

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01513

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His discharge waiver package for fraudulent entry be waived so that he can reenlist.

APPLICANT CONTENDS THAT:

The denial of his discharge waiver was unjust because it was inconsistent based on the commander's approval of cases similar to his, the lack of consideration for support from his supervisory chain of command and letters of character reference, and the disregard of his outstanding active service record.

During his initial contact with the recruiter, he stumbled in his office, unannounced, slightly nervous, and not sure what to expect. He was asked a series of qualifying questions and had no problem answering honestly. When he was asked if he had ever used illegal drugs, he said "no," because he had not used marijuana in almost four years, so his instinct was to say no and did not realize that it might not be disqualifying. However, after saying "no," he was afraid to change his answer. The first opportunity he had with a security officer he informed her of the three incidences he had used marijuana; the last occurring in 2008. He knew what he did was wrong, especially when it involves signing official documents; he should have come clean at the recruiting office. However, as an airman, he felt the need to tell the truth.

He deserved the waiver; however, unfortunately, that was not the case. He later found out that other airman had admitted the use of illegal drugs once they arrived at technical school. These were airmen who he enrolled with, who had used marijuana a multitude more times than he did, and some who had used drugs that were of a harsher nature than his, yet, they were given a waiver.

In support of his appeal, the applicant provides a personal statement, a chronology of the events leading up to his discharge and an extract of his discharge package.

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

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force, on 24 May 11, for a period of six years.

His commander notified him, on 27 Feb 12, that he was recommending him for discharge from the Air Force for "Fraudulent Enlistment." Specifically, on 22 Aug 11, during the applicant's pre-screening interview for his security clearance, he admitted to using marijuana three times prior to his enlistment. The applicant deliberately misrepresented and/or concealed facts on his 27 Jan 11, DD Form 1966, *Record of Military Processing - Armed Forces of the United States*, which he certified on 24 May 11 and his 26 Jan 11, AF Form 2030, *USAF Drug and Alcohol Abuse Certificate*, which he certified on 24 May 11. Had the Air Force known of the applicant's pre-service drug involvement, it could have rendered him ineligible to enlist.

The applicant acknowledged receipt of the notification of discharge and was advised of his right to consult with legal counsel and submit statements in his own behalf. The applicant's commander recommended the applicant be retained and he be allowed to retain his Top Secret clearance; however, his waiver request was disapproved by the discharge authority. The base legal office recommended the waiver package be approved and upon review of the case, found it legally sufficient to support the basis for separation. On 3 Mar 12, the discharge authority directed the applicant be discharged with an honorable discharge without probation and rehabilitation.

The applicant was honorably discharged, on 16 Mar 12, by reason of "Fraudulent Enlistment," and was issued an RE code of 2C (Involuntarily separated with an honorable discharge; or entry level separation without characterization of service). He was credited with 9 months and 23 days of active duty service.

THE AIR FORCE EVALUATION:

AFPC/DPSOS recommends denial. Based on the documentation on file in the master personnel records, the discharge was consistent with the procedural and substantive requirements of the discharge instruction and was within the discretion of the discharge authority. The applicant did not submit any evidence or identify any errors or injustices that occurred in the discharge processing. He provides no facts warranting a change to his narrative reason for separation.

The complete AFPC/DPSOS evaluation is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 30 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. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice warranting partial relief. While we note the applicant's stated request, we believe the more appropriate correction would be to change the applicant's reentry and separation codes. In this respect, while we found no error in the discharge processing, it appears the applicant's immediate commander and the SJA recommended his retention based on their view of the circumstances surrounding his separation and his overall performance and character. In our view, the evidence provided is sufficient to support that it is in the interest of justice to correct the record as stated above. In view of this, we recommend changing the applicant's reason for separation to Secretarial Authority and the RE code to 3K, respectively. The RE code of "3K," is a code which can be waived to allow reenlistment provided he meets all other requirements for enlistment under an existing prior service program. Whether he is successful or not will depend on the needs of the respective service concerned and our recommendation in no way guarantees he will be successful in returning to any branch of the service. Therefore, we recommend his records be corrected as indicated below.
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 issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 16 March 2012, he was discharged under the provisions of AFI 36-

3208, (Secretarial Authority), with a Separation Program Designator (SPD) code of "KFF" and a Reentry code of "3K."

The following members of the Board considered AFBCMR Docket Number BC-2012-01513 in Executive Session on 5 November 2012, under the provisions of AFI 36-2603:

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 Mar 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOS, dated 9 May 12.
- Exhibit D. Letter, SAF/MRBR, dated 30 May 12.

Panel Chair