

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00212

XXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Reinstatement to the rank of staff sergeant (E-5), effective 1 Nov 07.
2. Compensation for drill participation from 1 Nov 07 to 21 Oct 09, in the rank of staff sergeant.

APPLICANT'S CONTENTIONS

She received a copy of her Air Force Reserve military record and discovered she was involuntarily demoted from the permanent grade of E-5 to senior airman (E-4), effective 1 Nov 07. She did not receive any notice from her unit and was unaware of the demotion until her current review of her military records. She was discharged from the Air Force [Reserve], effective 21 Oct 09, with a general (under honorable conditions) characterization. She was also unaware of her discharge for unsatisfactory participation.

During unit participation, she resided in California and her duty assignment was a two-hour commute on drill weekends. She depended on the unit to mail her orders or send email notification to muster in person. Many attempts had been made to contact the unit and communications failed. Unsatisfactory participation was not her choice. She was later informed the unit was deployed to Afghanistan. Drill participation from 1 Nov 07 to 21 Oct 09 should be compensated as a staff sergeant as she continued to wear the uniform and participated in drills and exercises as a staff sergeant.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve senior airman.

On 30 May 06, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Air Force Reserve.

According to AF IMT 40a, *Record of Individual Inactive Duty Training*, the applicant was unexcused for the following Unit Training Assemblies (UTAs):

10 Jun 07, periods 3-4
4-5 Aug 07, periods 1-4
8-9 Sep 07, periods 1-4
13-14 Oct 07
3-4 Nov 07
8-9 Dec 07
5-6 Jan 08

On 21 Sep 07, according to a squadron commander (SQ/CC) memorandum, the applicant was notified she was denied participation for pay and points due to pending administrative discharge action for non-participation.

On 1 Nov 07, according to Reserve Order XXXX, the applicant was involuntarily demoted to the permanent grade of E-4, with effective date and date of rank of 1 Nov 07.

On 26 Jan 08, according to SQ/CC memorandum, the applicant was recommended for administrative discharge due to unsatisfactory participation. On 10 Feb 08, the Deputy Staff Judge Advocate found the recommendation to be legally sufficient, and on 14 Apr 08, the wing commander concurred with the recommendation for discharge.

On 3 Aug 08, according to AFRC/JA indorsement, the discharge package was found to not be legally sufficient as it lacked evidence the unit contacted the applicant regarding her failures to attend UTAs.

On 31 Oct 08, according to a memorandum to the SQ/CC, the applicant's immediate supervisor or section supervisor attempted to contact the applicant via telephone and a message left on her answering machine each month during the period Oct 07 to Feb 08, but no call was returned.

On 6 Feb 09, according to AFRC/JA indorsement, the discharge package was found to be legally sufficient.

On 13 Feb 09, AFRC/A1KK memorandum, Subject: Notification of Initiation of Separation Under AFI 36-3209, was sent to the applicant via certified mail. On 19 Feb 09, it was returned to sender by the United States Postal Service (USPS).

On 13 Apr 09, according to AFRC/A1KK memorandum, a final legal review was requested, and on 19 May 09, AFRC/JA found the discharge package to be legally sufficient. On 2 Jul 09, the discharge authority approved the applicant's administrative discharge, and denied probation and rehabilitation.

On 21 Oct 09, according to Reserve Order XXXX, dated 22 Jul 09, the applicant was discharged from the Air Force Reserve with a general (under honorable conditions) service characterization, for unsatisfactory participation.

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

AIR FORCE EVALUATION

AFRC/JA (Staff Judge Advocate) recommends denying the application. The applicant provided no documentation supporting her claim that she participated in the rank of staff sergeant after the demotion effective date of 1 Nov 07, and she did not claim relief for the demotion action. The process for notifying the applicant of the discharge action was followed and there was no evidence of an error or injustice.

On 21 Sep 07, the SQ/CC denied the applicant the privilege of participating in the Air Force Reserve for pay and points, pending administrative discharge due to her non-participation. On 1 Nov 07, the group commander directed the applicant be demoted to the grade of E-4, pursuant to Air Force Instruction (AFI) 36-2503, *Administrative Demotion of Airmen*, dated 20 Jul 94, paragraph 17.1. *Not Participating in Reserve Training*. The demotion was executed by way of Reserve Order XXXX, dated 1 Nov 07, with an effective date of rank of 1 Nov 07. The record

does not include a notice of the demotion action addressed to the applicant, nor a response (if received).

AFRC/A1KK mailed the applicant a Notification of Initiation of Separation Action, dated 13 Feb 09. The Notice specifies the basis for the action as unsatisfactory participation. Among the attachments was a statement of reasons, which also reflected unsatisfactory participation. The applicant failed to respond within the allotted timeframe of 30 days, constituting a waiver of rights afforded her in accordance with AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 Apr 05, chapter 4, paragraph 4.10, and the action continued to be processed through closure.

On 2 Jul 09, the discharge authority, AFRC/CC, found the evidence proved the applicant accumulated nine or more unexcused absences within a 12-month time frame and directed she be discharged from the Air Force Reserve with a general service characterization, for unsatisfactory participation. According to Reserve Order XXXX, the applicant was discharged effective 21 Oct 09.

In accordance with AFI 36-3209, the notice is sent by registered or certified mail and first-class mail to the member's last known address. If a member fails to acknowledge receipt or submit a reply within 30 days, this constitutes a waiver of all rights. A tracking printout from the USPS confirms the notice was delivered to the applicant's address of record. It verifies the USPS attempted to deliver the notice and notified the recipient to come to the USPS to claim their mail. The Postmaster for the applicant's residential town, based on her address of record at the time, confirmed the Notice was delivered to the address given. Pursuant to Air Force Manual 36-8001, *Reserve Personnel Participation and Training Procedures*, dated 11 Jan 04, paragraph 1.2. *Satisfactory Participation*, a member is responsible for maintaining their current address and telephone number with the unit and Military Personnel Flight.

In support of the administrative discharge, the record contains documentation of behavioral issues with the applicant, to include her failure to show for scheduled UTAs without being excused. Several AF IMT 40A forms are included for the following periods: 10 Jun 07 (periods 3-4), 4-5 Aug 07 (periods 1-4), and 8-9 Sep 07 (periods 1-4). This is a total of 10 periods of unexcused UTAs within a 12-month period. Additionally, the unit continued to document that the applicant did not show to UTAs once placed in a no points/no pay status. As such, she should not be compensated any points or pay for this timeframe.

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 8 May 23 for comment (Exhibit D) and the applicant replied on 12 May 23. In her response, the applicant contended she is a Black American Native Indian veteran who served our country in the United States Navy, Army National Guard, and Air Force Reserve. During her reserve tours, she was able to work full-time, raise her daughter as a single parent, while pursuing her Master's degree in Business Management.

On 30 May 06, she reported under orders to her assignment in California. Upon mustering in her staff sergeant uniform, wearing ribbons from the Navy and Army, she felt immediately discriminated against by unit members. Her team leader was a white, male, senior airman who displayed embarrassment at her presence. She was not able to sit down with him to develop a training plan as he was pursuing his training plan to obtain her rank of staff sergeant. She felt out of place and discriminated against. The only agenda was to have the female team members

tell her she would have to remove her hair extensions. Her hair was pulled into a ponytail during drills.

Each month, due to the two-hour commute from her home to her duty location the unit would mail her orders to report for drill weekend with base/hotel accommodations. There were some drills she was planting flowers in front of the command and vacuuming the Commander's office, as well as emptying trash receptacles and organizing files. Hands down training finally occurred during the Vehicle Operator Apprentice Course conducted by the training group during a two-week active duty training which was completed on 12 Apr 07.

In a memorandum to the SQ/CC dated 9 Jun 07, the noncommissioned officer in charge states there were behavioral issues leading to the administrative discharge, which is allegedly documented. She has no knowledge of these documents, and she would have been counseled and signed acknowledgement. The only issue she recalls was informing training officers in the classroom of typos and technical instructions that were incorrect or missing from training manuals. Maybe this is assumed a behavior issue of an educated Black woman.

After completion of the Vehicle Operations Course, the unit failed to mail monthly orders for completion of UTAs. Her calls were not returned by the unit administrative office. Where are the orders that were generated to report for UTAs? Where are the muster sheets that were signed by her during her scheduled drill weekends with her squadron? AF Form 2096, *Classification/On-the-Job Training Action*, dated 17 Sep 07 reflects she was approved as a training technician. She was not given any recognition for this personnel success, nor had knowledge of the classification upgrade.

Finally, she was not informed by the unit of demotion from E-5 to E-4. This is a clear and blatant injustice as well as discrimination towards her as a Black woman with high recommendations from other branches where she has served.

Regarding the finding of the advisory opinion, her request for reinstatement to original staff sergeant rank was not listed in the memorandum. The memorandum failed to prove the unit provided her the AFRC/A1KK letter allowing her the right to respond within 30 days. In addition, there were no attempts by the command to document contact as to her well-being after any response. Monthly orders were mailed to her address which included directions for reporting and housing/hotel accommodations due to her two-hour commute to base on drill weekends.

She would like to see evidence of nine or more orders to report for drill participation that were mailed to her address and returned as undeliverable during those months in question. The Postmaster in her hometown has knowledge of her military status and ensured all packages and certified mail was delivered if addressed correctly. Orders for drill participation were delivered without fail until after completion of her two weeks active duty training on 12 Apr 07. It appears that biases, discrimination, and breakdown in communication have occurred, resulting in her dispute today.

The applicant's complete response is at Exhibit E.

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, to include the rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFRC/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant either performed or was excused from the scheduled UTAs in question. Additionally, there is evidence the applicant was provided notification of the pending administrative discharge action. In her rebuttal, the applicant confirmed the mailing address maintained by the unit and used to communicate with her was correct. Her failure to respond resulted in a waiver of her rights in accordance with AFI 36-3209. Additionally, the applicant contended the advisory did not address her request for reinstatement of her staff sergeant rank; however, the advisor did note there was no specific request for relief from the demotion action in the applicant's original request, she only requested compensation for unperformed UTA periods at the staff sergeant grade. The request for reinstatement did not occur until the applicant submitted her rebuttal, post-advisory. Nevertheless, the Board considered her request and found the demotion action was executed in accordance with AFI 36-2503 as a result of the applicant's non-participation and that information was included in her notification of discharge action. Finally, while the applicant claims she experienced discrimination during her service, no evidence was provided to substantiate the discrimination nor to reflect the applicant initiated a discrimination complaint through the appropriate command channels. 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-2023-00212 in Executive Session on 16 Nov 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 6 Jan 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRC/JA, w/atchs, dated 1 May 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 8 May 23.
Exhibit E: Applicant's Response, w/atchs, dated 12 May 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.

X

Board Operations Manager, AFBCMR