

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02227

XXXXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

1. The flying evaluation board (FEB) be removed from his records.
2. He be returned to flying status.

### APPLICANT'S CONTENTIONS

The FEB found he should continue in flying service; however, the Chief of the Air National Guard (NGB/CF) reversed the decision and removed him from flying status in the Air Force, Air Force Reserve and the ANG. He requests the disqualification from flying be removed and his flying status be reinstated.

The primary accusations were from a novice with less than 100 hours of flying in a plane as a co-pilot. He was vilified and was not believed. He did not break any Air Force regulations or standards. His unit did not like his presence as he often disagreed with command actions and used the opinions of one pilot to remove him from the unit. The AF Form 8, *Certification of Air Crew Qualification*, disqualifying him flying came from the young pilot's accusations. The FEB was in retaliation and reprisal for the many disagreements he had with the leadership officers.

There was no reason from the NGB/CF to reverse the FEB's decision. There was no additional evidence and even the FEB found no actual evidence of any fault, other than hearsay and accusations. The FEB was also convened outside of regulation guidance due to no waiver being created to justify its convening. He was not notified of the FEB until 15 Jun 20 and the temporary duty (TDY) occurred 24-28 Feb 20. The intent of FEBs is to improve aviation safety. However, in his case, he continued to fly during the months of discussion as to whether an FEB was warranted or not. Novice flyers were allowed to continue flying with him although they supposedly feared flying with him. The described fear was manufactured.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air Force Reserve major (O-4).

The applicant served in the Regular Air Force in Air Force Specialty Code (AFSC) 11K3 (aircraft commander) and AFSC 11B3 (bomber pilot) from 1 Jun 05 to 15 Mar 17. He was honorably discharged for an intradepartmental transfer to the ANG via Palace Chase. He was credited with 11 years, 9 months and 15 days of active duty service.

On 16 Mar 17, the applicant was appointed in the ANG in AFSC 11S3Z (special operations pilot).

The applicant's automated records management system (ARMS) record does not include any documentation pertaining to the FEB or aeronautical order (AO) disqualifying him from aviation service. The documents pertaining to the FEB were provided by the applicant.

AF Form 8, dated 14 May 20 shows he was placed in unqualified flying status, Code "3." His commander directed downgrade in response to deficiencies observed and documented by qualified aircrew while on TDY 24 to 29 Feb 20. His commander noted discrepancies in safety, aircrew discipline, airmanship/situational awareness, crew coordination, mission planning and that he failed to accomplish preflight briefings in accordance with regulations. His commander recommended a FEB be convened to determine the applicant's suitability for continued service as a pilot. If the convening authority declined the option of an FEB, it was recommended retraining for requalification as a co-pilot.

On 15 Jun 20, the applicant was notified by the wing commander (WG/CC) a FEB would be convened on 15 Jul 20 to make a recommendation regarding his future in aviation service. The proceedings of the board were subject to review and further recommendation by the convening authority and intermediate commander. It stated HQ AFSOC/A3T would determine the final action.

On 15 Oct 20, a FEB was convened and the FEB recommended the applicant be retained in flying service.

On 1 Nov 21, NGB/CF non-concurred with the FEB and convening authority's recommendations and permanently disqualified the applicant from aviation as a pilot and prohibited the applicant from entering into any other aviation AFSC. In accordance with AFMAN 11-402, paragraph 8.5.6.1.1., the servicing airfield records management office would publish the AO assigning aviation service code (ASC) code "05," using the same effective date of the suspension AO. The NGB/CF memorandum does not include the reason for non-concurrence.

On 15 Apr 22, the applicant was honorably discharged from the ANG and transferred to the Air Force Reserve. He is currently performing duties in AFSC 32E3C (civil engineer project management).

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

## **APPLICABLE AUTHORITY/GUIDANCE**

AFMAN 11-402, *Aviation and Parachutist Service*, Table 8.1, FEB Action Timeline, states the respondent notification memorandum is prepared for the convening authority review by the applicant's unit commander or formal school commander immediately after identifying reason for FEB action.

Paragraph 8.5.7, FEB Waivers. After being notified of an FEB, the member may request a waiver of an FEB to return to previously qualified aircraft.

Paragraph 8.7.4. Nonconcurrence with FEB recommendation. Reviewing authorities must specify reasons for non-concurrence

## **AIR FORCE EVALUATION**

AF/A3TM recommends denial. In accordance with AFMAN 11-402, disqualification from aviation service is permanent when it results from an FEB action. The respondent's major command (MAJCOM/A3T) is the final approval authority for boards convened at the MAJCOM

level or below. However, for FEBs convened for cause involving Air Reserve Component (ARC) aircrew members, NGB/CF or Chief of Air Force Reserve (AF/RE), as appropriate, makes the final FEB decision. The documents provided validate permanent disqualification from aviation service and prohibit the applicant from flying Air Force aircrafts on active duty, in the ANG or the Air Force Reserve.

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 26 Oct 22 for comment (Exhibit D). He disagrees with the advisory. The witness statements were given by inexperienced aviators but due to disagreements with his leadership, his knowledge of the events were not researched. The statements were gathered by a political enemy and ran up the chain of command as truth.

The advisory opinion states everyone acted within their regulatory rights; however, the regulation governing FEBs was disregarded. AFMAN 11-402, Table 8.1., states that notification of an FEB should occur within five days of the event. He was not notified of the FEB until 5 months after the event. His unit took months to manufacture a coherent story to stop his career. Even then, he successfully defeated the FEB and retained his qualification only to be stricken by the deputy commander of the ANG. No aviator could believe he as a pilot became what they said in their statements over a single weekend. Not one instructor or evaluator saw the performance that disqualified him.

The applicant provided DAF/IGS memorandum dated 13 May 22 showing his IG complaint was dismissed finding there was insufficient evidence to indicate wrongdoing by his leadership in the conducting of the FEB and his disqualification from aviation service. The DOD Office of the IG (DOD OIG) and the DOD OIG Whistleblower Reprisal Investigations Directorate concurred with the findings.

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, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AF/A3TM and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the FEB, for reasons unknown, was not convened in a timely manner. However, the applicant has not sustained his burden of proof that the FEB was convened in error, retaliation or reprisal. The Board further notes, the DAF/IG dismissed the applicant's IG complaint finding insufficient evidence to indicate wrongdoing by his leadership. The Board also notes the FEB recommended the applicant continue aviation service; however, the NGB/CF, disagreed and permanently disqualified the applicant from aviation service per AFMAN 11-402, which was within his authority and discretion as the FEB final review authority. Therefore, the Board 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 evidence did not demonstrate material error or injustice, 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-2022-02227 in Executive Session on 22 Nov 22 and 22 May 23:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 18 Aug 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AF/A3TM, dated 26 Oct 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Oct 22.  
Exhibit E: Applicant's Response, w/atchs, undated.

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.

**X**

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Board Operations Manager, AFBCMR