


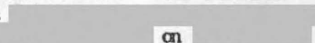





714 270 436 (DPLS)


→ 5200-14-2 TD 8100

3 May, 1978

  
Dear Sir:

Your letters of 8 March to the Minister of Justice and of 11 March 1978 to His Excellency the Governor General, have been referred to me. I have carefully reviewed your files and documents and I have, as well, requested and obtained a report into the matters raised in your letters.

Firstly, I should like to deal with the circumstances surrounding your release from the Canadian Forces. Your records reveal that you commenced training with  on  1975 as a member of Course number . On  1975, you were placed on formal warning report for lack of initiative, attentiveness and ability to meet the standards displayed by your comrades. On , you absented yourself without leave and remained so absent eleven days. On surrendering yourself, you were charged with absence without leave under Section 80 of the National Defence Act and, on  you were summarily tried for that offence, found guilty and awarded a fine of \$200.00.

Your release was subsequently authorized under Item 5(d) of the Table to Queen's Regulations and Orders for the Canadian Forces "Not advantageously employable" and was effective on . For your information, a 5(d) release item applies to the release of an officer or a man in the following circumstances:

- a. because of an inherent lack of ability or aptitude to meet military classification or trade standards; or
- b. who is unable to adapt to military life; or
- c. who, either wholly or chiefly because of the conditions of military life or other factors beyond his control, develops personal weaknesses or has domestic or other personal problems that seriously impair his usefulness to or impose an excessive administrative burden on the Canadian Forces.

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An Item 5 release is an honourable one. However, Canadian Forces policy concerning the re-enrolment of former members requires that the applicant have displayed the potential for further advancement in training and rank classification. I regret to say that your past performance does not reflect this potential and that, accordingly, you are not considered suitable for re-enrolment. I understand you were so informed in September 1976.

Turning now to the points raised in the two letters referred to above, I must say I cannot agree that your release and "conviction" ought to be cancelled. There is only one entry on your Canadian Forces conduct sheet and this reflects the charge of absence without leave to which I referred earlier. Absence without leave is a disciplinary offence, not a criminal offence. This is not a "conviction" in the generally accepted meaning of the word. The actual reason for your release from the Canadian Forces was not so much your "conviction" for the service offence of absence without leave as for lack of initiative, attentiveness and ability to meet the standards of your peers in respect of which you had been given a prior formal warning. To put it another way, you were not released for misconduct but for the reason stated above.

Records at your former unit and at this Headquarters do not reveal any report of an incident such as the one you have referred to that would have taken place between [redacted] and the date of your departure from Canadian Forces Base [redacted] on or about [redacted]. You will agree that without more precise and detailed information about this incident, it is not possible to initiate an investigation at this time. You will agree also, I am sure, that it would have been preferable if you, as the victim of this alleged incident, had registered an official complaint before this with the military or civilian authorities. Be that as it may, you were released from the Canadian Forces for the reason stated above and not because of an involvement in the incident you have alluded to. Once a release has been approved, there is no authority whereby the stated reason for such a release may be altered unless new facts have been advanced that clearly demonstrate that the information contained in the release documentation was incorrectly interpreted or that a factual error was committed. As no new facts have been submitted in the present instance, I regret to inform you that the actual reason for your release in 1976, i.e. "Not advantageously employable" cannot be changed.

Yours sincerely,



A.D. Mitchell  
Colonel

Director of Personnel Legal Services

LCol JE Caron/S-3445/mr

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