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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00550

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Correct his official military record to reflect the grade of staff sergeant (E-5).

APPLICANT'S CONTENTIONS

His Airman Performance Report (APR) came to his attention only weeks ago. No plea was made to the Evaluation Reports Appeal Board since the regulation states discharged individuals should apply by DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, in accordance with Air Force Instruction (AFI) 36-2406, *Officer and Enlisted Evaluations Systems*, paragraph 10.1.4..

Per his combat achievements and the actions to save an aircraft while airdropping at combat base Khe Sanh, he feels his request is valid since it was lost in the heat of battle. The Vietnam War was raging, and his APR was lost in processing on 30 Apr 68.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force sergeant (E-4).

On 30 Apr 68, the applicant was issued an AF Form 910, *TSgt, SSgt, and A1C Performance Report*, for the period 18 Oct 67 – 28 Apr 68.

On 21 Dec 68, according to DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, the applicant was furnished an honorable discharge from the Regular Air Force, in the grade of sergeant (E-4), and credited with 3 years, 5 months, and 3 days active service.

On 18 Jul 71, according to Reserve Order **Work-Product**, dated 20 Jul 71, the applicant was honorably discharged from the Air Force Reserve, in the grade of sergeant (E-4).

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

APPLICABLE AUTHORITY/GUIDANCE

AFBCMR Docket Number BC-2022-00550

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AFI 36-2406, *Officer and Enlisted Evaluations Systems*, Chapter 10, *Correcting Officer and Enlisted Evaluations*:

10.1.4. Retired or separated personnel are not eligible to apply for correction through the Evaluation Report Appeals Board; therefore, they must submit a DD Form 149 to the Air Force Board for Correction of Military Records.

Air Force Regulation 39-29, *Promotion of Airmen*, Table 3, *Requirements for Promotion*, Line 3:

For promotion to E-5, CAFSC, as indicated by career filed charts in AFM 39-1, 18 months in current grade computed from DOR, must be recommended by immediate commander. (Note 6: Written recommendation not required. A commander fulfills this requirement by placing an airman's name on a nomination list.)

AIR FORCE EVALUATION

AFPC//DPM 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.

The applicant entered the Air Force on active duty on 19 Jul 65 and was promoted to sergeant (E-4) on 1 May 67. The applicant's AF Form 7, *Airman Military Record*, lists his highest awarded grade as sergeant (E-4) with a date of rank of 1 May 67. On 21 Dec 68, the applicant was released from active duty and transferred to the Air Force Reserve to serve out his remaining military service. He was honorably discharged from the Air Force Reserve, in the grade of sergeant (E-4) on 18 Jul 71.

Per the applicant, due to the indorsing official's statement, "...promote to Staff Sergeant at earliest opportunity" on his APR, he should be promoted to the grade of staff sergeant (E-5). Air Force Regulation 39-29, *Promotion of Airmen*, Table 3, *Requirements for Promotion*, lists all requirements that must be met for promotion to staff sergeant, to include recommendation by immediate commander. There are no supporting documents that show the applicant was promoted to the grade of staff sergeant (E-5).

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 4 Nov 22 for comment (Exhibit D), and the applicant replied on 23 Nov 22. In his response, the applicant contended in reading the advisory, he acknowledged the immediate commander should make this special recommendation; however, in his APR, Block 10 reads officer in charge is the reporting official (the commander), and no other action should follow. He understands the normal requirements for promotion, but both the aircraft commander and the squadron commander are requesting waiver of the normal requirements due to his action at Khe Sanh possibly saving a multimillion-dollar aircraft from crashing. He saw many early promotions for heroic actions while serving in Vietnam, bypassing time in rank requirements. He hopes the Board will read his APR and follow up with the commander's recommendation.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

- 1. The application was not timely filed. 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.
- 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 AFPC/DPM and finds a preponderance of the evidence does not substantiate the applicant’s contentions. There is no evidence the applicant met all requirements for promotion to staff sergeant (E-5) in accordance with AFR 39-29. Therefore, the Board 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-00550 in Executive Session on 10 Jan 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 1 Feb 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPM, w/atch, dated 18 Oct 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Nov 22.
- Exhibit E: Applicant Response, dated 23 Nov 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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