

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01116

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

He be reinstated to the rank of Airman First Class along with his previous time in grade.

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APPLICANT CONTENDS THAT:

He has successfully completed the Air Force Return to Duty Program (RTDP) and has had no further disciplinary actions during the 12-month probation period following his official return to duty.

In support of his request, the applicant submits a personnel statement, letters of recommendation, documents pertaining to his nonjudicial punishment actions and return to duty, and an AF Form 910, *Enlisted Performance Report (AB thru TSgt)*.

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

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STATEMENT OF FACTS:

The applicant contracted his initial enlistment in the Regular Air Force on 10 July 2007. He was progressively promoted to the rank of airman first class.

On 16 September 2010, the applicant was tried by a special court-martial for two specifications of wrongful use of cocaine. He pled guilty to both specifications, was found guilty. His sentence was a reprimand, reduction in grade from airman first class, to airman basic, and forfeiture of \$500 pay per month for 6 months, hard labor without confinement for 3 months and restriction to the limits of his assigned Air Force Base for 2 months.

The applicant applied for and was selected to participate in the Air Force Return to Duty Program. On 15 March 2011, The Air Force Clemency and Parole Board reviewed the applicant's case

and approved his return to duty, effective as soon as possible, under the provisions of Air Force Instruction (AFI) 31-205, *The Air Force Correction System*, paragraph, 11.6.

The applicant's Enlisted Performance Report (EPR) profile follows:

<u>PERIOD ENDING</u>	<u>EVALUATION</u>
25 October 2011	5B - Promote Ahead of Peers
25 October 2010	3B
10 March 2010	5B - Promote
10 March 2009	4B

Information extracted from the Military Personnel Database System (MilPDS) (Exhibit B) reveals the applicant has been subsequently promoted to the grade of airman first class on 25 August 2012. He currently has a projected date of separation (DOS) of 9 July 2013. The applicant's Reenlistment Eligibility (RE) code is "4E" ineligible due to insufficient grade - grade is Airman First Class or below.

**Examiner's Note:** In accordance with (IAW) AFI 31-205, the Air Force maintains a service unique Return to Duty Program (reference 10 USC section, 953) located at Lackland AFB, TX. The program offers selected court-martialed enlisted personnel with exceptional potential the opportunity to be returned to active duty and have their punitive discharge, if adjudged, remitted. Program participants referred to as candidates, live in housing relatively free of physical security and control measures as much as possible. There is no social segregation by sex. They are provided with therapy and education programs individually designed to improve their conduct, attitude and productivity for continued Air Force service.

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AIR FORCE EVALUATION:

AFPC/DPSOE recommends denial. DPSOE states the RTDP is the Secretarial implementation of 10 USC section 953 (remission or suspension of sentence; restoration to duty; reenlistment). The RTDP gives airmen the opportunity to be returned to active duty and have a punitive discharge, if adjudged, remitted; it does not provide for restoration of rank. AFI 36-2502, *Airman Promotion/Demotion Programs*, governs eligibility for promotion. That instruction contains no provision enabling applicant to regain rank lost as a result of a criminal conviction. Completion of the RTDP does not even guarantee a return to duty. All that is required is that the airmen returned to duty be allowed to serve at least one year before separation. While the applicant has successfully completed the RTDP and provided several letters in support of his request, no error or injustice

occurred in this case. The applicant will be eligible for promotion to Airman First Class on 25 August 2012.

The complete AFPC/DPSOE evaluation is at Exhibit C

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a letter dated 6 May 2012, the applicant states IAW AFI 31-205, paragraph 11.6.16., Airmen who complete the RTDP can petition the AFBCMR for re-instatement of some or all rank lost in court-martial. The Air Force has at least contemplated that members who successfully complete the RTDP should receive some or all of their lost rank. Therefore, he requests his rank be restored to Airman First Class based on his successful completion of the RTDP and duty performance since returning to duty. The applicant includes details of his current job performance, leadership support, and reiterates his request for some or all of his previous time in grade in addition to his restored rank.

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

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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, to include his comments provided in rebuttal to the Air Force evaluation, in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.
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THE BOARD DETERMINES THAT:

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 this application BC-2012-01116 in Executive Session on 11 September 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 9 March 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOE, dated 27 April 2012.
- Exhibit D. Letter, SAF/MRBR, dated 11 May 2012.
- Exhibit E. Letter, APPLICANT, dated 6 May, 2012, w/atchs.

Panel Chair