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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01463

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His referral Enlisted Performance Report (EPR) rendered for the period 8 May 2009 thru 6 November 2009 be removed from his records.

APPLICANT'S CONTENTIONS

The referral EPR was a commander directed evaluation as part of his wrongful discharge in December 2010 due to a misdiagnosis of a personality disorder. The referral EPR stems from his first Letter of Reprimand (LOR) which was unjust; and the second LOR was based on allegations and hearsay in order to build a discharge case leading to his wrongful discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force Reserve (AFR) technical sergeant (E-6).

On 25 March 1998, according to the DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant entered active duty.

On 10 August 2009, the applicant was issued an LOR which reflects on 4 July 2009, he was assigned to work the Rockin' 4th Festival. Upon reporting for duty, he did not contact his direct supervisor. Furthermore, when the festival was over, he left his post to go home without checking in. He was instructed earlier in the night by another technical sergeant he was supposed to meet back at the vehicle bay prior to going home. What aggravated this was he was verbally counseled a few days prior on the importance of getting permission from his supervisor and reporting to leadership, after taking leave in the area without being assigned an official leave number. The applicant acknowledged receipt of the notification on 10 August 2009 and was advised he had three duty days to provide a response. The applicant did not provide a response.

On 24 September 2009, the applicant was issued an LOR for inappropriately using his position as a Noncommissioned Officer (NCO) to solicit three 569 USFPS airmen to unlawfully detain his wife and conduct a search/inspection of his privately owned vehicle on 30 August 2009. His conduct and behavior were in direct violation of Article 92 (Failure to obey order or regulation), of the Uniform Code of Military Justice (UCMJ) and constituted an abuse of authority. The applicant acknowledged receipt of the notification on 29 September 2009 and was advised he had

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three duty days to provide a response. The applicant indicated he would submit matters in response to the LOR (he provided a verbal response).

AF Form 910, *Enlisted Performance Report (AB thru TSgt)*, (Referral Report) rendered for the period 8 May 2009 thru 6 November 2009, Section I, Ratee Identification Data, Block 9, *No. Days Supervision* reflects 183; Block 10, *Reason for Report* reflects "Directed by Commander." Section III, *Performance Assessment*, Block 1, *Primary/Additional Duties* reflects "Meets;" Block 2, *Standards, Conduct, Character & Military Bearing* reflects "Does Not Meet;" Block 3, *Fitness* reflects "Meets;" Block 4, *Training Requirements* reflects "Above Average;" Block 5, *Teamwork/Followership* reflects "Meets;" Block 6, *Other Comments* reflects "Work-Prod... is not ready for promotion at this time;" Section V, *Overall Performance Assessment* reflects "Needs Improvement;" Section VI, *Additional Rater's Comments*, reflects "Concur;" and "I have carefully considered Work-Product's comments to the referral memo of 13 Nov 2009."

On 5 April 2010, the applicant's commander recommended he be discharged from the Air Force for a condition which interferes with military service: Personality Disorder. The authority for the recommendation reflects AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraphs 5.11.9.1. Further a commander-directed mental health evaluation was accomplished on 15 October 2009. The doctor believed the applicant's erratic and maladaptive behavior reflected an underlying personality disorder which significantly impaired his ability to function in a military setting. The doctor also believed because of the applicant's disorder he was unsuitable for continued military service. This was concluded after he presented with symptoms of poor judgment, poor insight, erratic behavior in numerous settings and relationships, marital separation with associated legal issues, financial debt, and loss of job status/responsibilities.

On 10 December 2010, according to the DD Form 214, the applicant was honorably discharged from active duty in the grade of technical sergeant. He served 12 years, 8 months and 16 days of total active service. The narrative reason for separation reflects "Personality Disorder."

On 31 January 2019, the Air Force Discharge Review Board (AFDRB) considered and approved the applicant's requests to change his narrative reason for separation and reenlistment eligibility (RE) code. The board concluded neither the evidence existed to convince the board the discharge was improper based on an incorrect medical health diagnosis. Therefore, the board determined the discharge narrative reason for separation was more accurately described as Secretarial Authority. Additionally, the RE code was changed to 3K.

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

AIR FORCE EVALUATION

AFPC/DP3SP recommends denying the application. The applicant did not file an appeal through the Evaluation Report Appeals Board (ERAB) under the provisions of AFI 36-2406, *Correcting Officer and Enlisted Evaluation Reports*, due to his separation status from active duty. However, it is worthy to note the contested EPR has been a matter of record for over 14 years. The test to be applied is not merely whether the applicant discovered the error within three years, but whether through due diligence, he could or should have discovered the error. The applicant unreasonably and inexcusably delayed in asserting this claim. He waited 14 years to file this appeal due to his focus on correcting his DD Form 214 and RE code, which was approved in 2018. As a result of

this very long delay, memories have either faded or are not available, and these factors seriously complicate any ability to determine the merits of the applicant's request. The Air Force asserts the applicant's unreasonable delay regarding a matter dating back 14 years has greatly complicated its ability to determine the factual merits of the applicant's position.

Furthermore, IAW AFI 36-2406, paragraph A2.4 (*Time Limit Waivers*). The applicant can request a waiver of the three-year time limit by citing unusual circumstances prevented filing the appeal in a timely manner. However, ratees are responsible for reviewing their records at least annually for accuracy and the board should consider the due diligence of the applicant to apply for correction. Applications which do not include a waiver will be returned without action. Grounds for a waiver do not include the following: failing to understand the appeals process; being discouraged from appealing by superiors, peers, or counselors; failing to understand how serious an impact an evaluation could have on your career in later years; and not reviewing your records during the intervening years. Although, the applicant stated he was focused on correcting his DD Form 214, he has not provided a convincing circumstance which would have prevented him from submitting the application in a timely manner and although the AFBCMR is not governed by AFI 36-2406, AFPC/DP3SP recommends denial based on timeliness alone and urge the AFBCMR to come to the same conclusion.

The applicant contends his referral EPR was based on an unjustified Letter of Reprimand (LOR). The first LOR the applicant was issued on 10 August 2009, for failure to make contact to his direct supervisor before and after his shift. The second LOR was issued on 24 September 2009, for unlawfully detaining his wife and conduct a search/inspection of his privately owned vehicle. After reviewing the applicants supporting documentation, it appears the request does not adhere to the requirements in AFI 36-2406 paragraph A2.2, as the applicant has not provided clear evidence the contested evaluation is unjust or wrong. Additionally, it is the applicant's responsibility to document their appeal with information from sources which are credible, relevant, and believable. Unsubstantiated conjecture about the motives of his evaluators, or how or why his evaluation turned out as it did, does not contribute to his case. He must provide factual, specific, and substantiated information which is from credible officials and is based on firsthand observation or knowledge. Statements or Memorandum for Records (MFRs) written by yourself on the events which you believe lead to the contested evaluation are not creditable evidence unless supported by another credible official. Furthermore, IAW AFI 36-2406, paragraph 10.2.1.3., states the "Evaluations that have become a matter of record are presumed to be accurate and objective." Once a report is accepted for file, only strong evidence to the contrary warrants' correction or removal from an individual's record. The burden of proof is on the applicant to prove an error or injustice. The applicant has not substantiated the contested EPR was not rendered in good faith by all evaluators based on the knowledge available at the time.

Air Force policy states an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all members of the rating chain-not only the support but, also for clarification/explanation. Statements from the evaluators during the contested period are conspicuously absent. The applicant has failed to provide the necessary information/support from any rating official on the contested EPR. Without the benefit of these statements, we can only conclude the EPR is accurate as written. It is determined the EPR was accomplished in direct accordance with all applicable Air Force policies and procedures.

The complete advisory opinion is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 20 June 2024 for comment (Exhibit D), and the applicant replied indicating when the EPR was issued the commander already initiated a psychological evaluation in which a wrongful diagnosis of "Personality Disorder" was declared. After this diagnosis the commander requested the performance report as part of the discharge procedure needing it to be a referral using two prior LORs for one minor incident for which he already received verbal reprimand and for one unsubstantiated incident was taken out of context and misses reliable resources to justify the allegation. He submitted a rebuttal; however, he was already being processed for discharge. During the same time his former wife initiated a German child custody case in a German court system (all which is explicitly explained in the attached German Supreme Court, Declaration of Wrongfulness). On 10 December 2010, he was discharged, given a five-year barment letter from reentering any military installation. He was sent to his home of record (Work-Product) on 11 December 2010 leaving his former wife and two children in Work-Product. He returned to Work-Product on 11 January 2011 on a tourist visa only to discover his former wife had illegally abducted his children to Work-Prod... He traveled in pursuit of his children to Work-Prod... and attended Icelandic court proceedings with the Icelandic Supreme Court regarding the abduction (reference Icelandic Supreme Court Judgment). His former wife was ordered by the Icelandic Supreme Court to return with the children back to Work-Product where the custody proceedings were still ongoing. It was not until summer 2013 when he returned back to the United States. Between 2009 and 2013, it was difficult to apply for ERAB during an ongoing international child abduction case in foreign lands. He did not have important military paperwork until 2013 (reference HHG invoice dated from 11 June 2011 thru 29 March 2013) which placed him outside of the three-year time limit. In 2018, the AFBCMR corrected his DD Form 214 and changed his RE code - clearly stating they did not agree with the diagnosis which led to his discharge. He was able to reenlist in 2019 in the Air Force Reserve. Ten years has passed since the issuance of the referral EPR. He reached out to the ERAB via myPers only to be informed to apply to the AFBCMR again. IAW AFI 36-2406 paragraph A2.5.7, A2.5.8, A2.5.13, the LORs were undue emphasis on isolated incidents where an alleged illegal search of his wife's vehicle was misconstrued to justify the referral EPR. His work performance during and after the isolated incident did not waiver. During the time between the two LORs, little to no counseling or feedback was conducted by his first sergeant. He had no alternative but to react with an IG/Congressional complaint regarding the unjust/wrongdoing. He has lost valuable years in the service due to the wrongful discharge. He is proudly serving his country again and despite the bitterness of these events, he is providing the best support and guidance possible to his troops. He hopes the Board agrees with his hardship and waive the time limit for his request to void the referral EPR.

The applicant's complete response is at Exhibit E.

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/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes once a report is accepted for file, only strong evidence to the contrary justifies correction or removal from an individual's record. The applicant has not provided substantiating documentation

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or evidence to prove the final EPR was rendered unfairly or unjustly. The applicant has failed to provide support from any rating official. Further, Air Force policy is an evaluation report is accurate as written when it becomes a matter of record. 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-2024-01463 in Executive Session on 11 February 2025:

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 17 April 2025.

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

Exhibit C: Advisory Opinion, AFPC/DP3SP, w/atchs, dated 12 June 2024.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 June 2024.

Exhibit E: Applicant's Response, w/atchs, not dated.

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.

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