

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-00740

COUNSEL: NONE

HEARING DESIRED: NO

MAR 27 1997

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APPLICANT REQUESTS THAT:

He be reinstated in the Air Force with no break in service; his grade of **staff sergeant (E-5)** be reinstated, with all back pay, allowances, and accrued leave; he be immediately selected to attend Officer Training School (**OTS**); his records be expunged of all unfavorable information it contains that was a direct result of the intentional injustice caused by the Air Force, including but not limited to Enlisted Performance Reports (EPRs), DD Form **214**, medical records, and Reports on Individual Personnel (RIPs); he be awarded the Air Force Good Conduct Medal with three Oak Leaf Clusters (AFGCM 3OLC), the Air Force Longevity Service Award Ribbon (AFLSR) w/2OLC, and the Air Force Commendation Medal (AFCM) w/1OLC; and that he be reimbursed for his Montgomery G.I. Bill contributions. By amendment dated **10 Jun 1996**, the applicant requested that the G.I. Bill issue be removed from consideration.

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APPLICANT CONTENDS THAT:

On 9 Oct **1991**, he was unjustly accused of not supporting his wife. As a result, he was given a career-ending Article **15**. He also had to pay back the **\$8,802.77** for Basic Allowance for Quarters (BAQ) at the dependent rate since it was unjustly determined he had not provided support for his wife.

After requesting that the Defense Finance and Accounting Service (DFAS) forward his claim for BAQ to the General Accounting Office (GAO), it was determined by GAO that the file created by the Eglin AFB Accounting and Finance Office (AFO) did **not** contain evidence to adequately support the fact that he did not provide support for his wife during the period in question. The GAO settlement certificate went on to state that on several occasions, his spouse certified he was providing for her, and that she never filed a formal or informal complaint for nonsupport or lack of adequate support.

As a result of the GAO findings, he was reimbursed the \$8,802.77 for BAQ that he had to pay back before separating and he was paid \$806.83 for the period he was unjustly denied BAQ (1 May **1991** - 17 Aug **1992**).

The GAO wanted his squadron commander to provide evidence to show he did not support his wife. Not only could the commander not provide such evidence, but the only evidence indicated support had been provided. As a result, the GAO reversed the decision made by the commander.

The Article 15 was based on two allegations: (1) He certified that he provided adequate support for his wife for two years (May 1988 - May 1990) which was then known by him to be false; and, (2) The Military Pay Office at [REDACTED] AFB determined that he either did not provide his wife with adequate support or was not entitled to BAQ with-dependent rate. The reasons given to him were: (1) His wife was not living with him; therefore, he was not entitled to dependent-rate BAQ. (2) His wife and he were legally separated; therefore, he must provide his wife at least the difference between single rate and dependent-rate BAQ. (3) Marital discord existed in the marriage. (4) There was a third-party complaint against him for having received dependent-rate BAQ when his wife was not residing with him. (5) He never provided his wife with adequate support payments for the period Jan 1985 - Apr 1991.

The Article 15 lent itself to another confusing matter. It seems that a PCS declination statement, unsigned and undated, was placed in his records without his knowledge. He was told that because of the Article 15 investigation, his reassignment orders were canceled. This situation with the bogus declination statement prevented him from pursuing the Article 15. On 31 Oct 1994, the AFBCMR determined that the declination statement never should have been placed in his records.

The Article 15 destroyed his career. Because of this grave injustice, he was not allowed to continue his career in the Air Force. He was in the fast lane of his career when this injustice was committed against him. If this constructive discharge had not occurred, he would be an Air Force officer today based on his achievements. He, who had a military record more deserving of a promotion, was demoted to senior airman because of bogus, unjustifiable and incompetent statements and allegations. His documentation will show that the injustice committed against him was either intentional or the result of severe incompetence. Anything short of his requests would preclude him from being made whole again and this would be another injustice.

In support of his appeal, the applicant provided copies of the following documents: GAO Settlement Certificate, dated 27 Sep 1993; Article 15, dated 9 Oct 1991; DFAS-DE documents; witness statements; documents from the Accounting and Finance Office (AFO) [REDACTED] AFB; character statements; a statement by his spouse; and other documents associated with the issues cited in his contentions (Exhibit A).

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#### STATEMENT OF FACTS:

Applicant contracted his initial enlistment in the Regular Air Force on 5 Aug 1983, in the grade of E-3 for a period of four years. He executed an extension of 23 months to this enlistment until 4 Jul 1989. He contracted his last enlistment on 10 Mar 1989, in the grade of E-5 for a period of four years.

On 9 Oct 1991, the applicant received punishment under Article 15, UCMJ, for misconduct. The reason cited was that on 21 May 1990, he signed a false official document, AF Form 987, "Recertification of Basic Allowance for Quarters (BAQ) - Variable/Rent Plus Housing Allowance (VHA/RPHA)", when he certified that he had provided adequate support for his wife for the previous two years and that his

wife resided with him. The punishment consisted of a reduction to E-4 with a new date of rank of 9 Oct 1991.

Applicant was authorized the following decorations: AF Training Ribbon, National Defense Service Medal, AFM, AF Organizational Excellence Award, AFGCM 10LC, AFLSA 10LC, and the **USAF** NCO PME Graduate ribbon 10LC.

Applicant's APR/EPR profile follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
7 Aug 84	9
7 Aug 84	9
7 Aug 86	9
7 Aug 87	9
14 Feb 88	9
14 Feb 89	9
14 Feb 90	5
* 14 Feb 91	4
14 Feb 92	3

As a result of the favorable consideration of the applicant's AFBCMR appeal on 25 Oct 1994, his record was corrected to show he was honorably released from active duty in the grade of E-4 on 31 Aug 1993, rather than 17 Aug 1992, by reason of "Early Separation Program-Strength Reduction," rather than "Expiration of Term of Service." This correction allowed him to reach high year of tenure as an E-4, changing his total active military service to 10 years and 26 days (see AFBCMR 94-02186).

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#### AIR FORCE EVALUATIONS:

The Air Force Legal Services Agency, AFLSNJAJM, reviewed this application with regard to the legal sufficiency of the Article 15 at the time it was administered, and, whether a reasonable basis exists in law or fact to set aside the Article 15 and grant relief. It is not possible to reassemble all of the information the commander had at his disposal in deciding whether or not the applicant committed the charged offense. It is reasonable to assume that he had before him the third party complaint, which even if later disputed by the applicant and his wife, formed a legitimate basis for the AFO to verify his recertification. Thus, the applicant's complaint of being discriminated against because he and his wife chose to live separately is without merit.

The applicant's assertion that the form was ambiguous is not persuasive. The Nov 1984 version of the form, signed by the applicant on 21 May 1990, asked for the complete current address of dependents/sharers. The only matter that **JAJM** found unclear in this case is how the applicant could reasonably have concluded that the form was ambiguous in his situation. The applicant states that he and his wife agreed that for matters involving the military, his address would be used. He fails to realize that any such agreement between him and his wife was completely irrelevant for purposes of the certification form. The fact that changes were made in later editions of the form does not mean that the form was ambiguous in his situation. The version the applicant signed should be analyzed on its own merits.

The fact is that the Air Force form asked for his wife's complete current address. He knew his wife permanently resided elsewhere, yet he still certified falsely that she resided with him.

The Legal Services Agency was not persuaded by his wife's statement in which she attempted to clarify three previous statements she made. Her statement never defined what she meant by adequate nor did it specifically ever state that the applicant provided any support at all to her during the period of time charged in the Article 15. Even if one believes the wife's statement, the applicant has still not provided any evidence that he provided the minimum support required by the pay manual. The fact that the GAO decided to "waive" the government's claim does not mean that the applicant did not commit the offense for which he received Article 15 punishment. The only proof of support in the application is a copy of one check for \$100 dated 20 Sep 1988, made payable to the applicant's wife, hardly sufficient to meet the minimum amount of support required by the regulation. **JAJM** noted that only the applicant is listed on the account. The applicant also provided a copy of a check dated "5-1-1985" which shows both his name and his wife's name on the account. He offered the 1985 check as proof that his wife had access to his funds if she wanted. The applicant's argument is not persuasive because the 1985 check long preceded the period of time charged in the Article 15. The 1988 check listed only the applicant on the account, thus negating his argument that his wife had access to his account. After carefully analyzing all of the documentation provided by the applicant, the Legal Services Agency recommended denial. Their complete evaluation is at Exhibit C.

The Airman Promotion Branch, AFPC/DPPPWB, reviewed this application and stated that the applicant was reduced in grade from **E-5** to **E-4**, with a date of rank and effective date of 9 Oct 1991, as a result of the Article 15 punishment. His date of rank and effective date to **E-5** prior to the reduction was 1 May 1988. If the Board sets aside the Article 15 or negates the reduction, the applicant's grade would revert to **E-5**, effective and with a date of rank of 1 May 1988 (Exhibit D).

The BCMR and SSB Section, AFPC/DPPPAB, reviewed this application with regard to removal of the EPR closing 14 Feb 1992, and recommended approval. According to the regulation, evaluators must not consider or refer to "Article 15 and actions taken under Article 15. Do not use the term Article 15 or mention punishment imposed under this authority." The applicant does not state specifically which unfavorable personnel data he would like removed from his record but DPPPAB assumed he is referring to documents relating to the Article 15. The statement on the AF Form 77, Supplemental Evaluation Sheet, attached to the EPR closing 14 Feb 1992, is in direct violation of the governing regulation and should be voided from the applicant's record. Since this office found no other evaluation report in his record that mentions the Article 15 or the behavior associated with it, no further changes in his record were recommended in relation to this issue. DPPPAB's evaluation is at Exhibit E.

The Programs and Procedures Branch, AFPC/DPPRP, reviewed this application and recommended denial. The case has been reviewed for separation processing and there are no errors or irregularities causing an injustice to the applicant. The separation complies with directives in effect at the time of his release from active duty. The applicant did not identify any specific errors in the separation processing nor provide justification to warrant reinstatement to active duty (Exhibit F).

The Recognition Programs Branch, AFPC/DPPRA, stated that the applicant is not entitled to any other unit or individual awards and decorations than those shown on his DD Form 214. The AFGCM is awarded to enlisted personnel for three years of exemplary service while on active duty. The applicant spent 10 years and 26 days on active duty, but received an Article 15 on 9 Oct 1991. Therefore, he is only entitled to the AFGCM 1OLC. The AFLSA is awarded to servicemembers for each four years of active duty. Since applicant only had 10 years of active duty, he is only entitled to the AFLSA 1OLC. There is no evidence in the applicant's records that a recommendation for the AFGCM 1OLC was ever submitted or placed into official channels. He has provided no documentation to substantiate his request for additional awards and decorations (Exhibit G).

The Officer Accessions Branch, AFPC/DPPAO), reviewed this application and recommended denial. Without an application and proof of its rejection based on an error or an injustice, there is no basis to grant the applicant's request for immediate selection to OTS. A review of the records reveals that the applicant was when discharged and is currently ineligible to apply for OTS because of his age (maximum age is 30); his reenlistment eligibility (RE) code; and because he cannot complete OTS and be commissioned prior to his 35<sup>th</sup> birthday. All commissionees must be able to accept their appointments early enough to complete 20 years of commissioned service before reaching age 55 (Exhibit H).

The Commander's Programs Branch, AFPC/DPSFC, stated that by operation of law, Title 10, USC, 701(b), members cannot carry over 60 days of accrued leave into the next fiscal year (FY). If the Board reinstates the applicant, DFAS restores 44 days of accrued leave for which the applicant received payment on 31 Aug 1993. Thereafter, DFAS reduces the accrued leave balance to 60 days at the end of each FY. If reinstated, the applicant's leave balance will be 60 days as of 1 Oct, plus 2.5 days earned for each month beginning 1 Oct. DPSFC recommended denial (Exhibit I).

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#### APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS:

Copies of the Air Force evaluations were forwarded to the applicant on 26 Aug 1996, for review and response (Exhibit J). The applicant's complete response and supporting documents are attached at Exhibit K.

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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 not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The AF Form 77, Supplemental Evaluation Sheet to the Enlisted Performance Report closing 14 Feb 1992, contains references to the Article 15 and the actions taken under Article 15 in direct violation of the governing regulation. Therefore, we agree with the opinion and recommendation of the Chief,

**BCMR** and **SSB** Section, that the report be voided and removed from his records. Even though we are recommending that the report be removed from the applicant's record, according to the office of primary responsibility, our recommendation is inconsequential to the applicant's promotion status since he had a mandatory separation date.

4. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The applicant's documentation was thoroughly reviewed; however, we did not find his arguments, either singularly or collectively, sufficiently compelling to override the rationale provided by the offices of primary responsibility.

a. Other than his own assertions, the applicant has failed to provide sufficient evidence to sustain his argument that he was unjustly accused of signing a false official document, Recertification of Basic Allowance for Quarters - Variable/Rent Plus Housing Allowance, when he recertified that he had provided adequate support for his wife. Even though the GAO waived the government's claim against the applicant for erroneous payment of dependent-rate BAQ, this decision by the GAO does not result in an inescapable conclusion that the basis for the Article 15 no longer exists. The fact remains that the applicant signed a false official document when he certified that his wife resided with him and that he provided adequate support for her. Further, he still has not provided proof that he furnished his wife the minimum support required by the pay manual. Since we are not persuaded by the documentation that the Article 15 was erroneous or improper, and the applicant has failed to show that his substantial rights were violated or that the commander abused his discretionary authority, the issues raised by the applicant do not provide an adequate basis to justify setting aside the Article 15. Therefore, we agree with the opinion and recommendation of the Air Force Legal Services Agency and adopt their rationale as the basis to conclude that the Article 15 was legally sufficient at the time it was administered and there is no legal basis in law or fact to set aside the Article 15 and grant the applicant relief.

b. The applicant has not provided documentation to substantiate that his service met the criteria for award of the **AFGCM 30LC** and he did not serve long enough to be eligible to receive the **AFLSR 2OLC**. Further, there is no evidence that a recommendation for the **AFCM 1OLC** was ever submitted. Therefore, without evidence to the contrary, we conclude that the applicant is not entitled to these awards.

c. Since we are recommending denial of the above-mentioned requests, and we have seen no evidence indicating that the corrected reason for his separation is in error or unjust in any way, we find no basis exists to favorably consider his requests for restoration of his grade of **E-5**, reinstatement on active duty with the attendant benefits and allowances, and, the removal of certain unfavorable information and documents.

5. With regard to the applicant's request for immediate selection to attend Officer Training School (OTS), there is no evidence that he ever submitted an application for **OTS** or that once submitted, his application was unjustly denied. As noted by the Officer Accessions Branch, the applicant has other disqualifying factors that would render him ineligible. As such, we recommend that his request be denied.

**THE BOARD RECOMMENDS THAT:**

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Enlisted Performance Report, rendered for the period 15 Feb 1991 through 14 Feb 1992, be declared void and removed from his record.

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The following members of the Board considered this application in Executive Session on 4 Mar 1997, under the provisions of AFI 36-2603:

Mr. LeRoy T. Baseman, Panel Chairman  
Mrs. Barbara A. Westgate, Member  
Mr. Mike Novel, Member

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

- Exhibit A. DD Form 149, dated 9 Mar 1996, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSNJAJM, dated 7 Jun 1996.
- Exhibit D. Letter, AFPC/DPPPWB, dated 18 Jun 1996, w/atch.
- Exhibit E. Letter, AFPC/DPPPAB, dated 28 Jun 1996.
- Exhibit F. Letter, AFPC/DPPRP, dated 5 Aug 1996.
- Exhibit G. Letter, AFPC/DPPPRA, dated 6 Aug 1996.
- Exhibit H. Letter, AFPC/DPPAO, dated 9 Aug 1996, w/atch.
- Exhibit I. Letter, AFPC/DPSFC, dated 13 Aug 1996.
- Exhibit J. Letter, SAF/MIBR, dated 26 Aug 1996.
- Exhibit K. Letter, Applicant, dated 23 Sep 1996, w/atchs.

  
LEROY T. BASEMAN  
Panel Chairman