

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00066

COUNSEL: None

HEARING DESIRED: No

AUG 14 1998

APPLICANT REQUESTS THAT:

The nonjudicial punishments imposed on her under Article 15, UCMJ, on 20 February 1996 and 18 April 1996 be removed from her records, her general (under honorable conditions) discharge be upgraded to honorable, her records be corrected to show she was discharged for the "Convenience of the Government" with the award of the appropriate separation code and a reenlistment eligibility (RE) code of 1, and she be awarded all back pay, travel pay and savings from her Uniformed Services Savings Deposit Program (USSDP).

APPLICANT CONTENDS THAT:

The Article 15 she received in April 1996 was based on the results of an Air Force Office of Special Investigations (AFOSI) investigation initiated as a result of allegations made by her then-husband that she submitted a fraudulent claim for Basic Allowance for Quarters (BAQ) and Variable Housing Allowance (VHA). He also tried to get her investigated for fraudulent enlistment. The investigation revealed no evidence of fraudulent enlistment. She believes it should be noted that the investigation was initiated hours after she asked her husband for a divorce. His actions were an attempt to get even by ruining her career.

Her husband had alleged that she did not provide him with any support but his allegation was contradicted by his own statements. In addition, she believes that she has provided sufficient evidence to show that she did, in fact, provide financial support to him, thereby verifying her entitlement to BAQ and VHA.

The OSI disregarded all evidence of her innocence in this matter and they improperly expanded their investigation. At no time was she interviewed during the investigation. She was never notified she was under investigation until the case was closed. As a result, the OSI investigation was incomplete and vital evidence was omitted.

It was her husband who initiated the actions required to obtain dependent benefits. He obtained all the paperwork for her to sign. The money they received was for the rent on their residence, his hotel bill at her training location, and his food. Since he

accompanied her to training, he was unable to provide for himself and she was the sole provider for all his living expenses. When she went overseas, she was notified that her dependent care benefits would cease unless she submitted another lease agreement. Her husband told her he had renewed the lease on their residence for another year and that she should write to the property manager to obtain a copy. Such an agreement was not included in the OSI package but she has obtained a copy from her finance office for the Board's review. The Board should note that her name is not on the document. Any and all activities that took place between her husband and his brother (the property manager), including the fraudulent lease agreement, was the responsibility of those two individuals. She was not involved.

Her husband stated that they had never lived at the address cited in the Article 15. This is untrue. She lived at the cited address until she went overseas. To her knowledge, he still lives there. She has provided several pieces of evidence, including telephone bills, documents by financial institutions, court documents, and affidavits, which she believes will show that they did live at the address. This same address was also listed as her official Home of Record. Her former employer (the local Police Department) listed this same address as her home address.

At the time the Article 15 was imposed, she was overseas and was unable to obtain evidence to prove her innocence with respect to the allegations concerning VHA and BAQ within the 7 days allowed by her commander. She believes that her submission will now show that she never defrauded the government and that she provided adequate support for her dependent.

Her husband alleged that she had committed adultery. This was untrue. He was referring to a telephone conversation they had and offered no proof to support his suspicions. She believes a thorough analysis of his allegations and statements will prove they are all complete untruths.

She accepted the Article 15 punishment because she had filed an Inspector General (IG) complaint for harassment at her assignment, she was going through a divorce, and she was under an excessive amount of stress.

In support of her application, she provided a personal statement in which she elaborates on the above assertions, summarizes the course of her marriage to her ex-husband and her service, and provides her views concerning her ex-husband's actions and character and the asserted inaccuracies in the OSI investigation. She also provided copies of her service records, the OSI Report of Investigation, and, documents cited in her contentions and associated with the issues raised in her application, which include statements attesting to her permanent place of residence during the period under review. The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

On 26 April 1995, the applicant enlisted in the Air Force Reserve under the Delayed Enlistment Program in the grade of airman first class (E-3) for a period of 8 years. She was a guaranteed training enlistee for service as an Imagery Interpreter Apprentice. On 12 July 1995, having been discharged from the Air Force Reserve, she enlisted in the Regular Air Force for a period of 4 years. On 13 August 1995, based on her disqualification for training as an Imagery Interpreter Apprentice, she was offered, and accepted, classification as a Security Apprentice. All of her enlistment documents show her residence was XXX XXth [REDACTED]. In addition, prior to her enlistment, on 28 March 1995, the applicant had signed a statement of understanding concerning her dependent care responsibilities.

Following her completion of Basic Military and Technical Training, the applicant was assigned to duties at [REDACTED], [REDACTED], with a report not later than date of 14 January 1996. Her assignment orders indicated she would not be accompanied by her dependent spouse, who was not medically cleared. The spouse's residence was listed as XXX XXth [REDACTED].

On 17 January 1996, the applicant was counseled for behaving in an unprofessional manner with a commissioned officer. On 24 January 1996, she received a Letter of Reprimand because she had been continually observed in the officer's company in direct violation of her superior's verbal instruction to cease this relationship. On 9 February 1996, her commander notified the applicant that he was considering whether she should be punished under Article 15, UCMJ, based on an allegation that she had failed to obey an order to cease her unprofessional relationship with an officer between on or about 30 January to 4 February 1996 by passing letters to him. The applicant was advised of her rights. On 14 February 1996, having consulted military legal counsel, the applicant waived her right to demand trial by court-martial, requested a personal appearance, and submitted a statement for the commander's review. On 20 February 1996, having considered the matters presented by the applicant, the commander determined she had committed one or more of the offenses alleged and imposed punishment on her. She was reduced in grade to airman basic. The reduction in grade was suspended until 15 August 1996, at which time, unless sooner vacated, it would be remitted without further action. The applicant initially appealed the punishment but subsequently withdrew her appeal.

On 14 March 1996, a Report of Investigation was completed by agents of the AFOSI. It was indicated that the matter investigated during the period 30 January to 14 March 1996 was the alleged fraudulent claim for BAQ. The investigation had its basis in a statement by the applicant's spouse on 30 January 1996 alleging that the applicant had falsely received BAQ. The report was referred to her commander for whatever action he deemed appropriate. The

investigator stated that, when interviewed, the applicant declined to answer questions and requested legal counsel.

On 9 April 1996, the applicant's commander notified the applicant that he was considering whether she should be punished under Article 15, UCMJ, based on an allegation that she had used a certain paper (a rental lease) which contained a false statement, which she knew to be false and fraudulent, to obtain BAQ at [REDACTED]. The applicant was advised of her rights. On 17 April 1996, having consulted military legal counsel, the applicant waived her right to demand trial by court-martial and stated she did not desire to make a personal appearance or to submit a statement for the commander's review. On 18 April 1996, the commander determined she had committed one or more of the offenses alleged and imposed punishment on her. She was reduced in grade to airman basic. The applicant appealed the punishment on 18 April 1996 but withdrew her appeal on the following day.

On 9 May 1996, the applicant's commander notified the applicant that he was recommending she be discharged from the Air Force under the provisions of AFI 36-3208 and AFD 36-32 for a pattern of misconduct. The applicant was advised of her rights and that a general (under honorable conditions) discharge would be recommended. The applicant acknowledged receipt of the notification. On 16 May 1996, after consulting military legal counsel, the applicant waived her right to submit statements. In a legal review of the discharge case file, dated 21 May 1996, a staff judge advocate found no errors or regularities and recommended that the discharge authority approve the proposed separation. On 30 May 1996, the discharge authority approved the recommended separation and directed that the applicant be discharged with a general discharge. This officer stated that, after reviewing the record, he had decided against offering probation and rehabilitation.

On 1 June 1996, the applicant was discharged because of a pattern of misconduct with a general (under honorable conditions) discharge. She had served 10 months and 20 days on active duty. An RE code of 2B was assigned.

On 5 June 1997, USAFE/IG finalized their investigation of a complaint filed by the applicant. The IG's analysis, findings and conclusions are at Exhibit B.

AIR FORCE EVALUATION:

The Military Justice Division, AFLSA/JAJM, reviewed the portion of the appeal pertaining to the Article 15 imposed on 18 April 1996 and recommended denial. After summarizing the processing of the Article 15, her military record, and her contentions and the evidence provided to support her appeal, JAJM indicated that although the applicant's explanation of her marital difficulties is compelling, the evidence submitted with her request does not fully

support her position. JAJM stated that the applicant has not submitted any hard evidence that either she or her husband resided at the address in question. The applicant could have submitted canceled checks to prove she was paying rent at the [REDACTED] address but did not. Further, although the apartment manager is her husband's brother and thus his credibility is an issue, he has stated emphatically that neither the applicant nor his brother resided at the [REDACTED] address. The applicant could have obtained a statement from the apartment owners to establish her residency, but she did not. Despite her assertions, the question of who was paying the rent on the apartment remains unanswered.

JAJM stated that the applicant has also failed to address the other misconduct which formed the basis of the characterization of her ultimate discharge. She chose not to take advantage of the appeal process and chose to accept her punishment without providing an explanation.

After reviewing the available records, JAJM concluded that there are no legal errors requiring corrective action regarding the nonjudicial punishment action and administrative relief by their office is not possible (see Exhibit C).

The Programs and Procedures Branch, AFPC/DPPRP, reviewed the applicant's case for separation processing and indicated that there are no errors or irregularities causing an injustice to the applicant. DPPRP stated that the applicant's discharge complies with directives in effect at the time of her discharge. The records indicate that the applicant's military service was reviewed and the appropriate action was taken (Exhibit D).

The Special Activities Branch, AFPC/DPPAES, stated that the applicant's RE code is correct. The type of discharge drove assignment of the RE code (Exhibit E).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and disagreed with the Air Force recommendations. She reiterated and elaborated on her initial contentions. She refers to a USAFE IG Investigation which she believes will support her claims of harassment which led to the initiation of the contested actions, including the first Article 15 punishment imposed in February 1996. She would like the Board to consider this IG Report before making a decision in her case.

The applicant stated that the only "hard" evidence against her were the statements by her ex-husband and his brother. She does not believe that this constitutes "satisfactory" evidence since it was provided by an individual whose credibility is at issue.

In further support of her appeal, she provided supportive statements by her parents, and a video tape showing her ex-husband

videotaping her coming out of the apartment cited on her official documents and showing her ex-husband engaging in various leisure activities in [REDACTED] when she allegedly was not supporting him. Even though unemployed, the tape will show that her ex-husband was well-provided for and healthy. In additional submissions, she provided two additional supportive statements by individuals who knew the applicant prior to and during the period she was married, a transcript of her divorce proceedings, a Court Order setting a hearing to Show Cause for Contempt, and a statement by her recruiter. All the foregoing documents are at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice with respect to the nonjudicial punishments imposed on the applicant under Article 15, UCMJ, on 20 February 1996 and 18 April 1996, and the determination that the payments of BAQ and VHA for the period 12 July 1995 through 15 April 1996 were based on fraudulent information.

a. The first nonjudicial punishment the applicant received on 20 February 1996 for disobeying a lawful order given on 17 January 1996 is technically incorrect. Our determination in this matter is based on the findings of the USAFE/IG to the effect that there was no "order" given to the applicant during the verbal counseling session she received on 17 January 1996. It was not until the Letter of Reprimand was issued on 24 January 1996 that she received a direct order to cease her relationship with a commissioned officer and to avoid other inappropriate relationships. Had the record correctly reflected the applicant did not officially receive a direct order to cease the subject relationship until 24 January 1996, we believe it is likely this Article 15 punishment may not have been imposed. It should be noted that although the officer cited in these proceedings was as deeply implicated in the matter as the applicant was, and therefore equally culpable, if not more so based on his rank and experience, he was merely counseled on two occasions and received an order to cease his relationship with the applicant -- an order which he promptly disobeyed. This officer was reassigned shortly thereafter and it would appear that his career has suffered no negative affect from the events at [REDACTED]. Based on this evidence, we further find that the applicant's punishment was excessive when compared to the disciplinary actions meted out to the officer and, therefore, in addition to being erroneous, the Article 15 is unjust. Accordingly, the nonjudicial punishment imposed in February 1996 should be expunged from the record.

b. As to the Article 15 punishment imposed on 18 April 1996, based on the evidence accumulated by the applicant subsequent to her discharge, we find that the investigations of the alleged fraudulent payments of BAQ and VHA were faulty at the worst and inadequate at the least. This situation was brought about, in part, by the applicant when she waived her rights and apparently made little effort to obtain the necessary paperwork which would exonerate her. Contributing to her inaction was her isolated location and the cumulative affect of the actions being taken against her. The evidence now provided by the applicant shows that she and her former spouse did reside at the address she had provided and that there were lease agreements for the property signed by her former spouse and his brother; that her former husband's statement to the OSI did contain conflicting and erroneous information; and that she did provide her former spouse monies for support. In addition, the applicant's arguments that her former spouse's motivation for reporting the alleged wrongdoing was based on factors other than an exercise of good citizenship and her former brother-in-law's testimony was suspect are compelling. Based on the above, the nonjudicial punishment imposed on the applicant on 18 April 1996 should also be removed from her records and the determination that she fraudulently established an entitlement to BAQ and VHA should be set aside.

4. Having determined that the nonjudicial punishments imposed on the applicant are erroneous and unjust and should be expunged from the record and because these matters formed the primary bases for her discharge for recurring misconduct, a reassessment of the discharge action is necessary. Without the nonjudicial punishments, the only remaining derogatory information in the file is information pertaining to the Letter of Counseling and the Letter of Reprimand. It is noted that the validity of the Letter of Reprimand is tainted by its reference to an "order" which had not been issued at that time. In any event, we find this information, alone, is not sufficient to support a discharge because of a "pattern of misconduct." Therefore, it is our opinion that a general discharge for misconduct can no longer stand. By this finding, it is not our intention to exonerate the applicant of any wrongdoing. The record clearly shows that she was not suited to the military environment, having so early on engaged in behaviors which were considered to be disruptive and which exhibited a willful defiance of the expressed wishes and orders of her superiors when they conflicted with her personal desires. For these reasons, correcting the record in a manner which would make possible her immediate enlistment, without qualification, is neither appropriate nor in the best interests of the Air Force or the applicant. It is our opinion that correcting the records to show she was honorably discharged under the Secretarial authority reserved specifically for this Board, with assignment of the corresponding separation code and a similar (waiverable) RE code, will afford her proper and fitting relief based on the facts and circumstances of this case.

5. The applicant requests that she be awarded all back pay, travel pay and savings from her USSDP. We assume that action to withhold any monies from the applicant's pay was for recoupment of the debt for BAQ and VHA. Since we have determined that the Article 15 punishments and the establishment of a debt for BAQ and VHA should be set aside, the applicant's pay and entitlements for the period will be recomputed by the Defense Finance and Accounting Service. Accordingly, action by this Board on the applicant's requests for pay based on the available record would be inappropriate.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

a. The nonjudicial punishment under Article 15, UCMJ, initiated on 9 February 1996 and imposed on 20 February 1996, be set aside and expunged from her records, and all rights, privileges and property of which she may have been deprived be restored.

b. The nonjudicial punishment under Article 15, UCMJ, initiated on 9 April 1996 and imposed on 18 April 1996, be set aside and expunged from her records, and all rights, privileges and property of which she may have been deprived be restored.

c. Competent authority determined that the payments of Basic Allowance for Quarters (BAQ) and Variable Housing Allowance (VHA) she received during the period of 12 July 1995 through 15 April 1996 were not based on error or fraudulent information and she was not indebted to the United States Government for payments of BAQ and VHA for the period 12 July 1995 through 15 April 1996.

d. On 1 June 1996, she was honorably discharged in the grade of airman first class under the provisions of AFI 36-3208, paragraph 1.2 (Secretarial Authority), with a separation code of KFF and a Reenlistment Eligibility (RE) code of 3K.

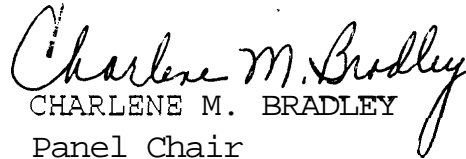
The following members of the Board considered this application in Executive Session on 27 January 1998, under the provisions of AFI 36-2603:

Ms. Charlene M. Bradley, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Henry Romo Jr., Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 28 December 1996 and applicant's letter, dated 10 February 1997, with attachments.

- Exhibit B. Applicant's Master Personnel Records and USAFE/IGQ letter, dated 5 June 1997, with attachments (withdrawn).
- Exhibit C. Letter, AFLSA/JAJM, dated 21 January 1997.
- Exhibit D. Letter, AFPC/DPPRP, dated 12 February 1997.
- Exhibit E. Letter, AFPC/DPPAES, dated 11 March 1997.
- Exhibit F. Letter, SAF/MIBR, dated 31 March 1997.
- Exhibit G. Letters from the applicant, dated 6 April 1997 and two undated letters, with attachments.


CHARLENE M. BRADLEY
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

AFBCMR 97-00066

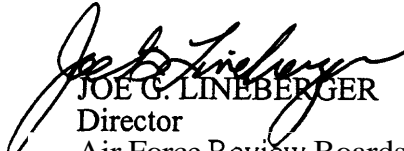
AUG 14 1998

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the *Air* Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED]
[REDACTED] be corrected to show that:

- a. The nonjudicial punishment under Article 15, UCMJ, initiated on 9 February 1996 and imposed on 20 February 1996, be, and hereby is, set aside and expunged from her records, and all rights, privileges and property of which she may have been deprived be restored.
- b. The nonjudicial punishment under Article 15, UCMJ, initiated on 9 April 1996 and imposed on 18 April 1996, be, and hereby is, set aside and expunged from her records, and all rights, privileges and property of which she may have been deprived be restored.
- c. Competent authority determined that the payments of Basic Allowance for Quarters (BAQ) and Variable Housing Allowance (VHA) she received during the period of 12 July 1995 through 15 April 1996 were not based on error or fraudulent information and she was not indebted to the United States Government for payments of BAQ and VHA for the period 12 July 1995 through 15 April 1996.
- d. On 1 June 1996, she was honorably discharged in the grade of airman first class under the provisions of AFI 36-3208, paragraph 1.2 (Secretarial Authority), with a separation code of KFF and a Reenlistment Eligibility (RE) code of 3K.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency