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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03249

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her entry level separation (ELS) characterized as "Not Applicable" be changed to honorable.

APPLICANT'S CONTENTIONS

She was told at the time of her separation, her character of service would be honorable. She was also told by the Total Force Service Center if she served over six months it would be honorable and the Department of Veterans Affairs has characterized her service as honorable.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1) who enlisted in the Air Force on 29 Feb 84.

On 26 Aug 84, 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 5-23 for unsatisfactory entry level performance and conduct. On this same date, the applicant acknowledged receipt of the notification. The specific reasons for the action were:

- a. On 27 Jul 84, the applicant was issued a Letter of Reprimand (LOR) for failing to report to her placed of assignment from 23 Jul thru 26 Jul 84.
- b. On 15 Aug 84, the applicant was counseled for a traffic violation, failing to stop at a stop sign and not wearing a seat belt.
- c. On 23 Aug 84, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for being absent without leave (AWOL) on or about 8 Aug 84 thru 10 Aug 84. She received a forfeiture of \$148.00 in pay for one month.

On 17 Sep 84, the Deputy Staff Judge Advocate found the discharge action legally sufficient.

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Controlled by: SAE/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 25 Sep 84, the discharge authority directed the applicant be discharged with an ELS.

On 3 Oct 84, the applicant received an ELS with a character of service noted as "Not Applicable." Her narrative reason for separation is "Entry Level Performance and Conduct" and she was credited with seven months and five days of total active service.

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

APPLICABLE AUTHORITY/GUIDANCE

AFR 39-10, *Administrative Separation of Airmen*, dated 1 Oct 82, describes the authorized service characterizations that were applicable at the time of the applicant's separation.

Honorable. The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

Under Honorable Conditions (General). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

AFPC/DP3SP recommends denying the application finding no error or injustice with the discharge processing or the preparation of the DD Form 214. In accordance with AFR 39-10, paragraph 1-

19, airmen are in entry level status during the first 180 days of continuous active military service. The timeline for declaring entry level status is the date that discharge action is initiated. In this case, the applicant's commander notified the applicant of the intent to discharge her on 26 Aug 84, which at the time made the applicant's total service reflect 5 months and 28 days, within the 180-day timeline, which makes the discharge entry level. Furthermore, the base legal office reviewed the discharge package and found the discharge legally sufficient to support entry level separation with uncharacterized service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

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 Jun 24 for comment (Exhibit D), and the applicant replied on 30 Jun 24. In her response, the applicant contends she finds it hard to believe she was first notified on 26 Aug 84 of the discharge action by her commander as this was a Sunday and neither she nor her commander were on duty. Counting calendar days, she would have served exactly 180 days from this count; however, she believes her commander notified her after the 180-day point.

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, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the commander's notification letter obtained from her military personnel records shows she was notified of the intent to discharge her on 26 Aug 84, which is 180 days from the day she enlisted; therefore, her DD Form 214 correctly annotates her ELS and "Not Applicable" characterization. Furthermore, the Board finds the applicant has provided insufficient evidence an honorable service characterization during her active service is clearly warranted by unusual circumstances of personal conduct and performance of military duty. During her relatively short period of service, she had several disciplinary issues which were the cause of her discharge. Lastly, the Board finds the DVA's characterization of the applicant's service has no bearing on the characterization indicated on her DD Form 214. Therefore, the Board recommends against correcting the applicant's records. 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)*. The Board does not find it in the interest of justice to waive the three-year filing requirement finds the application untimely.

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-2023-03249 in Executive Session on 30 Oct 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, w/atchs, dated 30 Sep 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPMSSR, dated 4 Jun 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Jun 24.

Exhibit E: Applicant's Response, w/atchs, dated 30 Jun 24.

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