

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

Work-Product

RECORD OF PROCEEDINGS**IN THE MATTER OF:****DOCKET NUMBER:** BC-2021-03630

Work-Product

COUNSEL: Work-Product**HEARING REQUESTED:** YES**APPLICANT'S REQUEST**

His retirement rank be changed to senior master sergeant (E-8) instead of technical sergeant (E-6).

APPLICANT'S CONTENTIONS

In a 3-page legal brief, the applicant through counsel contends because of an administrative error and a false accusation, he was denied a fair opportunity to be considered for, and to promote to senior master sergeant. The administrative error was a two-year administrative delay in awarding him the Air Medal with 3rd Bronze Oak Leaf Cluster, which would have been sufficient to earn his promotion to master sergeant (E-7) in promotion cycle 13E7. ¹Subsequent action by the Air Force Board for Correction of Military Records (AFBCMR) resulted in his promotion to master sergeant with a date of rank of 1 Mar 14. However, the administrative delays made his record non-competitive. In 2019, an accusation of sexual assault (subsequently recanted) resulted in an Air Force Office of Special Investigations (AFOSI) investigation, letter of reprimand, administrative demotion from master sergeant to technical sergeant, and led his squadron commander (SQ/CC) to recommend he be discharged. An Administrative Discharge Board (ADB) convened and determined the applicant did not commit the offense and no basis for discharge existed. The standard of proof at the ADB to prove the applicant did not commit the offense was by a preponderance of the evidence. Subsequently, the applicant requested an exception to policy to be reinstated to master sergeant. The wing commander (WG/CC) at the time supported the request; however, he was reassigned before completing the paperwork and the new WG/CC denied the request. The applicant was falsely accused of sexual assault, cleared of the wrongdoing by a board of officers during ADB proceedings, yet he was still administratively demoted based on the recanted allegation. Air Force Instruction (AFI) 36-2505, *Enlisted Airman Promotion and Demotion Programs*, paragraph 6.4.1.8., states: "A reason for demotion that is not supported by a preponderance of the evidence may not be used as the basis for demotion." As such, since the ADB determined his discharge for sexual misconduct was not warranted by the preponderance of the evidence, not only should his original rank be restored, but he should be retired in the rank of senior master sergeant.

The applicant's complete submission is at Exhibit A.

¹ AFPC/DPSOE informed AFBCMR staff the applicant was supplementally selected for promotion to the rank of master sergeant. Therefore, AFBCMR action was not required.

STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant.

On 8 Oct 14, the applicant was awarded the Air Medal with 3rd Bronze Oak Leaf Cluster for meritorious achievement while participating in aerial flight from 11 Apr 11 to 19 Jul 12.

In an undated memorandum, the Air Force Personnel Center, Enlisted Promotions office (AFPC/DPSOE) notified the applicant's unit to inform him and his commander he had been supplementally considered for promotion in cycle 13E7 and was selected for promotion to master sergeant with a line number of 2595.9. Pending the commander's recommendation letter, the applicant's date of rank of 1 Mar 14 can be updated.

On 21 Aug 15, Board staff informed the applicant his request for relief (supplemental consideration for 13E7 promotion cycle), submitted 2 Apr 15, was evaluated by AFPC/DPSOE, and identified they have authority to administratively correct his record. Therefore, his application to the AFBCMR in view of the administrative fix was being closed.

On 27 Sep 19, AFOSI initiated an investigation based upon information from a staff member of the Family Advocacy Program that the applicant sexually assaulted his wife. (Exhibit J).

According to documentation submitted by the applicant:

On 6 May 20, the SQ/CC issued the applicant a letter of reprimand for arranging an unknown male to have sexual intercourse with his incapacitated wife in Feb 19. The SQ/CC opined that as a senior noncommissioned officer (SNCO), the applicant was responsible for upholding the highest standards of personal conduct and professional behavior. Were it not for his spouse's lack of participation, he would almost assuredly have faced a court-martial. His blatant disregard of the law, United States Air Force core values, and the well-being of his wife has brought discredit upon himself, the squadron, and the United States Air Force.

On 18 May 20, the applicant responded to the letter of reprimand stating that he did not facilitate the rape or sexual assault on his wife. What they did, albeit unconventional, was entirely and completely consensual. Additionally, the applicant's wife provided an Affidavit stating that she was not raped or sexually assaulted in Feb 19 or on any other night. She consented to the sexual intercourse. She went on to say that the man she had the extramarital relationship with had mentally abused her and changed her perception of what occurred that evening in Feb 19. Upon much reflection and much therapy, she feels empowered to acknowledge what really happened that night.

On 15 Jun 20, according to *Administrative Demotion of Airmen Memorandum*, the SQ/CC recommended the applicant be administratively demoted to the rank of technical sergeant. The reason for his recommendation was the applicant's failure to fulfill responsibilities in accordance with AFI 36-2502, paragraph 6.3.4. The SQ/CC considered the applicant's entire military record in making the decision to initiate this demotion action. Per Air Force Handbook (AFH) 36-2618, *The Enlisted Force Structure*, paragraphs 4.4, 4.5, and 4.6 (and their respective subparagraphs) the responsibilities of a SNCO include the ability to abide by the Air Force Core Values, exhibit professional behavior, and enforce a zero tolerance policy for sexual harassment and sexual assault. [Applicant] disregarded and failed to carry out these responsibilities, as evidenced by an AFOSI investigation indicating the applicant arranged for an unknown male to have sexual intercourse with his incapacitated spouse. During the AFOSI interview the applicant's spouse

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indicated the applicant created and maintained a ²Tinder account using a pseudonym and her photographs in order to solicit men to engage in sexual acts with her. On the night in question, his spouse consumed enough alcohol to become inebriated and went to sleep by herself in [Applicant's] hotel room. The applicant's spouse was woken up by an unknown male having sex with his spouse and he watched the encounter knowing she was incapacitated. The unknown male told the applicant's spouse he was contacted via Tinder. But for his spouse's lack of participation, the applicant could have been court-martialed.

On 18 Jun 20, the applicant acknowledged receipt of the recommendation; indicated he did not concur with the proposed demotion; submitted written materials on his behalf [On 2 Jul 20, the applicant submitted 28 pages]; requested a personal hearing before the SQ/CC; and consulted with counsel.

On 10 Jul 20, the SQ/CC considered the written and/or verbal matters presented on 7 Jul 20 and 10 Jul 20, and determined demotion to technical sergeant was appropriate and indicated he would forward all submitted matters to the demotion authority.

On 20 Jul 20, according to Notification Memorandum – Board Hearing, the SQ/CC notified the applicant he was recommending his under other than honorable conditions (UOTHC) discharge under the provisions of AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.55., *Sexual Assault*. The reason for the action is he arranged for an unknown male to have sexual intercourse with his incapacitated spouse, as evidenced by an AFOSI investigation. For this misconduct he received a letter of reprimand dated 6 May 20.

On 31 Jul 20, the applicant's spouse provided input to the wing judge advocate (WG/JA) regarding an "Alternative Disposition to Discharge Board." In the memorandum she indicated she understood the applicant faces administrative demotion and an ADB. Alternatively, she further understood the possibility that in lieu of an ADB, he may be administratively demoted to technical sergeant and allowed to retire as a technical sergeant. She stated she fully supported this alternative disposition, and would also fully support his retirement as a master sergeant.

On 12 Aug 20, the GP/CC considered and reviewed all of the matters submitted by the applicant and any summary of the applicant's matters from the SQ/CC. In addition as required by AFI 36-2502, he obtained, read, and considered and attached a written legal review from the WG/JA, dated 7 Jul 20. The legal review found a legally sufficient basis to demote the applicant and the GP/CC determined demotion to the rank of technical sergeant with a new date of rank of 12 Aug 20 was appropriate.

On 13 Aug 20, the SQ/CC notified the applicant the demotion authority demoted him to technical sergeant with a 12 Aug 20 date of rank, and his right to appeal the decision no later than 18 Aug 20.

On 17 Aug 20, the applicant indicated he would appeal the decision and submitted a written statement consisting of 28 pages.

On 20 Aug 20, the GP/CC forwarded the case, legal review, and all matters to the appellate authority.

On 25 Aug 20, the appellate authority [WG/CC] considered all matters submitted to include the legal review submitted to the demotion authority and denied the applicant's appeal.

² Tinder is an online dating and geosocial networking application.

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On 25 Aug 20, the applicant acknowledged the WG/CC's decision.

On 4 Jan 21, the new SQ/CC removed the 6 May 20 letter of reprimand from the applicant's Unfavorable Information File (UIF).

On 29 Jan 21, the new SQ/CC provided a character statement to the reviewing authority. In the memorandum, the commander opined that based on his review of the evidence in this matter he understood the applicant's prior commander's decision to demote him because the applicant and his spouse's consensual, alternative lifestyle had a negative impact on his military career. However, he did not think discharge was appropriate and would advocate for the applicant to be allowed to retire from active duty.

On 8 Feb 21, the GP/CC reissued the applicant a letter of reprimand citing that as a noncommissioned officer (NCO), he was responsible for upholding the highest standards of personal conduct and professional behavior, and that his blatant disregard of the law, Air Force core values, and the well-being of his wife has brought discredit upon himself, the squadron, and the United States Air Force.

On 10 Feb 21, the applicant responded to the reissued letter of reprimand by stating he did not facilitate the rape or sexual assault on his wife. What they did, albeit unconventional, was entirely and completely consensual, and based on the evidence presented, he is not guilty of the charges indicated in the letter of reprimand.

On 22 Mar 21, the applicant received an Addendum to Notification Memorandum – Board Hearing, from the GP/CC, notifying him he was amending the notification memorandum indicating on 8 Feb 21 he issued a new letter of reprimand for the alleged offense stated in the 6 May 20 letter of reprimand, and was recommending he be discharged with a UOTHC service characterization.

On 23 Mar 21, the ADB found since it has not shown by a preponderance of the evidence that a sexual assault has been committed by the applicant, he should be retained in the United States Air Force.

On 15 Apr 21, the WG/CC informed the SQ/CC, the ADB's recommendation for the applicant's retention is binding and therefore, approved.

On 31 Jul 21, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from active duty. His narrative reason for discharge is "Sufficient Service for Retirement."

On 1 Aug 21, according to Special Orders No. **Work-Product**, dated 27 Apr 21, the applicant was retired in the rank of technical sergeant. He was credited with 20 years, 2 months, and 29 days of active service. His highest grade held was master sergeant.

On 3 Aug 21, according to a letter provided by the applicant, his former WG/CC provided a letter of support indicating prior to the ADB, the applicant was administratively demoted to the rank of technical sergeant based upon the weight of the evidence. He concedes the ADB decision is not binding on the prior administrative demotion action or his rank at retirement; however, he finds it relevant and compelling that a board of three impartial officers reviewed the evidence using the same preponderance of the evidence standard used in the demotion action, and made their findings. He indicated he supported the applicant's effort to be retired as a master sergeant.

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On 21 Sep 21, pursuant to the authority delegated by the Secretary of the Air Force, the Secretary of the Air Force Personnel Council determined the applicant did not serve satisfactorily in any grade higher and will not be advanced under the provisions of 10 U.S.C. § 9344.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, F, and G.

APPLICABLE AUTHORITY/GUIDANCE

10 U.S.C. § 9314, *Twenty to Thirty Years: Enlisted Members*, allows an enlisted member who meets the basic eligibility criteria for retirement, 20 years total active federal military service, to request retirement. Enlisted members must voluntarily request retirement.

10 U.S.C. § 9344. *Higher grade after 30 years of service: warrant officers and enlisted members*. Enlisted members of the Regular Air Force retired with less than 30 years of active service is entitled, when their active service plus service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily, as determined by the Secretary of the Air Force.

AFI 36-3203, *Service Retirements*. When Regular enlisted members' and certain reserve enlisted members' active service plus service on the retired list totals 30 years, they may be advanced on the retired list to the highest grade served on active duty satisfactorily and receive retired pay in that grade, as determined by the Secretary of the Air Force or designee under 10 U.S.C. § 9344.

AFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, paragraph 6.3.4. *Failure to Fulfill Responsibilities*. Airmen may be demoted for failing to fulfill Airman, NCO, or SNCO responsibilities under AFH 36-2618, *The Enlisted Force Structure*.

Paragraph 6.4.1.8. After receiving the Airman's acknowledgment, the commander decides whether to terminate the demotion action or continue processing. A reason for demotion that is not supported by a preponderance of evidence may not be used as a basis for a demotion.

AFH 36-2618, paragraph 4.6. *Senior Noncommissioned Officer Responsibilities*. In addition to meeting all junior enlisted Airmen and NCO responsibilities, SNCO responsibilities include:

4.6.1. Epitomize excellence, professionalism, pride, and competence, serving as a role model for all Airmen to emulate. Reflect the highest qualities of a leader and professional and provide highly effective leadership.

4.6.8. Promote responsible behaviors within all Airmen. Readily detect and correct unsafe or irresponsible behaviors that impact unit or individual readiness.

4.6.9. While every Airman has a duty and obligation to act professionally and meet all Air Force standards at all times, SNCOs have a special obligation and responsibility to ensure the Air Force retains a climate and culture of dignity and respect, as outlined in Air Force Policy Directive-1, *Air Force Culture*. SNCOs who fail to monitor, correct and advise subordinates and leaders when needed have not executed their responsibility.

AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, defines High Year of Tenure (HYT) as a year point at which the Air Force determines an enlisted Airman is ineligible for reenlistment and extension of enlistment due to grade and length of service. The HYT for technical sergeant is 22 years.

AIR FORCE EVALUATION

AFPC/DP2SSM (Special Programs) recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. In accordance with AFI 36-2907, *Unfavorable Information File (UIF) Program*, dated 22 May 20 (Incorporating Change, dated 15 Jan 21):

2.2. Standard of Proof. The Standard of Proof for adverse administrative actions is the "preponderance of the evidence." This standard will be used when evaluating the evidence and every element of the alleged offenses.

2.2.1. A preponderance of the evidence exists when it is more likely than not that events have occurred as alleged. Preponderance of the evidence is not determined by the number of witnesses or exhibits, but by all the evidence and evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationship to the matter being considered.

2.3.5. Letter of Reprimand. Administrative censure for violation of standards which is more severe than a RIC [Record of Individual Counseling], LOC [letter of counseling], and LOA [letter of admonishment] and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior.

2.4.6.4. RICs, LOCs, LOAs or letter of reprimands no longer contained in a PIF [Personnel Information File] or UIF. Air Force records contained in other Air Force records systems, not a unit PIF or UIF (for example, senior officer UIFs), may not be rescinded by a commander or civilian director. After the disposition date of the record (in either a PIF or UIF) has passed, members may apply to the AFBCMR to have their records of RICs, LOCs, LOAs, or letter of reprimands removed from other Air Force records systems.

3.2.4. Members will be allocated three duty days to acknowledge the intended actions and provide pertinent information before the commander makes the final decision on placing optional documents in the UIF.

On 6 May 20, the applicant received a letter of reprimand, alleging he facilitated the rape of his spouse. He did provide a response to the letter of reprimand. On 15 Jun 20, after the sexual assault allegation was recanted, but based solely on the allegation, the applicant was demoted from master sergeant to technical sergeant with a date of rank of 12 Aug 20. On 20 Jul 20, the applicant's commander recommended he be discharged for misconduct. On 4 Jan 21, the applicant's new SQ/CC decided to remove the letter of reprimand from the applicant's UIF. On 8 Feb 21, the GP/CC reinstated the letter of reprimand, and the applicant provided a response on 10 Feb 21. The applicant was discharged from the Air Force on 31 Jul 21 and retired 1 Aug 21. The letter of reprimand was rendered to the applicant based on the preponderance of evidence and he provided pertinent information, in accordance with AFI 36-2907. The letter of reprimand is not in the applicant's official military personnel record, so there is no action for the Board to take on the request for removal.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Jun 22 for comment (Exhibit D), and the applicant replied on 21 Jun 22. In his response, the applicant through his counsel contended that demoting the applicant for misconduct found by the ADB not to have occurred is

just plain wrong, constituting a manifest injustice. He refutes the AFPC/DP2SSM advisory opinion opining that it misses the point by stating the letter of reprimand issued to the applicant was in accordance with the administrative procedures required by AFI 36-2907. Specifically, the applicant was issued a letter of reprimand and demoted to technical sergeant, based solely on an allegation, that the applicant responded to with exculpatory evidence and an affidavit from his spouse recanting the allegation. On 26 Oct 20, the letter of reprimand was rescinded by the new SQ/CC after reviewing the evidence and speaking with the alleged victim. However, on 8 Feb 21, the GP/CC without reviewing the evidence, reissued a substantially similar letter of reprimand, which resulted in the applicant meeting a discharge board on 23 Mar 21. By a preponderance of the evidence, the ADB found the applicant to have not committed the misconduct contained in the letter of reprimand. Yet, the administrative demotion stood. The applicant's counsel met with wing leadership and was informed they intended to overturn the demotion. However, the WG/CC was reassigned prior to completing the required paperwork, and the new WG/CC, without reviewing the evidence did not support reinstating the applicant's rank to master sergeant. Based solely on this injustice, the applicant's retirement rank should be restored to master sergeant.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DP2SPP (Enlisted Promotions) recommends partially granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. On 6 May 20, the SQ/CC issued the applicant a letter of reprimand on the grounds he facilitated the sexual assault of his incapacitated wife on 3 Mar 19, which she reported during an AFOSI interview. Specifically, he used a Tinder account to solicit an unknown man to engage in sexual acts with his wife and watched him have sex with her while she was inebriated.

On 18 May 20, the applicant responded to the letter of reprimand asserting all acts were consensual and provided supporting documents to include hotel and Uber receipts, text messages and photos. Additionally, the applicant's spouse provided an affidavit affirming the encounter was consensual and requested to withdraw her allegations. On 9 Jun 20, the SQ/CC maintained the letter of reprimand and established a UIF. On 15 Jun 20 the SQ/CC issued the applicant his intent to demote. On 20 Jul 20, the SQ/CC informed the applicant he was being recommended for a UOTHC discharge for Misconduct (Sexual Assault) in accordance with AFI 36-3208. On 13 Aug 20, the demotion authority approved the demotion in rank to technical sergeant with an effective date of rank of 12 Aug 20. On 18 Sep 20, a new SQ/CC rescinded the 6 May 20 letter of reprimand and removed the applicant's UIF on 4 Jan 21. The new commander also requested to stop the discharge process but learned he did not have the authority to do so.

On 8 Jan 21, the GP/CC readministered a letter of reprimand for the alleged sexual assault on 3 Mar 19. The applicant provided a response on 10 Jan 21. On 21 Jan 21 the SQ/CC submitted a character statement to the administrative discharge board annotating after he reviewed all case materials, meeting with the applicant's spouse and civilian lawyer, he decided to remove the letter of reprimand, stop the discharge (but was not authorized to do so), stating it would be a mistake to discharge the applicant, and that he would advocate for the applicant to be allowed to retire from active duty. On 22 Mar 22, the GP/CC issued the applicant an Addendum to Notification Memorandum – Board Hearing to inform him of the following actions: (1) He amended the notification memorandum to include new administrative action for the alleged offense cited by the issuing commander in the letter of reprimand dated 6 Mar 20, which was since withdrawn; (2) He issued a new letter of reprimand for the 3 Mar 19 alleged offense, and in accordance with AFI 36-3208, UOTHC service characterization recommendation is appropriate.

On 23 Mar 21, the ADB found the applicant did not arrange for an unknown male to have sexual intercourse with his incapacitated spouse. The findings in the allegation do not form a basis for discharge under AFI 36-3208, paragraph 5.55. The ADB recommended the applicant should be retained in the Air Force. Further, on 3 Aug 21, the demotion appellate authority, WG/CC, at the time of the matter in question was reassigned soon after the administrative discharge board's decision, provided the AFBCMR a memo stating he found the administrative discharge board's findings relevant and compelling, and that he supports the applicant to be retired in his former rank/grade of master sergeant/E-7. AFPC/DP2SPP recommends the applicant be reinstated to the rank of master sergeant, with a date of rank of 1 Mar 14, and his records be considered for the 21E8 supplemental promotion cycle to senior master sergeant.

The complete advisory opinion is at Exhibit F.

AFPC/JA (Enlisted Personnel Law) recommends denying the application. On 6 May 20, the applicant received a letter of reprimand for facilitating a sexual encounter between his incapacitated wife and a third party. On 15 Jun 20, the applicant was notified of the commander's recommendation for demotion from master sergeant to technical sergeant based on AFI 36-2502, paragraph 6.3.4. (based on the same facts and circumstances of the letter of reprimand). The demotion authority concurred with the recommendation and demoted the applicant to technical sergeant, effective 12 Aug 20. An ADB held on or about 22 Mar 21 for violation of AFI 36-3208, paragraph 5.55; also based on the same facts and circumstances of the letter of reprimand. The ADB found that the applicant did not commit the alleged offenses and recommended the applicant be retained in the Air Force. The 6 May 20 letter of reprimand was subsequently rescinded by a subsequent SQ/CC on 30 Oct 20 but was reinstated by the GP/CC on 8 Feb 21. The applicant honorably retired from the Air Force on ³31 Jul 21 [sic].

The applicant asserts an injustice occurred when his leadership chain declined his request to remove his letter of reprimand or reinstate his rank after he was retained at an ADB. They disagree that any injustice has occurred. The applicant (and his counsel) rests their request solely on the fact that the members of the discharge board did not find a basis for discharge and recommended retention. However, the findings and recommendation of a board are not binding on other administrative or disciplinary actions. Additionally, because the standard of proof (preponderance of the evidence) is the same for letter of reprimands, administrative demotions, and administrative discharges, there is no greater weight to be given to the findings of a discharge board versus the findings of an impartial commander. In response to the 6 May 20 letter of reprimand, the applicant asserted he did not "arrange for an unknown male to have sex with [his] incapacitated wife." He did however "sit in the chair, watch and filmed a short video of their encounter." He admitted it was common practice for the couple to go out and have a few drinks and his wife to open a bottle of wine immediately prior to the encounter. He further stated that his wife had fallen asleep prior to the third party arriving at their hotel room, and that she was awakened by the third party prior to beginning the sexual encounter. These facts are sufficient to establish the commander could reasonably find the applicant knew, (or should have known) his wife was incapacitated at the time he filmed another party engaging in a sexual encounter with her. While the results of the ADB are notable, sufficient evidence exists to conclude the decision by the applicant's leadership not to revoke the letter of reprimand or administrative demotion, was not arbitrary and capricious. Further, as the demotion was not the result of an error or injustice, there is no basis to assume the applicant would have been promoted to senior master sergeant.

The complete advisory opinion is at Exhibit G.

³ The applicant was discharged on 31 Jul 21 and retired effective 1 Aug 21.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 2 May 23 for comment (Exhibit H), and the applicant replied on 4 May 23. In his response, the applicant through his counsel contended AFPC/JA's conclusion that there is sufficient evidence the commander could reasonably find the applicant knew, or should have known his wife was incapacitated, is directly contrary to the evidence of the testimony of the alleged victim (applicant's wife), that she engaged in a consensual sexual relationship. The advisory conclusion appears to be justified based on the OPR's distaste for the couple's consensual sexual lifestyle. The letter of reprimand was not written because of their lifestyle, but rather because allegedly the applicant committed sexual assault. Additionally, it should be noted that the applicant's due process protection regarding the letter of reprimand is entirely inferior to that of the ADB, where witnesses are subject to cross examination. No such protection is afforded by the commander or appellate authority in consideration of a letter of reprimand. Specifically, the GP/CC refused to speak to the alleged victim, the complaining witness, who sought to recant her allegation and answer his questions. Lastly, he asks the Board to review the AFPC/DP2SPP advisory as it cogently sets forth the analysis that is accurate and persuasive of why the applicant's request should be granted.

The applicant's complete response is at Exhibit I.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends his demotion was unjust and he was denied due process because the demotion authority's decision was contrary to the ADB recommendation. However, the Board disagrees. The administrative demotion was a separate and distinct function and had no bearing on the result of the ADB proceedings, which followed his request to appeal his demotion. Counsel contends that even though the new SQ/CC rescinded the letter of reprimand after reviewing the evidence and speaking with the alleged victim, the GP/CC, without reviewing the evidence, reissued a substantially similar letter of reprimand, which resulted in the applicant meeting an ADB and by a preponderance of the evidence, the ADB found the applicant to have not committed the misconduct contained in the letter of reprimand. Yet, the administrative demotion stood. However, as noted by AFPC/JA, the findings and recommendation of an ADB are not binding on other administrative or disciplinary actions. The administrative demotion and ADB were separate actions. The *Administrative Demotion of Airmen Memorandum*, provided by the applicant indicates the applicant's original SQ/CC recommended he be demoted for failure to fulfill responsibilities in accordance with AFI 36-2502, paragraph 6.3.4. The SQ/CC considered the written and/or verbal matters presented by the applicant and determined demotion to technical sergeant was appropriate and indicated he would forward all submitted matters to the demotion authority [GP/CC]. The GP/CC, read and considered the matters submitted by the applicant and attached a written legal review from the WG/JA. The applicant appealed the decision and submitted a 28-page written statement to the appeal authority [WG/CC]. The WG/CC considered all matters and denied the applicant's appeal. Counsel also points to a character statement provided by the new SQ/CC as evidence why the applicant's rank should be restored. The SQ/CC stated he did not think discharge was appropriate and would advocate for the applicant to be allowed to retire from active duty; however, based on his review of the evidence in this matter he understood the applicant's prior commander's decision to demote him because the applicant and his spouse's consensual, alternative lifestyle had a negative impact on his military career.

The applicant asserts what he and his spouse did, albeit unconventional, was entirely and completely consensual, and based on the evidence presented, he is not guilty of the charges included in the letter of reprimand. However, as noted above, the applicant was demoted because of his failure to fulfill his SNCO responsibilities in accordance with AFI 36-2502, paragraph 6.3.4. The ADB, in a separate action, subsequently decided since it has not shown by a preponderance of the evidence that a sexual assault has been committed by the applicant, he should be retained in the United States Air Force. However, the ADB did not consider the applicant's demotion – only whether he should be retained in the Air Force. Conversely, the applicant's commanders determined there was sufficient evidence to show he failed to carry out his responsibilities as a SNCO in violation of Air Force standards and expectations, which was sufficient to demote him to technical sergeant. Counsel further cites AFI 36-2505, paragraph 6.4.1.8., as a reason the Board should grant relief because it states: "A reason for demotion that is not supported by a preponderance of the evidence may not be used as the basis for demotion." As such, since the ADB determined his discharge for sexual misconduct was not warranted by the preponderance of the evidence, the demotion should also be rescinded. However, as noted above, the administrative demotion and ADB process are separate actions. While the *Administrative Demotion of Airmen Memorandum* mentions the events that resulted in the AFOSI investigation, the reason for the applicant's demotion was his failure to fulfill his responsibilities in accordance with AFI 36-2502, paragraph 6.3.4. Furthermore, AFPC/JA states because the standard of proof (preponderance of the evidence) is the same for letters of reprimand, administrative demotions, and administrative discharges, there is no greater weight to be given to the findings of the ADB versus the finding of an impartial commander. The Board agrees. In addition, the applicant claims he suffered an injustice because he was not provided an opportunity to retire as a senior master sergeant; however, while the SQ/CC initially recommended the applicant be discharged with a UOTHC characterization, the ADB determined he should be retained in the Air Force, yet he voluntarily retired on 1 Aug 21, knowing he could have served until 2023, which may have provided him with an additional opportunity for promotion consideration.

Counsel states the Board should concur with the AFPC/DP2SPP advisory as it cogently sets forth the analysis that is accurate and persuasive of why the applicant's request should be granted. The Board disagrees with their recommendation. AFPC/DP2SPP based their recommendation on the ADB's decision to retain the applicant and the former WG/CC's letter of support provided after the applicant had already retired. However, the ADB considered whether the applicant should be retained – not whether he should have been demoted. Furthermore, although the former WG/CC provided a letter of support, the WG/CC at the time considered all the facts, the applicant's submission, legal review, and determined the applicant should be demoted based on his failure to fulfill his SNCO responsibilities. In addition, following the applicant's retirement, the Secretary of the Air Force Personnel Council considered the applicant's service pursuant to 10 U.S.C. § 9344 and AFI 36-3203, and determined he should be retired at the grade of E-6, without any advancement to the grade of E-7 upon completion of 30 years. In cases of this nature, the Board is not inclined to disturb the judgments of commanding officers absent a strong showing of abuse of discretionary authority. The Board does not find this to be the case. Finally, the Board considered the applicant's numerous contentions and did an extensive review of the voluminous case file. However, based on the totality of the evidence, the Board finds the applicant failed to sustain his burden of proof of an error or injustice. Therefore, the Board recommends against correcting the applicant's record.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03630 in Executive Session on 6 Jul 23:

Work-Product, Chair, AFBCMR
Work-Product, Panel Member
Work-Product, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Oct 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSM, dated 5 Apr 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Jun 22.
- Exhibit E: Applicant's Response, dated 21 Jun 22.
- Exhibit F: Advisory Opinion, AFPC/DP2SPP dated 18 Jul 22.
- Exhibit G: Advisory Opinion, AFPC/JA, dated 22 Jul 22.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 2 May 23.
- Exhibit I: Applicant's Response, dated 4 May 22.
- Exhibit J: AFOSI Report of Investigation, dated 27 Mar 20 (WITHDRAWN)

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

9/22/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*