

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01472

COUNSEL: NO

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

1. Her official military records be corrected to show that she was not involuntarily discharged from the Air Force.
2. She be reinstated onto active duty in her last AFSC of 8R000 (Enlisted Accessions Recruiter).

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APPLICANT CONTENDS THAT:

1. She was unfairly denied an Administrative Discharge Board (ADB) during her involuntary discharge. Her Area Defense Counsel (ADC) told her she did not qualify for an ADB because she had not served the minimum of six years of active duty which is required to warrant an ABD. However, per AFI 36-3208, *Administrative Separation of Airman*, she was entitled to an ADB because she had over six years of total service. She served 5 years, 1 month, and 10 days of active duty, and 5 years, 11 months, and 20 days of inactive duty.

By amendment the applicant contends:

2. Her discharge from the Air Force was an act of reprisal under the Whistleblowers Protection Act in retaliation for making a protected communication while at Air Force Recruiting School regarding a classmate who had been unfairly advanced through a particular portion of the course curriculum. Because of the protected communications, she met a hostile work environment at her new duty station, which included delays in receiving advanced Basic Allowance for Housing (BAH) and access to software required to perform her duties, being assigned a government vehicle with a history of maintenance problems, being given an old computer, and having a flight mate who made persistent unwanted sexual advances toward her. As a result of this reprisal, she went Absent With Out Leave (AWOL) to find resolution outside of the Air Force.

3. Her Article 15 was ineffective for the following reasons:

a. The charges reflected were erroneous. While her Flight Chief requested the Article 15 be initiated for her being AWOL, the actual charges reflected the following: "Without authority, failed to go at the time prescribed to her appointed place of duty," and "Without authority was absent from her place of duty at which she was required to be." Additionally, the period of AWOL described is incorrect as she attempted to surrender on 21 Dec 10, but was told that she must return to her home station to do so.

b. The ultimate sentence was crafted in such a way as to give her the false perception she would be granted probation and rehabilitation until 11 Jul 11, without further action, instead she was demoted.

c. The bases of the action included two Letters of Reprimand (LOR), but the LORs for improper use of a government owned vehicle and for making unauthorized phone calls were too harsh. Each LOR states she was "derelict in her duties," but "derelict" is too harsh a word for unintentional misuse.

4. She was improperly denied her right to test for promotion to the grade of Staff Sergeant (SSgt) in 2010. Her adjusted date of rank (DOR) to Senior Airman (SRA) was 26 Jul 09, making her eligible to test for SSgt in the 2010 cycle after she had completed six months time in grade (TIG). However, her leadership told her she would be testing in 2011.

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

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STATEMENT OF FACTS:

The applicant entered the Regular Air Force on 22 Mar 00 and served until 21 Mar 04 when she was released from active duty and transferred to the Individual Ready Reserve (IRR).

On 25 Jan 10, the applicant reentered the Regular Air Force in the grade of senior airman (E-4) to serve as an Air Force Recruiter.

On 7 Feb 11, the applicant's commander notified her that he was recommending she be discharged from the Air Force for Minor Disciplinary Infractions with a service characterization of Under Honorable Conditions (General). The reasons for this action were:

1. On or about 17 Dec 10, the applicant, without authority, failed to go at the time prescribed to her appointed place of duty. And, on or about 20 Dec 10, the applicant, without authority, was absent from her appointed place of duty, and did remain so absent until on or about 28 Dec 10. For this misconduct, she was punished under Article 15 of the Uniform Code of Military Justice (UCMJ). As punishment the applicant

received a reduction to the grade of Airman, with reduction below Airman First Class suspended, unless sooner vacated.

2. On or about 9 Nov 10, the applicant was derelict in her duty in that she used her assigned Government Owned Vehicle between the hours of 2200 and 0500 without the permission of the operator's supervisor. For this dereliction of duty, she received a Letter of Reprimand (LOR).

3. On or about 20 May 10 to on or about 20 Dec 10, the applicant was derelict in her duty in that she used her assigned Government office telephone to make unauthorized personal phone calls outside here recruiting zone. For this dereliction of duty, she received an LOR.

The applicant's commander recommended her for discharge, the case file was found to be legally sufficient and the discharge authority ultimately directed she be discharged with a service characterization of General, without an opportunity for probation and rehabilitation.

On 25 Jan 11, the applicant submitted a Congressional Complaint to her Congresswoman complaining she was the victim of "inequality and retribution."

On 10 Feb 11, the applicant contacted the Air Education and Training Command Inspector General Complaints Resolution Division (AETC/IGQ), alleging she was the victim of reprisal on the part of her squadron commander for having made a protected communications.

On 22 Feb 11, the Air Force Recruiting Service Inspector General (AFRS/IG) notified the applicant she was protected under the DOD Whistle Blower Protection Act while her case was under review.

On 4 Mar 11, the applicant was discharged for Misconduct (Minor Infractions), furnished a General (Under Honorable Conditions) discharge certificate, and was credited with 11 years and 1 month of total service, which included five years, one month, and ten days of active service and 5 years, 11 months, and 20 days of inactive service.

In accordance with AFI 36-3208, Paragraph 6.2.2, Airmen recommended for discharge for (involuntary separation) must be offered an opportunity for a hearing by an administrative discharge board if: (6.2.2.2.) the Airman has six or more years of total active and inactive military service at the time the discharge processing starts. This includes service in the delayed enlistment program (DEP).

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility which are included at Exhibits C and D.

AIR FORCE EVALUATION:

AFPC/DPSOS recommends approval indicating there was an error or injustice. Based on the documentation on file in the applicant's master personnel records, the decision to deny the applicant an ADB hearing was not consistent with the procedural and substantive requirements of the discharge instruction. In accordance with AFI 36-3208, Paragraph 6.2.2. the applicant qualified for an ADB hearing during her involuntary discharge proceeding because she had over 6 years of combined active and inactive service at the time of her separation. Therefore, we recommend the Board grant the applicant's request that she be offered an opportunity for a hearing by an ADB.

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

AFRS/RSO/CCU advises that the applicant is not qualified to return to service in the Recruiting Special Duty. Her Reentry Code (RE Code) of 2B is disqualifying IAW AFI 36-2606, *Active Duty Service Determination for Civilian or Contractual Groups*. Further, even if her disciplinary actions were removed from her file by the AFBMCR, her pay grade of E-4 (Senior Airman) was restored, and her RE Code was upgraded to an acceptable RE Code, she would still be ineligible to apply to the AF Prior Service program based on the fact that she would not have 4-years retainability prior to hitting her high year of tenure (HYT) as an E-4. Therefore, she is not qualified due to the HYT restriction.

A complete copy of the AFRS/RSO/CCU evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reiterates that her discharge and Article 15 were rendered unfairly. She also contends that said actions were rendered in reprisal for her protected communications. She also contends that she was unfairly denied the opportunity to test for promotion to the grade of staff sergeant in early 2010, despite being eligible to do so. In support of these contentions, she submits 90 pages of material consisting of correspondence related to her Congressional Inquiry, e-mails associated with her case, excerpts from the military personnel record, and several pictures (Exhibit F).

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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. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice regarding the applicant's contention she was denied her right to meet an Administrative Discharge Board (ADB) in conjunction with her involuntary discharge. After a thorough review of the evidence of record and the applicant's complete submission, to include her rebuttal response, we agree with the AFPC/DPSOS determination that the applicant was entitled to appear before an ADB prior to being discharged as she had attained more than six years of combined active and inactive service at the time of her separation. Moreover, the applicant also alleges that her discharge was the culmination of a systematic pattern of events that constitute reprisal in violation of the Whistleblower Protection Act (10 USC 1034). However, while the evidence of record indicates the applicant timely filed a complaint with the Inspector General, it appears as though an investigation into her allegations was never completed in accordance with the provisions of 10 USC 1034. Therefore, while we find the evidence is sufficient for us to conclude that she was deprived of certain due process rights related to her discharge, in order for the Board to render full and fair consideration of this case, we believe the applicant's case should be referred to the Inspector General for an investigation under the authority granted to this Board on this issue. Accordingly, it is our determination that a final decision not be rendered on the applicant's requests until such time as the Inspector General conducts an investigation at our request and the report of investigation (ROI) is provided to us for review. The Board notes the applicant did not contend she was the victim of reprisal in her original AFBCMR application, but notified the AFCMR of her claim of reprisal under Whistleblower Protection Act (10 USC 1034) in her subsequent rebuttal after receiving the Air Force evaluations in Aug 12. Thus, the Board adhered to the statutory requirement for responding to an allegation of reprisal by responding with 180-days of receipt of the applicant's rebuttal. Upon receipt of the ROI, or if for some reason the IG should determine an investigation cannot be conducted, we will reopen the applicant's case and resume consideration of her requests. Therefore, it is our determination that the applicant's case be administratively closed, without prejudice, until appropriate action by the IG has concluded and this Board and the applicant, has been so advised.

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THE BOARD DETERMINES THAT:

The applicant be notified that her case was administratively closed, without prejudice.

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The following members of the Board considered AFBCMR Docket Number BC-2012-01472 in Executive Session on 9 Jan 12, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01472 was considered:

- Exhibit A. DD Form 149, dated 29 Mar 12, w/atchs.
- Exhibit B. Master Military Personnel Records.
- Exhibit C. Letter, AFPC/DPSOS, dated 14 May 12.
- Exhibit D. Letter, AFRS/RSO/CCU, dated 2 Aug 12.
- Exhibit E. Letter, SAF/MRBR, dated 3 Aug 12.
- Exhibit F. Letter, Applicant, undated.

Panel Chair