RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2007-03235

INDEX CODE: 102.01

XXXXXXXXXXXXXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

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

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APPLICANT CONTENDS THAT:

An administrative oversight occurred between the Air Force Reserve Command (AFRC) and the Personnel Division Office of the Air Force Reserve (AF/REP) which caused the Secretary of Defense (SECDEF) to delay approving her being commissioned.

She was notified by the Air Reserve Personnel Center (ARPC) on 15 May 2007 that her rank of second lieutenant was not correct and she would remain a technical sergeant until the SECDEF signed the scroll approving her commission. She subsequently received her appointment order on 24 May 2007, and does not feel that she should have to pay the consequences for someone’s administrative oversight.

In support of her appeal, she has provided copies of her signed Oath of Office, a Certificate of Appointment as a second lieutenant, a Certificate of Training for completion of the Academy of Military Science (AMS) course, an Air National Guard (ANG) Academy of Military Science Diploma, all dated 20 April 2007; a personal statement; RO PA-00439 appointing her as a second lieutenant in the USAFR effective 24 May 2007; her signed Oath of Office, dated 24 May 2007; and a 15-16 May 2007 e-mail trail addressing the administrative oversight and delay in SECDEF approval of her commission.

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 technical sergeant. On 11 January 2007, her name was submitted to AF/REP for placement on a scroll for SECDEF approval of her appointment as a second lieutenant in the AFR. However, the scroll containing her name was lost due to an administrative oversight and her name was resubmitted for SECDEF scroll approval on 12 April 2007. She 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 she was SECDEF approved, which did not occur until 24 May 2007.

Deputy 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 10 USC.

Her 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 she was in enlisted status until SECDEF approved her 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 her 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 DETERMINESTHAT:

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-2007-03235 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

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 24 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 2008.

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

JAMES W. RUSSELL, III

Panel Chair