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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03658

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. She be awarded active duty service credit for the period of 19 Aug 23 to 11 Sep 24 (390 days).
2. She receive all back pay, allowances and entitlements.
3. She be granted an extension of Active Guard Reserve (AGR) orders for the period of 31 Jul 26 to 31 Mar 27 (244 days) to reach 20 years of satisfactory service.
4. She suffer no reprisal as a result of multiple post court martial inspector general (IG) complaints.

APPLICANT'S CONTENTIONS

On 10 Jul 23, she was on active duty orders when she was recalled for a unit sweep urinalysis. She subsequently tested positive. On 1 Aug 23, she was offered nonjudicial punishment (NJP). She refused the Article 15 and demanded trial by court martial. On the same day, her command took action to curtail her active duty orders.

Instead of a court martial, on 14 Aug 23, her unit issued her a Letter of Reprimand (LOR). Despite the LOR being upheld, she was recalled to active duty for court martial. On 18 Jun 24, she was found Not Guilty by a court martial. Aside from the 14 days she spent on orders for the court martial, she lost 376 days of active duty service due to an unjust curtailment decision.

Her request for court martial should have been honored and her orders should never have been curtailed. She was formally acquitted by the special court martial on 18 Jun 24. She now seeks full restoration in light of the many injustices she has endured at the hands of Air Force Reserve officers. The rash and unjust action removed her from service and severed her family's access to health care.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve lieutenant colonel (O-5).

Per Special Order dated 19 Oct 22, the applicant was placed on extended active duty (EAD) orders per 10 U.S.C. § 12301(d), effective 12 Dec 22 to 31 Jul 26.

On 27 Jul 23, the Security Forces Squadron (SFS) was notified of a positive urinalysis from the applicant's urine sample. The sample resulted in 254 nanogram/milliliter (ng/mL) of cocaine. The Department of Defense (DoD) cutoff for the substance is 100 ng/mL. The SFS initiated an investigation to determine if the applicant knowingly ingested cocaine. The applicant was interviewed on 28 Jul 23. She stated she never used cocaine but the week prior to the urinalysis, her sister-in-law who uses marijuana and mushrooms was in town. She also stated while providing the urine sample, she dropped the container and there was a chance for cross contamination. She also stated her son had been caught by the police for using marijuana.

On 1 Aug 23, ARPC/DPA advised the applicant he was initiating action to determine if her AGR tour should be curtailed in accordance with DAFMAN 36-2114, *Management of the Air Force Reserve Individual Reserve (IR) and Full-Time Support (FTS) Programs*. This was because of a positive urinalysis drug test which indicated wrongful use of cocaine.

The applicant provides a LOR dated 9 Aug 23, the LOR states an investigation disclosed she wrongfully used cocaine, failed to report for a unit recall and made false statements regarding the reasons for her tardiness. Specifically, it stated between 3 and 10 Jul 23, she wrongfully used cocaine, resulting in a positive urinalysis. On 10 Jul 23, she failed to report on time to the unit recall and drug urinalysis. She then provided the reason for her lateness was due to her participation in physical training (PT); however, text messages reflected she was aware of the recall at 0707 hours and was texting other unit members regarding the recall until 0746 hours. In a response dated 13 Aug 23, she expected the court martial charges to be preferred. She stated she did not use cocaine and she never would. There were mishaps in the urinalysis procedure and shortcomings by the observers. There were multiple untrained individuals who lacked knowledge of the Drug Demand Reduction Program (DDRP) operating procedures. She provided a timeline for the period 3 Jul 23 to 10 Jul 23. There were also 38 members who were late to the unit recall. Further, she had an approved telework agreement for Mondays and Fridays. Neither the LOR nor the applicant's rebuttal response are filed in the applicant's Automated Records Management (ARMS) record.

On 10 Aug 23, the AFRC/CD considered the matters provided by the applicant and approved the involuntary curtailment of the applicant's AGR tour. On 16 Aug 23, the AFRC/CD informed applicant's counsel his decision to curtail the applicant's AGR order stands and there was no change.

On 18 Aug 23, the applicant was honorably released from active duty with a narrative reason for separation of “Completion of Required Active Service.” She was credited with 8 months and 7 days of active duty service.

SAF/IGS provides Automated Case Tracking System (ACTS) for FRNO 2024-01068, FRNO 2024-16526, FRNO 2024-00444, FRNO 2024-16254 and FRNO 2023-14752. The applicant filed multiple IG complaints against her commander and AFRC pertaining to her positive urinalysis sample for cocaine and curtailment of AGR tour. The applicant was unhappy with the DDR process and alleged things were not done in accordance with instruction and laws. On 13 Feb 24, the United States Space Force (USSF) Delta Commander informed the IG that the issues raised by the applicant would likely be looked at during the trial, the Judge Advocate (JA) and IG both agreed a commander directed inquiry (CDI) was not appropriate at the time and no action would be taken.

The Entry of Judgment in the applicant’s court martial shows she was tried by a special court martial (SPCM) on 21 Jun 24. She pled Not Guilty and was found Not Guilty of one charge and one specification of wrongfully using cocaine, a Schedule II controlled substance, between 3 Jul 23 and 10 Jul 23, in violation of Article 112a, Uniform Code of Military Justice (UCMJ).

The applicant’s records include an AF Form 77, *Letter of Evaluation*, dated 10 Jul 25, which states, “No evaluation available for the period 1 Jun 23 through 11 Sep 24. No evaluation required in accordance with AFI 36-2406.”

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisory opinion at Exhibit E.

APPLICABLE AUTHORITY/GUIDANCE

10 U.S.C. § 1034(b)(1) Prohibition of Retaliatory Personnel Actions. No person may take (or threaten to take) an unfavorable personnel action or withhold (or threaten to withhold) a favorable personnel action, as reprisal against a member of the armed forces for making or preparing or being perceived as preparing to make protected communication.

DAFMAN 36-2114, *Management of the Air Force Reserve Individual Reserve (IR) and Full-Time Support (FTS) Programs*, paragraph 6.4.9, Commanders considering involuntary curtailment are encouraged to consider use of all quality force tools available prior to initiating an involuntary curtailment. In accordance with Table 6.4, *AGR Involuntary Curtailment Approval and Appeal Authority*, the approval authority for the applicant’s AGR tour is the AFRC/CD. On 10 Aug 23, the AFRC/CD approved the curtailment of the applicant’s AGR tour.

AIR FORCE EVALUATION

AF/JAJI recommends denial and finds insufficient evidence to recommend relief on the basis of a legal error. The advisory opinion will address the applicant's offer of NJP, LOR and court martial.

On 10 Jul 23, the applicant provided a urine sample during a unit sweep. On 27 Jul 23, SFS/S2I (Security Forces Investigations) was notified the applicant's urinalysis results were reported as positive for cocaine at a level of 254 ng/mL. The DoD cutoff is 100 ng/mL.

On 1 Aug 23, the applicant was offered NJP under Article 15. After consulting counsel, the applicant demanded trial by court martial.

On 9 Aug 23, ARPC/CD served the applicant a LOR. According to the LOR, an investigation disclosed the applicant wrongly used cocaine, willfully failed to report for a unit recall with a report time of 0800 and made false statements regarding the reason for her tardiness. After considering the applicant's response, the command upheld the LOR.

On 20 Feb 24, charges were preferred against the applicant. On 23 Feb 24, a preliminary hearing under Article 32, UCMJ was conducted. On 28 Mar 24, one charge and its specification were referred to a special court martial. The referred specification was that the applicant did within the continental United States, between on or about 3 Jul 23 and on or about 10 Jul 23, wrongfully use cocaine, a Schedule II controlled substance, in violation of Article 112a, UCMJ.

On 18 Jun 24, the applicant was found not guilty at a special court martial by military judge alone of the charge and specification.

The applicant has the burden of providing evidence in support of their allegation of an error or injustice per DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.4.4. The AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved the questions of fact and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision of discretion.

The standard of proof at a court martial is beyond a reasonable doubt. "A reasonable doubt is a doubt based on reason and common sense. A reasonable doubt is not mere conjecture; it is an honest, conscientious doubt suggested by the evidence, or lack of it, in the case. An absolute or mathematical certainty is not required. The rule as to reasonable doubt extends to every element of the offense. It is not necessary that each particular fact advanced by the prosecution, which is not an element be proved beyond a reasonable doubt."

The standard of proof for NJP is preponderance of the evidence. This means the commanding officer must determine it is "more likely than not" the member committed the offense defined by the UCMJ. Each element of each offense, as defined in the Manual for Courts Martial, must be supported by a preponderance of the evidence (more likely than not). This standard is more rigorous than "probable cause" standard of proof used by law enforcement to obtain a warrant but a lower standard of proof than the "beyond reasonable doubt" standard used at a court martial. It is a commander's responsibility to ensure the impartial and timely administration of military

justice by offering NJP for appropriate offenses as soon as possible after facts indicate such offenses have been committed and have become known by the member's commander. The commander's action must be temperate, just and conducive to good order and discipline.

In accordance with DAFI 36-2907, *Adverse Administrative Actions*, the standard of proof for letters of counseling, admonishment and reprimand is preponderance of the evidence.

A rational factfinder could conclude it more likely than not the alleged misconduct occurred under the preponderance of the evidence standard. Every reasonable inference from the evidence supports the decisions of the principals who resolved questions of fact and took the actions at issue. Further, there is no evidence proper procedures were not followed or that the applicant was denied due process. Here, command was in receipt of a positive urinalysis test result. The applicant was offered NJP and elected trial by court martial. The command elected to serve a LOR on the applicant and after considering her response upheld the LOR based on the preponderance of the evidence standard. At court martial, the applicant was found not guilty under the beyond a reasonable doubt standard. There is no evidence of abuse of discretion.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Jul 25 for comment (Exhibit F) 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 AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends she was unjustly curtailed from her AGR tour based on a faulty positive urinalysis for cocaine, issued an LOR and was subsequently found not guilty of wrongful use of cocaine at special court martial. As pointed out by AF/JAJI, the standard of proof at court martial is beyond reasonable doubt, while the standard of proof for an LOR is preponderance of the evidence, or "more likely than not." In this respect, the Board finds it was within the applicant's commander's authority and discretion to issue the applicant the LOR based on the positive urinalysis finding. The LOR also documented the applicant's failure to report on time to the unit recall and drug urinalysis sweep. The applicant also indicated her reason for the late arrival was participation in PT; however, text messages showed she was notified of the recall at 0707 hours and was texting with other unit members about the recall until 0746 hours. Nonetheless, the Board notes the applicant's records do not include the LOR dated 9 Aug 23. With respect to the applicant's request

that she be awarded active duty service credit for the period 19 Aug 23 to 11 Sep 24 and she be granted an extension of AGR orders for the period 31 Jul 26 to 31 Mar 27, the Board finds insufficient evidence to grant relief. In accordance with DAFMAN 36-2114, the AFRC/CD is the approval authority for the involuntary curtailment of AGR tours. On 10 Aug 23, the AFRC/CD approved the curtailment of the applicant's AGR tour. Based on the evidence, it appears the curtailment of the applicant's AGR tour was in accordance with Air Force regulations and the applicant was afforded her appeal rights. The applicant also requests the Board ensure she suffer no reprisal as a result of her multiple IG complaints. It is not possible for the Board to prevent future retaliation or reprisal. However, reprisal and retaliation of any member for making protected communication is prohibited per 10 U.S.C. § 1034(b). Should the applicant be the victim of reprisal or retaliation, the applicant may file a complaint of reprisal with the IG. 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-2024-03658 in Executive Session on 13 Aug 25.

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 24 Oct 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: SAF/IGS, ACTS (WITHDRAWN).
- Exhibit D: SFS ROI, dated 26 Jun 24. (WITHDRAWN).
- Exhibit E: Advisory Opinion, AF/JAJI, dated 9 Jul 25.
- Exhibit F: Notification of Advisory Opinion, SAF/MRBC letter, dated 11 Jul 25.

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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.

9/4/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-03658

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