

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 90-02340

[REDACTED]
[REDACTED]
COUNSEL: None

HEARING DESIRED:

MAY 23 1995

APPLICANT REQUESTS THAT:

Blocks 9a (Type of Separation), 9c (Authority & Reason), and 13 (Terminal Date of Reserve/Military Service Obligation (MSO)) of his DD Form 214 be changed.

APPLICANT CONTENDS THAT:

Since his reenlistment eligibility (RE) code was changed on 18 March 1982, the areas in question should also be corrected.

Applicant's 6 November 1994 letter to his congressman, with attachments, requesting these changes is provided at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force in the grade of airman basic on 29 July 1974. He was discharged on 28 July 1978 in the grade of senior airman under the provisions of AFR 39-10 with an RE code of 2H (Identified as alcohol abuser according to AFR 30-2 & has not completed period of follow-on support for alcohol rehabilitation treatment) and a separation program designator (SPD) code of KBK (Expiration Term of Service). Block 13 reflected "N/A." Available military records do not provide information concerning the circumstances surrounding his discharge.

In a letter dated 18 March 1982, the Director of Manpower & Personnel Data Systems, AFMPC/DOA1, advised applicant that the RE code on his DD Form 214 was administratively changed from 2H to 1J (Eligible to reenlist but elects separation or discharge).

Applicant subsequently enlisted in the Regular Air Force on 10 May 1982 in the grade of sergeant, and is currently serving in the Regular Air Force in the grade of master sergeant.

In an application dated 7 July 1990, he requested that Blocks 9a, 9c and 13 on his DD Form 214 should also be changed in view of his RE code being changed to 1J. On 11 January 1991, the Board denied applicant's request as untimely. A copy of the Record of Proceedings is attached at Exhibit C.

AIR STAFF EVALUATION:

The Military Personnel Technician, AFMPC/DPMARS2, reviewed the application and states that if applicant had been given an RE code of 1J at the time he separated, he would have been released from active duty and would have fulfilled his MSO in the Air Force Reserve. Since he was discharged and did not complete his MSO, they cannot give him credit for time not served.

A complete copy of the Air Staff evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

A complete copy of the Air Staff evaluation was forwarded to the applicant on 6 March 1995 for review and comment within 30 days. As of this date, no response has been received by this office.

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 warranting corrections to applicant's DD Form 214. In this respect, we note that on 18 March 1982, the Director of Manpower and Personnel Data Systems changed applicant's RE code from 2H to 1J. In the absence of discharge records, we must rely on the presumption of regularity that responsible officials applied appropriate standards in effecting the change in applicant's RE code. In view of the fact that the applicant would have been released from active duty and would have fulfilled his MSO in the Air Force Reserve had he been given the correct RE code at the time he separated, it appears that the failure to update the related items on his DD Form 214 was an administrative oversight. In view of the above, and to offset any possibility of an injustice, we conclude that applicant's records be corrected to the extent indicated below.
-

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was not discharged on 28 July 1978, but on that date, he was released from active duty, transferred to the Reserve of the Air Force,

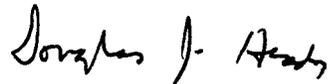
with obligated service until 28 January 1980, and furnished a separation program designator (SPD) code of "MBK."

The following members of the Board considered this application in Executive Session on 27 April 1995, under the provisions of AFR 31-3:

Mr. Douglas J. Heady, Panel Chairman
Mr. John T. Dorsett, Member
Mr. Gregory H. Petkoff, Member

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

- Exhibit A. Applicant's Letter to C/M Hobson, dated 6 Nov 94, w/atchs .
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Record of Proceedings, dated 11 Jan 91, w/atchs.
- Exhibit D. Letter, AFMPC/DPMARS2, dated 14 Feb 95.
- Exhibit E. Letter, AFBCMR, dated 6 Mar 95.



DOUGLAS J. HEADY
Panel Chairman

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 90-02430

COUNSEL: None

HEARING DESIRED: No *11/1/90*

APPLICANT REQUESTS THAT:

His DD Form 214 blocks 9a, 9c, and 13 be changed.

APPLICANT CONTENDS THAT:

The reasons the applicant believes the records to be in error or unjust and the evidence submitted in support of the appeal are at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application are not known as the applicant's military records have been lost/destroyed.

AIR STAFF EVALUATION:

AFMPC/DPMARS2 reviewed this application and noted that the applicant has not filed a timely request and his inordinate delay may have contributed to their not having an adequate record to review. They must rely on the presumption of regularity and recommend that the application be denied.

A complete copy of the evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

A copy of the Air Staff evaluation was forwarded to applicant on 3 October 1990 for review and response. As of this date, no response has been received by this office.

90-02340

FINDINGS AND CONCLUSIONS OF THE BOARD

1. The application was not filed within three years after the alleged error or injustice was discovered, or reasonably could have been discovered, as required by Section 1552, Title 10, United States Code (10 USC 1552), and Air Force Regulation 31-3. Although the applicant asserts a date of discovery which would, if correct, make the application timely, the essential facts which gave rise to the application were known to applicant long before the asserted date of discovery. Knowledge of those facts constituted the date of discovery and the beginning of the three-year period for filing. Thus the application is untimely.

2. Paragraph b of 10 USC 1552 permits us, in our discretion, to excuse untimely filing in the interest of justice. We have carefully reviewed applicant's submission and the entire record, and we do not find a sufficient basis to excuse the untimely filing of this application. The applicant has not shown a plausible reason for delay in filing, and we are not persuaded that the record raises issues of error or injustice which require resolution on the merits at this time. Accordingly, we conclude that it would not be in the interest of justice to excuse the untimely filing of this application.

DECISION OF THE BOARD

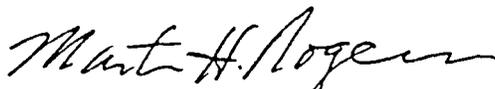
The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered this application in accordance with the provisions of paragraph 9, AFR 31-3, dated 31 May 1985:

Mr. Martin H. Rogers, Panel Chairman
Ms. L. Julie Copenhaver, Member
Mr. C. Bruce Braswell, Member

The following documentary evidence was considered:

- EXHIBIT A. DD Form 149, dated 7 Jul 90, w/atchs.
- EXHIBIT B. Applicant's Available Master Personnel Records.
- EXHIBIT C. Letter, AFMPC/DPMARS2, dated 3 Oct 90.
- EXHIBIT D. Letter, AFBCMR, dated 3 Oct 90.


MARTIN H. ROGERS
panel Chairman