RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-03964

XXXXXXX COUNSEL: NONE

HEARING DESIRED: YES

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

1.  Her date of separation (DOS) of 27 Jan 10 be corrected to reflect 31 May 11.

2.  The results of the Calendar Year 2010 (CY10) National Guard Bureau (NGB) Statutory Tour Force Management (STFM) Board be set aside.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

Her DOS was established incorrectly when she was selected for an extended active duty (EAD) position with the NGB. At the time of her selection, she was already serving on EAD with NGB, with an established DOS of 30 Sep 07. NGB should have offered her a new four-year tour when she was selected for her new position in accordance with paragraph 5.1 of ANGI 36-6, *The Air National Guard Statutory Tour Program Policies and Procedures.* Instead, they erroneously extended her current tour and set her DOS at 27 Jan 10. As a result of her erroneous DOS, she was prematurely considered by the CY10 NGB STFM Board which directed her release from EAD, effective 27 Jan 10. Had NGB complied with the provisions of ANGI 36-6, she would not have met the NGB STFM Board until CY11.

In support of her request, the applicant provides an expanded statement and copies of excerpts from her military personnel records related to her selection for an EAD tour, EAD orders with amendments, excerpts from ANGI 36-6, *The Air National Guard Statutory Tour Management Program*, ANG Statutory Tour Force Management Review (STFMR) Interim Policy Guidance, and a supporting statement.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant is currently serving on EAD with the NGB in the grade of master sergeant (E-7), effective and with a date of rank of 11 Apr 07.

On 14 Dec 05, the applicant was voluntarily ordered to EAD under the provisions of 10 USC 12301(d) for duty with the NGB for a period of 20 months, effective 28 Jan 06.

On 23 May 07, according to information provided by the applicant, she was notified of her selection for another position within the NGB Statutory Tour Program in accordance with Military Vacancy Announcement 2007-038. On 1 Jun 07, the applicant’s original EAD orders were amended to extend her DOS from 30 Sep 07 to 27 Jan 10, an extension of 28 months resulting in a combined EAD period of four years.

In accordance with the NGB STFMR Interim Policy Guidance, dated 1 Sep 07, the purpose of the NGB STFMR is to evaluate officer and enlisted members on EAD for “career status” within the NGB Statutory Tour Program. This review normally takes place 10 – 15 months prior the established DOS of the initial (probationary) EAD tour. Career status is attained when a statutory tour member is granted a successive tour beyond their initial statutory tour.

On 8 Apr 09, the applicant acknowledged receipt of the CY10 NGB STFMR decision to release her from EAD on her 27 Jan 10 DOS. On 1 May 09, she submitted a request for reconsideration which was denied by the Director, ANG on 27 May 09. On 27 Jan 10, she was released from EAD in accordance with the decision of the STFMR.

On 28 Jan 10, the applicant was voluntarily ordered to active duty for operational support (ADOS) for duty with NGB/A1 and served continuously until her release on 21 Oct 10.

On 22 Oct 10, the applicant was again voluntarily ordered to EAD under the provisions of 10 USC 12301(d) for duty with the NGB for a period of 48 months, effective 1 Dec 10 and with a new DOS of 30 Nov 14.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibits C and D.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AIR FORCE EVALUATION:

NGB/HR recommends denial indicating that NGB leadership never intended to award the applicant a four-year tour from the date of her selection. As such, the award of a 32 month [sic] extension was appropriate under ANGI 36-6, paragraph 5.3, and was not erroneous. Although a four-year tour is normally granted for a successive tour, doing so in this case would have extended the applicant’s DOS beyond the normal probationary period and required career management in accordance with DoD Instruction 1205.18, *Full-Time Support to the Reserve Components.*  Prior to making career status determinations, the commander considers a variety of factors (e.g., total active service attained and advancement potential) as the basis for making a determination of tour length. The recommended active duty time required for a master sergeant (E-7) to be granted career status is at least eight years; however, the applicant had only attained three years of total active service at the time of her selection. Accordingly, the commander, in consultation with the director, decided not to grant a successive tour and bestow career status upon her at that time. Furthermore, the applicant knowingly accepted the tour with the appropriate DOS. When she was notified that she would meet the CY10 NGB STFMR, she had an affirmative responsibility to correct any discrepancy in her record. At that time, she did not notify NGB/HR that she should not meet the CY10 NGB STFMR, or that her DOS was incorrect. Finally, during the course of her appeal of the STFMR results, she again failed to indicate that her DOS was incorrectly established, or that she should not have met the CY10 NGB STFMR Board.

A complete copy of the NGB/HR evaluation is at Exhibit C.

NGB/A1PS recommends that relief be granted, indicating the applicant’s DOS should be changed to 31 May 11 to comply with the provisions of ANGI 36-6, paragraph 5.3, which require that successive tour lengths be four years, unless otherwise specified. Additionally, granting relief will not automatically bestow career status upon the applicant as doing so will result in an initial EAD tour of 68 months, just short of the six-year probationary program prescribed by DoD Instruction 1205.18The instruction indicates that personnel may be placed in Active Guard/Reserve (AGR) status for occasional, one-time tours, or for a probationary period established by the Secretary concerned. A probationary period shall not exceed six years. Continuation beyond the initial probationary period or service in AGR status for more than six years constitutes retention and shall require subsequent management under a career program.

A complete copy of the NGB/A1PS evaluation is at Exhibit D.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 15 Jan 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 an error or injustice. The applicant contends that her EAD tour should have been extended for four years when she was selected for a nationally advertised extended active duty (EAD) position with the National Guard Bureau (NGB). She believes that her DOS was erroneously established and resulted in her being prematurely considered by the Calendar Year 2010 (CY10) National Guard Bureau (NGB) Statutory Tour Force Management Review (STFMR). After a thorough review of the evidence of record and the applicant’s complete submission, we do not believe she has been the victim of an error or injustice. With respect to her DOS, we note the comments by NGB/HR indicating that while a successive four-year tour is normally awarded when a statutory tour member is selected for a nationally advertised EAD position, doing so in this case would have bestowed career status upon the applicant even though she was ineligible for such status under prescribed NGB force management guidelines. Specifically, these guidelines call for the attainment of at least eight years of total active service for a master sergeant (E-7) to qualify for career status; however, the applicant had only attained three years of total active service at the time of her selection. We note that NGB/A1PS recommends that relief be granted, indicating that ANGI 36-6 indicates that a successive four-year tour be granted in these circumstances. Nonetheless, we believe the commander’s decision to establish the applicant’s DOS as 27 Jan 10 was reasonable in view of the fact that ANGI 36-6 also indicates that, “Successive tour lengths will be four years, *unless otherwise specified*.” As for the applicant’s assertion she was prematurely considered for retention by the CY10 NGB STFMR, after a thorough review of the evidence of record and the applicant’s complete submission, we do not believe she has been the victim of an error or injustice in this regard. In view of the fact the applicant’s DOS was properly established, we believe she was appropriately considered by the CY10 NGB STFMR. Therefore, absent any evidence the CY10 NGB STFMR failed to follow the substantive requirements of the governing instructions, apply appropriate standards, or afford the applicant rights to which she was entitled, we find no basis to question the ultimate decision to release her from EAD on her DOS. Therefore, absent evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant’s case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD DETERMINES THAT:

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following members of the Board considered AFBCMR Docket Number BC-2009-03964 in Executive Session on 5 Apr 11, under the provisions of AFI 36-2603:

Ms. XXXXXXXXXX, Panel Chair

Ms. XXXXXXXXXX, Member

Mr. XXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 10 Aug 09, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, NGB/HR, undated, w/atch.

Exhibit D. Letter, NGB/A1PS, dated 11 Jan 10, w/atchs.

Exhibit E. Letter, SAF/MRBR, dated 15 Jun 10.

XXXXXXXXXX

Chair