RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-00381

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Reentry (RE) Code of 2C, on his DD Form 214, Certificate of Release or Discharge from Active Duty, be changed so he can apply to the Oregon National Guard.

APPLICANT CONTENDS THAT:

His discharge was voluntary in order to avoid reprisal actions by his first sergeant. He chose to separate rather than to seek a discharge hearing board. His separation was fitness related and the cause of the separation has been remedied. He believes he can continue to serve in a beneficial manner. To re-enter, he will have to pass through a Military Entry Processing Station (MEPS), meaning MEPS will verify his previous physical condition has been corrected.

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

STATEMENT OF FACTS:

The applicant entered the Air Force on 21 Jun 00.

On 27 Jan 09, the applicant's commander notified him he was recommending him for discharge. The reason for the action was failure of the fitness program. The applicant was in the poor fitness category for a continuous 12-month period. In fact, he failed the Fitness Assessment 15 times.

On 28 Jan 09, the applicant acknowledged receipt of the action, indicating he wished to meet a discharge hearing board, would consult with counsel, and would submit statements on his own behalf. However, on 21 Apr 09, he chose to waive his previously requested board after consulting with defense counsel.

On 30 Apr 09, his commander recommended his discharge.

On 5 May 09, the case was reviewed and determined to be legally sufficient, and the discharge authority directed the applicant be discharged with an Honorable discharge without probation or rehabilitation due to failure in the Fitness Program.

On 15 May 09, the applicant was furnished an Honorable Discharge with a RE Code of 2C, and was credited with 8 years, 10 months, and 25 days of total active service.

The remaining relevant facts pertaining to this application are described in the letter prepared by the Air Force office of primary responsibility (OPR) which is attached at Exhibit C.

AIR FORCE EVALUATION:

AFPC/DPSOA recommends denial with respect to the applicant's RE Code indicating there is no evidence of an error or injustice. He received an RE Code of 2C, "Involuntarily separated with an honorable discharge, or entry level separation without character of service." The RE Code of 2C is required per AFI 26-2606, Reenlistment in the USAF, Chapter 5, based on his involuntary discharge. The applicant seems to believe waiving his right to a discharge review board makes his involuntary discharge a voluntary discharge; however, that is not the case, as the applicant was involuntarily separated under the appropriate administrative guidance.

A complete copy of the AFPC/DPSOA evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 18 May 12 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and

recommendation of the Air Force office of primary responsibility (OPR) and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. The discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority for multiple Fitness Assessment failures. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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 the application.

The following members of the Board considered AFBCMR Docket Number BC-2012-00381 in Executive Session on 16 Aug 12, under the provisions of AFI 36-2603:

Panel Chair Member Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 25 Jan 12.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSOA, dated 8 May 12.

Exhibit D. Letter, SAF/MRBR, dated 18 May 12.

Panel Chair