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

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### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02055

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COUNSEL: NONE

HEARING REQUESTED: NO

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### APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to reflect his active duty service.

### APPLICANT'S CONTENTIONS

He served in the Air force as an active duty member. He would like his active duty service corrected in order to apply for benefits through the Department of Veterans Affairs.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 26 Apr 10, according to AF Form 2030, *USAF Drug and Alcohol Abuse Certificate*, the applicant placed his initials in the column labeled "NO" for each question listed in Section II: Certification at Time of Application.

On 27 Apr 10, the applicant filled out and signed Standard Form 86, *Questionnaire for National Security Positions*. Block 23, *Illegal Use of Drugs or Drug Activity* has a check mark in the column labeled "NO" for each question listed.

On 30 Aug 10, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Regular Air Force.

On 2 Nov 11, the applicant filled out his Personnel Reliability Program (PRP) Questionnaire. In Section I: Member, the applicant annotated "YES" to questions 1, *Have you ever been involved in the unauthorized trafficking, cultivating, processing, manufacturing, or sale of any controlled or illegal drugs? (including cannabis-based products)*, and 2, *Have you ever been ticketed for a traffic violation or ever been in trouble with the police for something other than a traffic violation?* The applicant also states in the additional comments section that around the ages of 12-15 he was claustrophobic.

On 3 Apr 12, the applicant's commander issued a Letter of Reprimand (LOR) to the applicant. The LOR states that in his PRP Questionnaire, three of the applicant's answers reference incidents that were not disclosed in his initial paperwork for entry into the military. His failure to disclose these incidents in his initial paperwork is a violation of federal law and of Article 83 of the Uniformed

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Code of Military Justice (UCMJ), *Fraudulent Enlistment*. The applicant chose not to provide comments in response to the LOR.

On 16 Apr 12, the applicant's commander sent the applicant a memorandum recommending him for discharge for fraudulent entry. The authority for this action is Department of the Air Force Policy Directive (DAFPD) 36-32, *Military Retirements and Separations*, and Department of the Air Force Instruction (DAFI) 36-3208, *Administrative Separation of Airmen*, under the provisions of Chapter 5, Section C, paragraphs 5.13.4. The applicant's commander recommends that his service be characterized as under honorable conditions (General).

On 7 May 12, the applicant's commander sent the wing commander a memorandum recommending the applicant for discharge. The Judge Advocate (JA) reviewed the discharge recommendation and found it to be legally sufficient.

On 10 May 12, the applicant's commander sent a memorandum to the Military Personnel Flight (MPF), directing that the applicant be discharged for fraudulent entry. He also directs that the applicant's characterization of service is to be under honorable conditions (general).

On 31 May 12, according to DD Form 214, the applicant was discharged from the Air Force. Block 12, *Record of Service*, items c through g are all marked with "00". Block 28, *Narrative Reason for Separation*, reflects: Fraudulent Entry.

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

## AIR FORCE EVALUATION

AFPC/DP2MLT (Military Accessions) recommends denying the application. In accordance with (IAW) Department of Defense (DoD) 7000.14-R, *Finance Management Regulation*, Volume 7A, Chapter 1, Paragraph 7.19.5, *Service Not Creditable*, it states in sub-paragraph 2.2.1.1, the time served in an enlistment that is terminated, voided, or invalidated as fraudulent is not creditable service in the computation of pay. DAFI 36-3211, *Military Separations*, Chapter 7, *Reasons for Involuntary Separation*, Paragraph 7.19.5, *Credit for Service*, states that members discharged for fraudulent entry do not receive credit for the service they performed.

An additional advisory was submitted by AFPC/DPMSSR (Military Retirements and Separations), who also recommends denying the application. Review of the applicant's master personnel record reveals that the commander and Base Discharge Authority (BDA) conclude that the applicant admitted to performing illegal activities and being claustrophobic prior to entry onto active duty on a PRP questionnaire. These circumstances were not reported by the applicant on initial entrance forms he completed for eligibility to enter the Air Force. As a result, it was directed that the applicant be discharged from the Air Force for fraudulent entry. IAW DAFI 36-3208, paragraph 5.19.5, "Airmen discharged for fraudulent entry do not receive credit for the service they performed. Airmen receive credit if discharged for erroneous enlistment or the fraud is waived, and they are discharged for another reason." The BDA directed discharge for fraudulent entry and there is no evidence in the record that the BDA granted a waiver.

Based on the documentation and analysis of the facts, there is no evidence of an error or injustice. Block 12c, *Net Active Service This Period*, on his DD Form 214 reflects the correct period of service as 0 years, 0 months, and 0 days. Service determined to be fraudulent is not creditable service for pay or active duty.

The complete advisory opinions are at Exhibits C and D.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Nov 23 for comment (Exhibit E) 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 recommendations of AFPC/DP2MLT and AFPC/DPMSSR 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 Department of the 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.

## 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-2023-02055 in Executive Session on 9 May 24:

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Panel Chair

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Panel Member

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Panel Member

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

- Exhibit A: Application, DD Form 149, dated 10 Jun 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2MLT, w/atchs, dated 6 Nov 23.
- Exhibit D: Advisory Opinion, AFPC/DPMSSR, dated 7 Nov 23
- Exhibit E: Notification of Advisories, SAF/MRBC to Applicant, dated 8 Nov 23.

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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.

7/15/2024

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