

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01110

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be credited with three months and nine days of active duty.

APPLICANT'S CONTENTIONS

He is three months and nine days shy of obtaining a two-year active duty requirement to qualify for a Veterans Affairs (VA) Home Loan Certificate of Eligibility (COE) and medical benefits. He does not have the down payment for a home hence why he is trying to get a COE. He will do any service required to achieve this. At the beginning of his career, he was transferred on a humanitarian assignment to take care of his ill mother. His discharge was an injustice as he was bullied and when he retaliated, he was discharged. He acknowledges he did not handle the situation well. He is currently working through a VA program to obtain his Information Technology (IT) Certification.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 12 Oct 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-47 for a pattern of misconduct. The specific reasons for the action were:

- a. Dated 26 Aug 83, AF Form 3070, *Notification of Intent to Impose Nonjudicial Punishment*, indicates the applicant received nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ) for failure to obey a lawful order to attend training. He received a reduction in rank to airman (E-2), suspended until 7 Mar 84.
- b. Dated 15 Sep 83, AF Form 3070, indicates the applicant received NJP, under Article 15, UCMJ, for using disrespectful language towards a superior noncommissioned officer. He received a reduction in rank to airman with a new date of rank of 4 Oct 83.

On 3 Nov 83, the Staff Judge Advocate found the discharge action legally sufficient.

On 14 Nov 83, the discharge authority directed the applicant be discharged for a pattern of misconduct, with a general service characterization.

On 22 Nov 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct-Pattern Conduct Prejudicial to Good Order and Discipline" and he was credited with 1 year, 8 months, and 22 days of total active service.

On 17 Aug 92, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 5 Sep 96, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

APPLICABLE AUTHORITY/GUIDANCE

According to the U.S. Department of Veterans Affairs website, eligibility requirements for the VA home loan program are as follows: If a veteran served between 8 Sep 80 and 1 Aug 90, they must meet the minimum active-duty service requirement if they served for: (1) at least 24 continuous months; (2) or the full period (at least 181 days) for which they were called to active duty; (3) or at least 181 days if they were discharged for a hardship or a reduction in force; (4) or less than 181 days if they were discharged for a service-connected disability.

AIR FORCE EVALUATION

AFPC/DP2SSR (Military Retirements and Separations) recommends denying the application finding no error or injustice with the discharge processing. A review of the applicant's Master of Personnel Record showed the Base Discharge Authority (BDA) directed separation upon review of the commander's recommendation for discharge. Once the BDA directed separation, the discharge is executed immediately and the applicant would have been separated within a matter of days. The date of separation listed on the DD Form 214 is correct as indicated and matches the date of separation listed in the military personnel database. The applicant separated from active duty on 22 Nov 83; therefore, they cannot grant additional time on active duty that was not served by the applicant for the purpose of any outside agency benefits.

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 20 Jun 23, for comment (Exhibit D), 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/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The applicant has provided no evidence which would lead the Board to believe his time in service calculation or his date of separation was annotated incorrectly per the governing regulation in effect at the time of his separation. There is no provision within the governing regulations that will allow this applicant to be given credit for military service not served. 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)*. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-01110 in Executive Session on 20 Jul 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 3 Feb 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSR, dated 14 Jun 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Jun 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.

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Board Operations Manager, AFBCMR