RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-01975

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His highest rank of master sergeant (MSgt/E-7) be reinstated.

APPLICANT CONTENDS THAT:

He is the subject of an injustice as he served satisfactorily in the grade of MSgt from 1992 thru 1995, until he had a reduction in grade in November 1995. He was told that he would receive his grade of MSgt after being separated for ten years.

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

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force who was progressively promoted to the grade of MSgt. On 16 October 1995, the applicant was offered nonjudicial punishment for committing indecent acts upon a female under the age of 16 years of age, not his wife, by fondling her breasts, buttocks, and genital area with his hands, with intent to gratify his sexual desires. After consulting counsel, the applicant waived his right to a trial by court-martial, accepted the Article 15 punishment, and submitted an appeal to his commander. After considering the applicant's submission, the commander found the applicant committed the alleged offenses. As a result, the applicant received punishment consisting of reduction in grade to technical sergeant (TSgt/E-6), with a new date of rank of 16 October 1995.

On 16 October 1995, the commander notified the applicant of his intent to file the applicant's Article 15 in his Senior Non-Commissioned Officer (SNCO) Selection Record. On 6 November 1995, the senior review authority approved the commander's decision and directed the applicant's Article 15 be filed in his SNCO Selection Record.

The applicant applied for retirement and a highest grade held determination was completed by the Secretary of the Air Force Personnel Council. A Secretary of the Air Force memorandum, dated 7 February 1996, indicates the applicant "did not serve

satisfactorily in any higher grade and will not advance under the provisions of Section 8964, Title 10, United States Code."

The applicant retired effective 1 May 1996, in the grade of TSgt.

AIR FORCE EVALUATION:

AFPC/DPSOR recommends denial. DPSOR states the applicant did not submit any evidence or identify an error or injustice in the grade determination process. Absent evidence to the contrary, there is a presumption of regularity in which the applicant was afforded due process and, that the discharge was consistent with procedural and substantive requirements of the grade determination.

The complete DPSOR 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 2 July 2012, for review and comment within 30 days (Exhibit D). As of this date, this office has received no response.

THE BOARD CONCLUDES THAT:

- 1. The applicant has exhausted all remedies provided by existing law or regulations.
- 2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
- 3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or an 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 and adopt its rationale as the basis for our conclusion 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.

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.

The following members of the Board considered AFBCMR Docket Number BC-2012-01975 in Executive Session on 15 February 2013, under the provisions of AFI 36-2603:

- , Panel Chair
- , Member
- , Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2012-01975:

- Exhibit A. DD Form 149, dated 24 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOR, dated 21 Jun 12.
- Exhibit D. Letter, SAF/MRBR, dated 2 Jul 12.

Panel Chair