RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2007-03234

 INDEX CODE: 102.01

 XXXXXXXXXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His commissioning date be changed from 24 May 2007 to 20 April 2007.

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APPLICANT CONTENDS THAT:

He received his commission on 20 April 2007 upon completion of the Academy of Military Science (AMS) course at McGhee Tyson ANGB, TN.

In support of his appeal, he has provided copies of an IMT 938, *Request and Authorization for Active Duty Training Tour,* 11 March 2007 – 20 April 2007; an IMT 475, *Education/Training Report*; a certificate of appointment as a second lieutenant; a Certificate of Training for completion of the AMS course; and his signed Oath of Office, all dated 20 April 2007.

Applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The applicant was a Reserve of the Air Force (AFR) enlisted member serving in the grade of master sergeant. On 11 January 2007, his name was submitted to AF/REP for placement on a scroll for SECDEF approval of his appointment as a second lieutenant in the AFR. However, the scroll containing his name was lost due to an administrative oversight and his name was resubmitted for SECDEF scroll approval on 12 April 2007. He successfully completed the AMS Course at McGhee Tyson ANGB, TN, on 20 April 2007, and was administered an Oath of Office for appointment as a second lieutenant in the AFR on that date. However, the oath subsequently became invalid since it was administered before he was SECDEF approved, which did not occur until 24 May 2007.

Deputy Secretary of Defense (SECDEF) Memo, dated 2 May 2005, states all military officer appointments under Title 10, United States Code (10 USC), Section 12203, not approved by 30 June 2005, will be submitted to the SECDEF for approval.

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AIR FORCE EVALUATION:

ARPC/DPA recommends denial as the applicant was appointed appropriately as a direct appointment, after completing AMS, to the Line of the Air Force Reserve in accordance with (IAW) Air Force Instruction (AFI) 36-2005, 19 May 2003, *Appointment in Commissioned Grades and Designation and Assignment in Professional Categories – Reserve of the Air Force and United States Air Force,* and Title 10, United States Code.

His appointment order was issued IAW AFI 36-2005. Current policies do not allow for backdating oaths; however, the applicant was an enlisted member and received the pay and benefits authorized while he was in enlisted status until SECDEF approved his commission on 24 May 2007. OSD General Council determined the appointment date is the date SECDEF approves the appointment or the date the oath was administered, whichever is later. The applicant was granted appointment IAW the OSD directive.

The ARPC/DPA evaluation is at Exhibit B.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the evaluation was forwarded to the applicant on 9 November 2007, for review and comment, within 30 days. However, as of this date, no response has been received by this office.

On 18 Jun 2008, a copy of a 9 June 2008 Air Force Review Board Agency Legal Advisor’s opinion (Exhibit D) was forwarded to the applicant for review and comment within 30 days; however, as of this date, no response has been received by this office.

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case and do not find it supports a determination that the applicant's DOR and effective date should be changed. In this respect, it appears the applicant’s DOR and effective date of commissioning were appropriately established in compliance with Air Force instructions and Title 10 U.S.C. While the statute does allow adjustment of the DOR and effective date of an officer if, due to unusual circumstances, the appointment is delayed from the date on which it would otherwise have been made, we are not persuaded by the evidence provided that the delay in appointment was due to unusual circumstances. Rather, it appears to be a result of the normal administrative actions required before the list could be finally approved by the Secretary of Defense. Accordingly, in the absence of evidence showing the applicant was treated differently from others similarly situated, or that his DOR and effective date were established contrary to the provisions of the governing policy based on the controlling statue, we find no compelling basis to recommend granting the relief sought.

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THE BOARD DETERMNESTHAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered Docket Number BC-2007-03234 in Executive Session on 6 January 2009, under the provisions of AFI 36-2603:

 Mr. James W. Russell, III, Panel Chair

 Mr. Joseph D. Yount, Member

 Ms. Teri G. Spoutz, Member

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The following documentary evidence was considered:

 Exhibit A. DD Form 149, dated 23 Sep 07, w/atchs.

 Exhibit B. Letter, ARPC/DPA, dated 31 Oct 07, w/atchs.

 Exhibit C. Letter, SAF/MRBR, dated 9 Nov 07.

 Exhibit D. Letter, AFBCMR Legal Advisor, dated 9 Jun 08.

 Exhibit E. Letter, AFBCMR, dated 18 Jun 08.

 JAMES W. RUSSELL, III

 Panel Chair