI 36-3208, paragraph 3.12; 38 U.S.C. § 3702(a)(2)(F)), or Hardship (AFI 36-3208, paragraph 3C; 38 U.S.C. § 3702(a)(2)(D), 38 U.S.C. § 5303A(b)(3)(A)) carry a shortened 90-day LOS requirement during wartime (2 Aug 90 to Present). The aforementioned separation types are classified by the Air Force as Convenience of the Government; however, the Department of Veterans Affairs' Loan Guaranty Service has specific statutes addressing the LOS required for Veterans with these separation types and therefore does not apply the additional Convenience of the Government criteria under 38 U.S.C. § 3011(a)(1)(ii)(II) (as required by 38 U.S.C. § 5303A(b)(3)(G)(i)) when establishing eligibility.

Convenience of the Government options provide another exception to this LOS requirement – but require the Veteran to have fulfilled 20 months of a documented two-year enlistment. If the Veteran enlisted for a longer period, the Veteran cannot use this exception; the obligation must be two years. To verify the conditions where this exception can be applied, the Veteran must provide evidence of their two-year enlistment along with their DD Form 214.

When reviewing a request for a determination of eligibility, a Veterans Affairs loan specialist will review the DD Form 214 and compare the Veteran's LOS and character of service against the requirements for that Veteran's era of service. If the Veteran does not meet the minimum LOS but has an acceptable character of service, the loan specialist will review the Narrative Reason for Separation to consider any exception that may apply to that Veteran. For the Convenience of the Government exception to apply, the Veteran would also need to provide documentation to show they only enlisted for a two-year obligation.

AIR FORCE EVALUATION

ARPC/CCX recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. ARPC has no records to determine a separation code. The separation code of MND is used for miscellaneous reasons.

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 11 May 22, for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DP2STM recommends denying the application. There is limited documentation in the applicant's Master Personnel Record and the applicant did not provide any documentation to support her claim of separating from the Air Force under the hardship provision of the regulation. Based on the presumption of regularity and the fact that the applicant was "released" from active duty, it must be concluded that the separation was correct as indicated. Members who separate as a result of hardship are discharged from the Air Force and not released. Unless the applicant can provide concrete documentation to the contrary, based on review of the applicant's request and the master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Jan 23, for comment (Exhibit F), 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 applicant claims she was discharged due to a hardship. However, there is insufficient evidence she requested or met the requirements for a hardship discharge under the provisions of AFI 36-3208, Section 3C. Instead, the evidence supports she was released from the Regular Air Force with a voluntary convenience of the government separation under the provisions of AFI 36-3208, Section 3B, for miscellaneous reasons. Therefore, the Board finds a preponderance of the evidence does not substantiate the applicant's contentions. In addition, while the Board is not the authority for a Veterans Affairs home loan guarantee, according to 38 U.S.C., the applicant did not fulfill the 2-year requirement for a home loan as she served only 11 months and 22 days of her 4-year enlistment. 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a

preponderance of the evidence. 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.

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 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 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-2021-03400 in Executive Session on 16 Mar 23:

Work-Product

, Panel Chair
Panel Member
Panel Member

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

- Exhibit A: Application, DD Forms 149, w/atchs, dated 18 Oct 21 and 18 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/CCX, dated 10 May 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 May 22.
- Exhibit E: Advisory Opinion, AFPC/DP2STM, dated 23 Jan 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jan 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.

4/13/2023

X

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product

AFBCMR Docket Number BC-2021-03400