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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03088

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be reinstated and promoted to master sergeant (E-7).
2. His records be backdated to 2019 when the investigation started
3. He be sent to the Basic Instructors Course with follow-on assignment as the Development and Instructor Noncommissioned Officer in Charge (NCOIC), W... Maintenance Group, Work-Product Work-Product

APPLICANT'S CONTENTIONS

He was informed he was not selected for reenlistment because he had been under investigation for three years. The case first started out with military authorities and closed out with no action taken on the part of the military. The case was then passed to civilian authorities and ended with all charges being completely dismissed. However, during the investigation, he was involuntarily removed from the Air Force several times, experienced multiple pay delays, detained on several occasions, coded incorrectly, threatened, bullied, harassed and locked in prison upon arriving to Work-Product AFB. He has always maintained his innocence regarding the allegations made against him and throughout this ordeal he has maintained his dedication to service and waited for the criminal process to exonerate him. Further, paragraph 6.8 states that his entire military record must be considered in determining whether to deny reenlistment. He has received several awards throughout his career, and his dedication and work ethic earned him a STEP promotion to technical sergeant.

He was wrongly accused; underwent a lengthy investigation; maintained his innocence; cooperated with all authorities throughout; and the case was dismissed. As he was never convicted and as the case was dismissed, there should have been no reason for denying his reenlistment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 4 Mar 03, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Regular Air Force.

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On 30 Oct 20, according to his Military Personnel Database System (MilPDS) record, he was promoted to the rank/grade of technical sergeant/E-6.

On 10 Jan 22, according to AFOSI ROI, Case # <redacted>, dated 26 Apr 23, a joint investigation between AFOSI and Alamogordo Police Department was initiated concerning four (4) allegations of Rape and Sexual Assault of a Child, a violation of Article 120, UCMJ against the applicant.

On 6 Apr 23, the 12th Judicial District Court, Alamogordo, NM, filed a Nolle Prosequi regarding this allegation due to lack of evidence. The “Nolle Prosequi explained the victim recanted her detailed description of sexual abuse by the [applicant] and was influenced by <redacted> to such a degree that a successful prosecution was unlikely at this time.”

On 10 May 23, according to AF Form 418, *Selective Reenlistment Program (SRP) Consideration/Denial of Continued Service for Airmen*, the applicant was non-selected for reenlistment and denied continued service by his commander and placed in RE code 2X; *Airman non-selected for reenlistment*. On that same date, the applicant acknowledged receipt.

On 15 May 23, according to AF Form 418, the applicant indicated he intended to appeal this decision.

On 16 May 23, according to AF Form 1411, *Extension of Enlistment in the Air Force*, the applicant requested a one (1) month extension to his current enlistment that he entered on 18 Dec 15. This was the seventh (7) extension to his current enlistment with all the extensions now totaling 48 months. It established a new DOS of 17 Jun 23.

On 18 May 23, applicant submitted his response to the denial of reenlistment.

On 14 Jun 23, according to memorandum, <applicant> 418 Conversation, the squadron first sergeant, provided the commander’s reasoning for the non-selection for reenlistment/denial of continued service:

- a. <Applicant’s> character has been brought into question on multiple occasions through investigations and substantiated sources.
- b. <Applicant> has failed to foster a positive culture of trust within the organization in his time at the 49 EMS.
- c. <Applicant’s> history demonstrated a potential discredit to the Air Force and compromise to operational security.

On 16 Jun 23, according to email from AFPC/DP3SA, provided by applicant, the AFPC Enlisted Retention Policy and Procedures Administrator, in coordination with AF/A1PPS, directed a constructive reenlistment with a DOE of 1 Jan 18 for a term of 5 years and 7 months and the member will execute any future extensions as needed IAW the AFI.

On 22 Jun 23, the applicant provided a response to the first sergeant’s memorandum.

On 26 Jul 23, according to *Retirement Application*, he applied for retirement with a requested retirement date of 1 Sep 23.

On 31 Aug 23, according to his DD Form 214, he was honorably retired in the grade of technical sergeant with the narrative reason of sufficient service for retirement. He was credited with 20 years, 5 months, and 27 days of active service.

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

APPLICABLE AUTHORITY/GUIDANCE

§509. Voluntary extension of enlistments: periods and benefits. (a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

AFI 36-2606, *Reenlistment and Extension of Reenlistment in the United States Air Force, Chapter 2, Reenlistment And Extension Of Enlistment In The Regular Air Force - Selective Reenlistment Program (SRP) [REGAF ONLY]*:

2.1. SRP Policy. Reenlistment in Regular Air Force (RegAF) is not an inherent individual right. It is a privilege and confers an obligation to serve.

2.6.8. Commander/civilian director considerations on SRP. Commander/civilian directors will consider the following before making a decision: 2.6.8.2. Unfavorable information from any substantiated source.

2.6.12.1.1. For Airmen non-selected under SRP, the commander/civilian director may discuss the non-selection with the Airman's supervisor before making their final decision. The commander/civilian director (may be designated to First Sergeant) will discuss non-selection with the Airman. The items being discussed will include the specific reasons for non-selection, areas needing improvement, promotion ineligibility (to include automatic cancellation of projected promotion line numbers) and the possibility of future reconsideration and selection.

Table 2.1. Reenlistment Appeal/Denied Continued Service Authority.

If the Airman:	Appeal Authority	See Note:
has 20 or more years TAFMS on current ETS; or is in the NCO Career Status Program and has 20 or more years TAFMS as of the date the commander/civilian director denied continued service. Also see paragraph 2.3.2.	Respective Group Commander	1, 2

has at least 16 years, but fewer than 20 years TAFMS on current ETS; or is in the NCO Career Status Program and has at least 16 but fewer than 20 years TAFMS as of the date the commander/civilian director denied continued service. Also see paragraph 2.3.2.	Secretary of the Air Force or delegated authority	1, 4
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Notes:

1. After the case file has been considered by the appellate authority, the appeal decision is final and the case cannot be sent to a level above that authority to have the decision overturned.

AFI 36-2606, Chapter 6, Extensions of Enlistment [REGAF ONLY], paragraph 6.2 Extension Limitations. 6.2.2. Voluntary extensions for all Airmen are limited to a maximum of 48 months per enlistment (10 USC § 509). This cannot be waived.

Enlisted Promotions Personnel Services Delivery (PSD) Guide, 26 Feb 20, Version 1:**Ineligible for Promotion Consideration - Promotion Eligibility Status Codes (PES)**

PES CODE	EXPLANATION	Grade Status Reason (GSR)
J	Denied or not selected for reenlistment.	

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. On 10 May 23, the applicant was non-selected for reenlistment by his commander. While the specific reasons for the denial of reenlistment were not listed on AF Form 418, it is clear from the applicant's submission the reasons were discussed with him. He submitted an appeal of the denial of reenlistment on 18 May 23. On 14 Jun 23, the applicant's unit submitted a memorandum detailing the reasons for being non-selected for reenlistment. The applicant was then given 10 days from 16 Jun 23 to submit his appeal, which he did so on 22 Jun 23. At the time his DOS was 17 Jun 23 and he was authorized to extend his enlistment through Jul 23 to allow enough time for his appeal to be processed. However, he had already extended his enlistment/reenlistment the maximum of 48 months, which by law cannot be waived. He then requested a constructive reenlistment to allow time for the appeal to be processed. This constructive reenlistment, approved by AFPC, established a new DOS of 31 Jul 23 and authorized him to extend in 30 day increments, as needed, to await the appeal decision. On 20 Jul 23, his appeal was denied and he acknowledged the denial the following day, 21 Jul 23. At this point, he could not stay in the Air Force past his established DOS of 31 Aug 23 and would have to separate or retire on his DOS. He applied and was approved for retirement with an effective date of 1 Sep 23.

The complete advisory opinion is at Exhibit C.

AFPC/DPMSPS recommends denying the request for promotion with an effective date of 2019. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice as he was ineligible for the 23E7 promotion board. On 30 Oct 20, the applicant was promoted to technical sergeant under the Promoting Under Stripes for

Exceptional Performers (STEP) process and there is no documentation supporting promotion beyond his current grade of technical sergeant. In accordance with the Enlisted Promotion Eligibility Chart, he would have been eligible for the 23E7 promotion board, however, per the Enlisted Personnel Delivery Guide, his promotion eligibility status code (PES) "J" rendered him ineligible for consideration.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Feb 24 for comment (Exhibit E), but has received no response.

AIR FORCE EVALUATION

AFPC/JA recommends denying the applicant's request for reinstatement and promotion. On 10 May 23, he was not selected for reenlistment by his commander who verbally provided the reasons for his denial to the applicant; however, this was not properly documented on the AF Form 418. On 15 May 23, the applicant elected to appeal the non-selection for reenlistment decision and provided his appeal response on 18 May 23. On 14 Jun 23, the applicant's first sergeant provided a detailed memorandum why the commander denied the applicant's reenlistment, which stated on 10 May 23, the commander verbally provided his reasons to the applicant for denying his reenlistment and the command team gave the applicant additional time to provide a response. On 22 Jun 23, he provided his response. On 20 Jul 23, the applicant's group commander denied the applicant's appeal and on the following day, 21 Jul 23, the applicant acknowledged the appeal denial.

The applicant properly submitted for reenlistment via the AF Form 428 and it was denied by his squadron commander. The commander verbally provided the reasons for denying the reenlistment in accordance with AFI 36-2606, paragraph 2.6.12.1.1., and subsequently documented the reasoning on a memorandum, dated 14 Jun 23. Further, since the applicant had over 20 years Total Active Federal Military Service (TAFMS) at the time he submitted his request for reenlistment, his group commander was the appropriate appellate authority who denied his appeal.

In regard to his request to be reinstated as a master sergeant, there is no evidence of an error or injustice in the applicant's promotion records and he has provided no justification as to why he should be reinstated as a master sergeant. However, if he is reinstated on active duty, he should enter as a technical sergeant.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 4 Sep 24 for comment (Exhibit G), but has received no response.

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 thoroughly 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/DPMSSM, AFPC/DPMSP, and AFPC/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. Reenlistment in the Regular Air Force in not an inherent individual right. While the applicant contends there were no grounds for his commander's decision, the Board notes his squadron commander provided his reasons, both verbally and by memorandum, to the applicant; applicant's character, failure to foster a positive culture of trust, and personal history demonstrating a potential discredit to the Air Force and compromise to operational security. The Board also notes the applicant's command team provided him additional time to appeal the denial to the appellate authority, who upon reviewing all the evidence denied the applicant's appeal. Further, the Board finds applicant provided no evidence his promotion records are in error and has failed to provide any evidence or documentation that he was considered for and promoted to master sergeant. Based on the foregoing, the Board finds the applicant's commander and appellate authority both acted well-within their authority to deny the applicant's reenlistment. Further, the Board determines the commander's decision was neither arbitrary or capricious and that the applicant's situation to be no different from similarly situated Airmen. Therefore, the Board recommends against correcting the applicant's records.

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 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-2023-03088 in Executive Session on 26 Nov 24:

Work-Product Panel Chair

Work-Product Panel Member

Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 8 Feb 24.
- Exhibit D: Advisory Opinion, AFPC/DPMSP, dated 26 Feb 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Feb 24.
- Exhibit F: Advisory Opinion, AFPC/JA, dated 28 Aug 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Sep 24.

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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.

12/9/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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