



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01410

Attorney-Client

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Reenlistment Eligibility (RE) code be changed to allow reentry in the military.

APPLICANT'S CONTENTIONS

He was injured in Basic Military Training (BMT) but has since recovered and desires to reenlist. When discharged from the Air Force, he received an RE code of "4C" with a narrative reason for separation of "Failed Medical/Physical Procurement Standards."

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 18 Jul 16, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 27 Sep 16 for a period of six years.

On 28 Nov 16, the applicant's Commander recommended the applicant be discharged under AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section C, Defective Enlistments, Paragraph 5.14 under Basis for Discharge for Erroneous Enlistment and recommended an entry level separation (ELS).

On 2 Dec 16, the applicant provided a response to the Commander's recommendation. In the response, the applicant asked to remain in the Air Force to seek a more precise diagnosis by a specialist and/or treatment for his injury. However, if the Air Force chose to discharge him, he desired to have the option to re-enlist after requalification and treatment outside of the military.

On 8 Dec 16, the applicant's discharge was approved.

On 9 Dec 16, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received an uncharacterized ELS with a narrative reason for separation of "Failed Medical/Physical Procurement Standards" and an RE code of "4C." He was credited with 2 months and 13 days of active duty.

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

**AFBCMR Docket Number BC-2022-01410
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3208, *Administrative Separation of Airmen*.

Paragraph 5.14. Basis for Discharge for Erroneous Enlistment. Errors in the enlistment process occur when the Air Force does not have the true facts or does not take the right action. An airman is subject to discharge from an erroneous enlistment, reenlistment, or extension of enlistment if:

5.14.1. It would not have occurred had the relevant facts been known by the Air Force and the eligibility criteria of AFIs 36-2002 (formerly AFR 33-3) and 36-2606 (formerly AFR 35- 16, volume 1), had been followed;

5.14.2. It was not the result of fraudulent conduct on the part of the member; and

5.14.3. The defect is unchanged in any material respect

DAFI 36- 3211, *Military Separations*.

A6.5. Entry-Level Separation. This type of separation is given only when the person is in the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. This is a discharge that does not attempt to characterize the type of service as either good or bad.

AIR FORCE EVALUATION

AFPC/DP2SSM recommends denying the application. The applicant was discharged under Defective Enlistments, specifically, Erroneous Enlistment on 9 Dec 16 with an ELS and uncharacterized character of service after serving 2 months and 13 days of service. However, he received an erroneous RE code on his DD Form 214 of 4C--(Separated for concealment of juvenile records, minority, failure to meet physical standards for enlistment, failure to attain a 9.0 reading grade level as measured by the Air Force Reading Abilities Test, or void enlistments). His correct RE code is 2C--(Involuntarily separated with an honorable discharge; or entry level separation without characterization of service), based on his ELS with uncharacterized character of service. Although there is an error in reference to applicant's RE code as stated above, there is no evidence of an error or injustice that would support a more favorable RE code (as requested) based on the documentation provided by the applicant and analysis of the facts.

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 22 Jun 22 for comment (Exhibit D) and 4 Jan 23 (Exhibit F) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor found there was insufficient evidence to support the applicant's request as stated. A service member may be administratively discharged, even though related to a medical condition, when in the case of an active-duty member it has been determined that a disqualifying medical condition existed prior to service and has not been permanently aggravated by military service. The applicant was seen for back pain in his 2nd week of BMT and the consideration of the condition being "permanently" aggravated above the natural progression of a

degenerative condition is not a medically plausible conclusion. Degeneration of skeletal bone (in this case, the spine [vertebra]) is a condition that does not acutely develop, but rather a condition that slowly develops with symptom magnification over a prolonged period. Therefore, the subjective symptoms that manifested in BMT were clearly and unmistakably a result of a degenerative condition (verified by x-ray analysis) that began long before service entry. Therefore, under the presumption of regularity, the applicant did not meet the minimum medical standards for enlistment. Further, it appeared from the applicant's written statement in response to the discharge action that he was of the mindset to continue medical treatment by a specialist until resolution of his condition and then to re-enlist in military service. Although admirable, that he desires to continue to serve his country, but a degenerative spinal condition is not curable without extensive surgery and is a condition whereby the medical community attempts to control its associated painful symptoms and possibly slow down the continued symptom presentation due to natural aging. His post-service civilian medical records even emphasized the continued worsening of his condition noting degenerative vertebral bone growth. Regrettably, after an extensive review of the available records, the medical advisor has not seen evidence to refute the decision to administratively separate the applicant.

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 4 Jan 23 (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 Board concurs with the rationale and recommendation of AFPC/DP2SSM and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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 Air Force Instruction 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 the 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-2022-01410 in Executive Session on 22 Mar 23:

Attorney-Client, Panel Chair
Attorney-Client, Panel Member
Attorney-Client, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 16 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSM, dated 22 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Jun 22.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 21 Dec 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 4 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.

1/1/2024

Attorney-Client

Board Operations Manager, AFBCMR
Signed by: *Attorney-Client*