

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2010-03242

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He be reinstated to active duty.

APPLICANT CONTENDS THAT:

After serving eight years on active duty in an enlisted status and attending Officer Training School (OTS) to become an officer, he was unfairly discharged because he was disqualified from the Personal Reliability Program (PRP), contrary to Air Force Regulations.

During OTS he was selected for Space and Missile Officer training. After receiving partial information on the duties of the position, he voiced his reservations on launching nuclear weapons and his possible medical ineligibility to perform PRP duties, as it was his responsibility to do under the PRP. Upon assignment to the training squadron, he once again voiced his concerns to his Flight Commander. He did so because he did not want to waste Air Force time and money, and the best way to expedite the situation was to inform his leadership upon his arrival to the unit. He was later medically cleared for PRP and met twice with his commander to discuss his reservations and was asked a number of questions, to include his ability to inflict civilian casualties and if he could not, what would be the sufficient number of casualties he could kill. He felt that he could not provide such a number due to the lack of education from his command concerning the duties. Although all other members going into missile training receive initial training on-the-job (OJT) prior to starting the class, he never received any OJT. His commander advised him that she was going to recommend his separation; however, he did not indicate why. Furthermore, she never tried to reclassify him nor handle the situation in a timely manner. He filed a complaint with the Inspector General (IG) office and notified his leadership that he had done so. He later was educated on the duties of a missile officer by an instructor and no longer had reservations about performing those duties. He advised the commander of this and she indicated that although she would forward his package for reclassification, she had to decertify him from the PRP. His PRP decertification

occurred on the same day the commander found out about his IG complaint and was the result of him filing the complaint. He later discovered that his previously considered reclassification package was incomplete because he was never given the opportunity to write a personal statement.

In support of the appeal, the applicant submits copies of his performance reports, a letter from a former rater, the IG response to his complaint, notification of the results of the Initial Skill Training (IST) Reclassification/Discharge Panel, an email concerning his attendance in class 10-07, and an AF Form 286a, *PRP Permanent Disqualification/Decertification Action*.

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

STATEMENT OF FACTS:

After serving on active duty in an enlisted status from 14 May 2002 through 16 December 2009, he was commissioned a second lieutenant in the Regular Air Force on 17 December 2009 and entered active duty.

On 27 December 2009, he was assigned to the 392nd Training Squadron, Vandenberg AFB, CA, as a student in class 10007 to attend Space and Missile Officer training on 1 February 2010.

On 29 December 2009, he advised his Flight Commander and PRP manager of his reservations about launching nuclear weapons and that he was possibly medically ineligible for PRP certification. Based on his disclosure, the Flight Commander requested that he prepare a Memorandum for Record (MFR) outlining his reservations and scheduled him for a medical appointment to confirm his medical eligibility for PRP certification. He submitted an MFR to his Flight Commander outlining his reservations.

On 22 January 2010, he was advised that he would not begin missile officer training.

On 4 February 2010, he was found medically qualified for PRP certification.

On 1 and 8 March 2010, he met with the Squadron Commander, Flight Commander, and First Sergeant, to discuss his concerns with nuclear weapons duty and indicated that his position did not change. The Squadron Commander advised him that she would be recommending his separation from the Air Force.

On 22 March 2010, the applicant filed a complaint with the IG, alleging unfair treatment at the 392nd Training Squadron, subsequent to his voicing his concerns with fulfilling his

duties as a Space and Missile Officer. Specifically, his commander was not following interim and AFI guidance concerning training and that although he had been recommended for separation he had been given no reason for doing so.

On 31 March 2010, the applicant again met with the Squadron Commander and indicated that based on information he received from an instructor he no longer had reservations about nuclear weapons duty. In view of this, she reversed her earlier recommendation for separation and instead recommended that he be retained and reclassified. However, since he was to be retained, she was required to make a determination on his PRP eligibility. Based on the applicant's earlier concerns with missile officer duty, the Squadron Commander initiated action to permanently decertify him from the PRP.

On 8 April 2010, he acknowledged his right to appeal the permanent PRP decertification and certified that he would not submit any additional information.

On 25 May 2010, the Initial Skill Training (IST) Reclassification/Discharge panel met at AFPC and determined the applicant would not be reclassified but discharge. The applicant was advised of the decision and that he would be honorably discharged; however, based on his previous enlisted service, he was offered the opportunity to reenlist in his previous enlisted grade, i.e., staff sergeant (E-5).

On 16 June 2010, the 381st Training Group Commander, notified the applicant that AETC/IG had referred his [first] complaint to him on 29 March 2010 and that after reviewing his concerns, determined there was no intent to keep information from him. He further advised that on 30 March 2010, he instructed the commander and her staff to make every effort to keep him informed of his status and to provide him information in a timely manner.

On 19 July 2010, Headquarters Air Education and Training Command (Hq AETC) considered and denied his appeal of his permanent PRP decertification.

On 16 August 2010, he was separated for failure to complete a course of instruction, with severance pay.

On 26 October 2010, AETC/IGQ provided the applicant the final response to his 9 June 2010 email, indicating that it was their independent determination, based on the evidence, the Squadron Commander had sufficient justification for the actions initiated regarding his PRP status, continuation in training, and reclassification. They further advised him the evidence clearly indicated the actions were not initiated in reprisal for protected communications made to the IG but were the logical consequence of events he set in motion; they found no evidence to support credible allegations of abuse of authority; their

determination was approved by SAF/IGQ and IG DoD MRI; and that as such, he had received the decision of the final approval authority. In addition, he was advised of his rights to appeal the decision of IG DoD MRI to that office and of his right to apply for correction of military records under 10 USC 1034.

AIR FORCE EVALUATION:

AFPC/DPTSF provides no recommendation, noting the applicant's previous request for reinstatement/administrative qualification consideration was forwarded to the Nuclear Operations and Integration Division of the Air Staff (AF/A10-ON) who disapproved requalification reconsideration, certification, and reinstatement.

The complete AFPC/DPTSF evaluation is at Exhibit C.

AFPC/DPSIP reviewed the application and states that since the areas considered by the Initial Skills Training (IST) panel are subjective they are unable to provide the reason for the recommended separation and recoupment of the applicant. In this regard, they note that IST panel members considered the applicant's potential to complete required training for other Air Force Specialty Codes (AFSCs); his potential to develop and contribute in subject career field should he be reclassified; any unique or special abilities/skills he might have in high demand language skills, i.e., Chinese, Russian, Arabic, Korean, etc, that could benefit subject career field or the broader Air Force in the future; his demonstrated "officership" and commitment to the Air Force; and the potential payback to the Air Force.

The complete AFPC/DPSIP evaluation is at Exhibit D.

AFPC/JA reviewed the application and recommends denial, as the applicant has not established an error or injustice warranting relief. While it appears the applicant was properly decertified from PRP and thereafter eliminated from training based on his self-professed reservation about carrying-out all aspects of the nuclear mission, which on its face, constitutes a basis for decertification, they are not the experts on the PRP program. To whatever degree the Board might believe the PRP decertification issue has not been satisfactorily addressed, it can request a separate advisory on that subject from the appropriate office of primary responsibility (OPR). With respect to the legality and fairness of the discharge action, the authority to discharge an IST eliminee provides that pursuant to Section 630 of Title 10 United States Code (10 USC 630) and Department of Defense Instruction 1332.30, paragraph 4(d), the Secretary of the Air Force or delegee, may voluntarily separate probationary officers when they do not complete IST training and there is no requirement for the officer's continued

service. The legality of which was recently upheld in an opinion issued by the General Counsel of the Air Force (National Security and Military Affairs), SAF/GCM. In addition, the decision not to reclassify him into another career field was, in essence, a force management decision made after careful evaluation of all the factors in his record, bearing on the "whole person" concept. Most importantly, the process includes a comparison of the officer's skills and qualifications to those critical skills or career fields which the Air Force determines, at any moment in time, require additional manpower. In the applicant's case, the initial review and recommendation was made by five disinterested senior officers, who by charter of the Secretary of the Air Force, acted in the best interest of the Air Force. There is no evidence that proves, or even suggests, that Air Force officials responsible for the separation decision acted arbitrarily or abused their discretion.

A complete copy of the AFPC/JA evaluation, with attached SAF/GCM opinion, are at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations, to include the 23 June 2011 SAF/GCM referenced by AFPC/JA, were forwarded to the applicant on 19 August 2011 for review and comments, within 30 days. However, as of this date, no response has been received by this office.

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 to warrant overturning the decision of the IST Reclassification/Discharge panel. After thoroughly conducting our independent review of the evidence of record, to include the responses to the applicant's two separate IG complaints, and noting his contentions, we are not persuaded that he was discharged based on his permanent PRP decertification. In this respect, we note the following:
 - a. The applicant voiced his concerns with respect to fulfilling nuclear weapons duties and based on these comments, the commander initially indicated that she would be recommending his discharge. However, she subsequently reversed her position and recommended that he meet the IST Reclassification/Discharge panel for possible retention/reclassification based on a

subsequent conversation the two had in which he indicated that he could complete nuclear officer duties. Consequently, she was required to make a determination on his PRP eligibility since she was recommending his reclassification/retention. In view of his earlier concerns with nuclear weapons duty, she initiated action to permanently decertify him from the PRP, which he did not appeal.

b. Contrary to the applicant's assertion, the decision to discharge him was based on a force management decision rendered by the IST Reclassification/Discharge panel, under its delegated authority pursuant to 10 USC 630. The IST Reclassification/Discharge panel's decision was based on a comparison of the applicant's skills and qualifications to those critical skills or career fields which the Air Force determined required additional manpower.

c. We find it abundantly clear, as did AETC/IG, SAF/IGQ, and IG DoD MRI, the alleged unfavorable personnel action, i.e., the applicant's permanent PRP decertification, would have occurred even in the absence of his protected communication, i.e., filing of his first IG complaint. The findings of these offices appear to be supported by the evidence of record and there has been no showing the investigations were improperly conducted. As such, we find no basis to overturn their decisions or to direct further investigation. We note that given the presumption of regularity in the operation of governmental affairs and in the absence of corroborative documentary evidence establishing impropriety, it is presumed that officers of the government, like other public officials, discharge their duties correctly, lawfully, and in good faith. The applicant has not provided sufficient evidence to overcome this presumption.

d. In view of the above and in the absence of evidence to the contrary, we are not persuaded the applicant has been the victim of reprisal under 10 USC 1034. Further, based on a totality of the evidence presented, we are not persuaded that he has met his burden of establishing the existence of an error or an injustice in his records under 10 USC 1552, as the decision of the IST Reclassification/Discharge panel was within their delegated authority and the applicant provides no evidence its decision was arbitrary or capricious, or that he was denied rights to which entitled.

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 following members of the Board considered AFBCMR Docket Number BC-2010-03242 in Executive Session on 21 February 2012, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 27 Aug 10, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPTSF, dated 10 Nov 10.
- Exhibit D. Letter, AFPC/DPSIP, dated 22 Nov 10, w/atchs.
- Exhibit E. Letter, AFPC/JA, dated 3 Aug 11, w/atrch.
- Exhibit F. Letter, SAF/MRBR, dated 10 Aug 11.
- Exhibit F. SAF/IG Investigations, w/atchs (Withdrawn).

Acting Panel Chair