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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03273

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

Her official military personnel record be amended to reflect the following:

- a. Twenty years active service with back pay.
- b. Appropriate advances in rank/grade.
- c. Military retirement.

### APPLICANT'S CONTENTIONS

She is seeking back pay based on a 20-year career to include appropriate increases for advancing rank as well as retirement. The law stipulating one must be discharged from the military if pregnant was illegal, discriminatory, and an injustice. She has always carried this injustice with her but did not learn until a few months ago this law no longer stands. Thanks to House Resolution (H.R.) 5447, this law was considered discriminatory and is no longer in effect.

Her records were falsified. She was discharged due to pregnancy. This is discrimination and an injustice. Her intent was to make the United States Air Force Nursing Corps her career. She spent four years in civilian nursing. She knew a career in the military was her primary objective. She married a pilot and became pregnant. She concealed her pregnancy for six months as she knew she would be discharged if discovered, and she did not want that. When her commander asked about her pregnancy, she was out that day. Because she had to conceal her pregnancy, she was not able to seek pre-natal care. This jeopardized her baby and herself. Her records were falsified to indicate she was three months pregnant, not six months, at discharge. Her husband could keep his career, but she lost hers. She discovered the injustice and discrimination immediately, but since it was a law on the books, she could not do anything to correct it until the law changed due to its discriminatory nature.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve first lieutenant (O-2).

On 10 Jan 68, according to an applicant memorandum to her group commander, she requested discharge from all appointments held by her in the United States Air Force under paragraph 25, Air Force Regulation (AFR) 36-12, *Administrative Separation of Commissioned Officers and*

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*Warrant Officers of the Air Force.* The reason for her request is her pregnancy of approximately three months duration. Attached in support was an 804 MDG/MSHG memorandum, same date, which stated the applicant was being seen in the Obstetrical Clinic and had an estimated date of confinement of 4 Jun 68.

On 11 Jan 68, according to 1st Indorsement to the applicant's memorandum, dated 10 Jan 68, the applicant's group commander recommended her application for discharge be approved.

On 24 Jan 68, according to a SAC/DPMPs memorandum, Subject: Application for Discharge, provided by the applicant, her request for discharge was approved. The memorandum directed the orders show reason and authority: SDN [Separation Designator Number] 541, paragraph 40a, AFR 36-12, and this letter.

On 29 Jan 68, according to SAC message, R 292218Z Jan 68, Subject: Application for Discharge, the SAC/DPMPs memorandum, dated 24 Jan 68, should read as follows: show in orders reason and authority: SDN 541, paragraph 25, AFR 36-12, and this letter.

According to Special Order Work-Pro..., dated 31 Jan 68, the applicant was relieved from assignment and honorably discharged from all appointments in the Air Force, effective 9 Feb 68. Authority: Paragraph 25, SDN 541, AFR 36-12 and SAC letter, dated 24 Jan 68, Application for Discharge.

On 9 Feb 68, according to DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, the applicant was furnished an honorable discharge, with Reason and Authority: SDN 541, paragraph 25, AFR 36-12, and SAC letter, dated 24 Jan 68, Application for Discharge, and was credited with 1 year, 8 months, and 14 days 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**

H.R. 5447, *Women Discharged from the Military Due to Pregnancy Relief Act of 2002*, was introduced in the House on 24 Sep 02, during the 107th Congress, but was not enacted. The purpose of the act was to convey that women who served in the United States Armed Forces before 23 Feb 76, should not have been involuntarily discharged due to pregnancy and expressed remorse for the women who endured unnecessary and discriminatory actions because they became pregnant while a member of the Armed Forces. The Act suggested several forms of payment and allowances, to include changing records for officers to show they completed five additional years of active duty service.

In accordance with AFR 36-12, dated 1 Aug 63:

### **Section C – Discharge Upon Application**

25. *Women Officers – Pregnancy.* The discharge of an officer who is pregnant is governed by paragraph 40. A nonprobationary Reserve officer who does not desire her case to be considered by a board of officers may apply for discharge under the provisions of this paragraph. (SDN 541).

### **Section D – Involuntary Discharge**

40. *Women Officers – Pregnancy or Minor Children.* The discharge of an officer under this paragraph will be effected at the earliest practicable date. Normally, officers separated under this

paragraph will be honorably discharged. If other factors are involved which would warrant separation under other directives prescribing other than honorable separation, the provisions of those directives will govern.

a. *Pregnancy.* A woman officer will be discharged from the service when a determination is made by a medical officer she is pregnant. This does not preclude her retention in the active military service in a patient status if hospitalization for conditions other than pregnancy is required. (SDN 541).

## **AIR FORCE EVALUATION**

AFPC/DPMSSR recommends denying the application. Based on the applicant's request and the Master Personnel Record, there is no error or injustice with the discharge processing or the preparation of the DD Form 214.

Review of the applicant's Master Personnel Record revealed the applicant submitted a signed voluntary request for separation based on pregnancy on 10 Jan 68. This request was processed by her chain of command and approved. The applicant separated on 9 Feb 68. Although the applicant claims she was forced to separate against her will, we see no evidence of this circumstance in the record, nor did the applicant provide any valid documentation as evidence such a circumstance took place. In addition, it has been approximately 56 years since the applicant separated from the Air Force, an excessive length of time which is well beyond the Air Force Board for Correction of Military Records (AFBCMR) required three years of discovery of an error or injustice and puts the service at a disadvantage. Furthermore, we do not grant additional hypothetical active duty time that was not actually served, nor grant hypothetical rank promotions with the intent of granting retirement that was not earned by actually serving on active duty. The applicant had ample opportunity throughout the years to visit an in-service recruiter in order to try to rejoin the Air Force or any other military service at any time. Finally, the SDN 541 listed on the applicant's DD Form 214 is the code for "Pregnancy" that was used at the time of the applicant's separation.

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 6 Jun 24 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/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant voluntarily requested discharge and release from all appointments in the Air Force due to pregnancy. Her request was approved in accordance with the guidance in effect at that time, as reflected on the applicant's DD Form 214. Additionally, while introduced, H.R. 5447 was not enacted into law. 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 (DAFI) 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 and finds the application untimely.

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-2023-03273 in Executive Session on 13 Aug 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 23 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 6 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.

10/7/2024

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