



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03254

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His original enlistment on 19 Apr 22 for six years in the grade of airman first class (E-3) be restored.

APPLICANT'S CONTENTIONS

He was the victim of mistaken identity and a fraudulent charge. He was cleared of all charges and was able to reenlist back in the Air Force in 2023.

He graduated from basic military training (BMT) and was attending technical school when he was arrested due to a warrant being issued for his arrest for a fraudulent prescription purchase in Richmond, VA in 2020. He was the victim of mistaken identity and was charged for a crime he did not commit. Within two weeks, he was discharged from the Air Force. His case was dropped and he was exonerated of all charges. He then went back to his recruiter and was offered a four year enlistment with the grade of airman basic (E-1).

The false accusation occurred in Richmond, VA in Dec 20. During the time, he did not live in Richmond, VA. Further, the wrong address and spelling of his name were used. Although he learned in training, the name on a warrant should be exact and he had never once been put in handcuffs, except for training, no one cared to listen to his testimony. The Air Force has been a part of his life since he was born as his father served for 23 years. He still desires to stay in the Air Force and requests his original enlistment in the grade of E-3 be restored.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving airman basic (E-1).

On 19 Apr 22, the applicant enlisted in the Air Force for a period of six years in the grade of E-3 in Air Force Specialty Code (AFSC) 3P0X1 (Security Forces).

While attending technical training, the applicant was notified by his commander on 25 Jul 22 he was recommending he be discharged for erroneous enlistment, entry level separation (ELS), per DAFI 36-3211, *Military Separations*. The specific reason for the recommendation was an investigation disclosed he was alleged to have obtained or procured a drug or controlled substance by fraud, deceit, misrepresentation, embezzlement or subterfuge. Had the Air Force known he was under investigation for the allegations, he would not have been permitted to enlist in the Air Force.

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Controlled by: SAF/MRB
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POC: SAF.MRBC.Workflow@us.af.mil

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In a response dated 28 Jul 22, the applicant stated he was wrongfully accused of the allegations. The applicant addressed that the information on the warrant was incorrect, to include that his name was spelled differently and the address provided was not his home address.

On 2 Aug 22, the staff judge advocate (SJA) found the discharge recommendation legally sufficient.

On 10 Aug 22, the discharge authority approved the applicant's discharge for erroneous enlistment and directed he be discharged with an ELS, without the opportunity for probation and rehabilitation.

On 18 Aug 22, the applicant was discharged with an ELS and narrative reason for separation of "Erroneous Entry." He served four months of active duty service.

The applicant provides a letter from his counsel, dated 12 Oct 22, stating the prosecutor issued a *nolle prosequi* (no longer prosecute the case) and the judge entered the *nolle prosequi* in the case. The counsel wrote she hoped the information would be sufficient for the military to reinstate him.

On 20 Apr 23, he enlisted in the Air Force for a period of four years in the grade of E-1 in AFSC 3P0X1.

The applicant provides a letter of support from his squadron commander (SQ/CC), dated 13 Sep 23, recommending the applicant's original six year enlistment be honored and that he be allowed to promote to the grade of E-3 per his six year contract. The evidence clearly showed he was exonerated from all formal charges by the court system and he was allowed to resume his Air Force career field. The occurrence was unfortunate; however, the AFBCMR could remedy the situation that was outside of the applicant's control and honor the original contract.

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

AIR FORCE EVALUATION

AFPC/DPMLT (Accessions) recommends denial. The applicant was discharged with the recommendation of his commander and the discharge was affirmed by the SJA based on the information available at the time. He was discharged while still pending court proceedings and without any additional information from outside sources. Granting relief of the original enlistment contract would entitle the applicant to back pay, entitlements and promotion while not currently serving after the discharge date and falsely eliminate the current break in 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 24 Oct 23 for comment (Exhibit D) 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 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/DPMLT and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the Board notes the applicant provides a letter of support from his SQ/CC, the Board does not find the recommendation persuasive to grant relief. The Board finds that based on the information at the time, the applicant's discharge was found legally sufficient and consistent with Air Force policy. The applicant was then permitted to reenlist upon the prosecutor's decision to not prosecute the case. The Board found no evidence the applicant was treated unjustly or that there was any error in the discharge processing to warrant restoring his initial enlistment for six years in the grade of E-3. Therefore, the Board 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 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-2023-03254 in Executive Session on 8 Feb 24:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 13 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMLT, w/atchs, dated 23 Oct 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 24 Oct 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.

5/17/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF