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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03674

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His former grade of Chief Master Sergeant (CMSgt/E-9) be restored effective 29 Oct 20.
2. His retirement orders be changed to reflect that he retired in the grade of E-9 effective 1 May 21.

APPLICANT'S CONTENTIONS

His case was mishandled. The 15-month timeline to resolve his alcohol related incident case was absurd and proved to be unusually cruel to him and his family, causing unnecessary anxiety, stress, and severe depression. He is seeking medical care for post-traumatic stress disorder (PTSD) directly related to this event. He is requesting his grade be restored because the original reason to initiate the administrative demotion has been officially removed. He references AFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, paragraph 6.1.6.1. "In cases where the demotion reason has been removed, the original date of rank and effective date will be restored." Finally, the unfavorable information file (UIF) that contained all evidence the administrative demotion was based on had expired, which also removes the original reason for administrative demotion.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force senior master sergeant (E-8)

On 17 Aug 93, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 28 Jul 94 for a period of four years.

On 8 Oct 19, a memo provided by the applicant indicates he received a Letter of Reprimand (LOR) from his squadron commander for a direct violation of Article 113, *Drunken or Reckless Operation of a Vehicle, Aircraft, or Vessel*, Uniform Code of Military Justice, specifically, operation of a motor vehicle while under the influence of alcohol. He was advised to seek professional services to improve his decision-making skills.

On 16 Oct 19, AF Form 1058, *Unfavorable Information File (UIF) Action*, provided by the applicant, indicates his squadron commander established a UIF and placed the LOR in it.

**AFBCMR Docket Number BC-2021-03674
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
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POC: SAF.MRBC.Workflow@us.af.mil

CUI//SP-MIL/SP-PRVCY

On 4 Nov 19, the *Administrative Demotion of Airmen Memorandum and Endorsements Form*, provided by the applicant, indicates the squadron commander recommended the applicant be administratively demoted to the grade of Senior Master Sergeant (SMSgt).

On 7 Nov 19, AF Form 1160, *Military Retirement Actions*, provided by the applicant, indicates he applied for retirement in lieu of (RILO) demotion.

On 22 Jan 20, a memorandum from the demotion authority, provided by the applicant, indicates the demotion authority recommended approval of the RILO application.

On 20 Jul 20, a Secretary of the Air Force Memorandum, provided by the applicant shows the RILO application was denied.

On 29 Oct 20, the *Administrative Demotion of Airmen Memorandum and Endorsements Form*, provided by the applicant, indicates the demotion authority demoted the applicant to the grade of SMSgt with a new date of rank, 29 Oct 20.

On 4 Nov 20, the *Administrative Demotion of Airmen Memorandum and Endorsements Form*, provided by the applicant, indicates the applicant appealed the demotion decision.

On 14 Dec 20, a memorandum from the appellate authority, provided by the applicant, indicates the appellate authority denied the applicant's appeal.

On 21 Jan 21, Special Orders **Work-Product** indicates the applicant would be retired in the grade of SMSgt, effective 1 May 21. Highest grade held on active duty is SMSgt.

On 22 Jan 21, Special Orders **Work-Product** rescinded Special Orders **Work-Product**.

On 25 Jan 21, Special Orders **Work-Product** indicates the applicant would be retired in the grade of SMSgt, effective 1 May 21. Highest grade held on active duty is CMSgt.

On 26 Mar 21, AF Form 102, *Inspector General (IG) Complaint Form*, provided by the applicant, indicates the applicant filed an IG complaint alleging his base's Judge Advocate (JA) office failed to present factual information in his case.

On 30 Apr 21, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant was discharged from the Air Force for Retirement with a narrative reason for separation, of "Maximum Service or Time in Grade." He was credited with 26 years, 9 months and 3 days of active service.

On 9 Jul 21, an e-mail from HQ AFMC/IG office, provided by the applicant, indicates the applicant was advised the correct avenue to address his issues is to petition the Air Force Board for Correction of Military Records (AFBCMR) for correction of any adverse personnel actions or demotion.

On 20 Jul 21, a Secretary of the Air Force Personnel Council (SAFPC) Memorandum, indicates the applicant served satisfactorily in the higher grade of Chief Master Sergeant (E-9) within the meaning of Section 9344, Title 10, United States Code, and the applicant's advancement to that grade on the retired list is directed, effective the date of completion of all required service.

CUI//SP-MIL/SP-PRVCY

On 10 Aug 21, Special Orders **Work-Product** amended Special Orders **Work-Product** to incorporate the 20 Jul 21 SAFFPC decision in the remarks section.

For more information, see the excerpt of the applicant's record at Exhibit B.

APPLICABLE GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 8 Aug 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his records from a mental health perspective. There were no records during or post service to indicate he received any mental health treatment for anxiety, depression, PTSD, or any other mental health conditions. He also received no mental disorder diagnosis to include PTSD. He claimed he was seeking medical care for PTSD directly related to the event, but no records exist or was submitted to validate this claim. It was unclear from his concise one-sentence statement whether he had PTSD at the time of the event or if he had developed PTSD following the event. The available records finds no evidence his alcohol related incident/misconduct was the result of a mental health condition. There was no evidence he was drinking to cope with a mental health condition or had a mental health condition affecting his behaviors at the time of his alcohol related incident/misconduct. He was clearly attending an event and was drinking as part of the

CUI//SP-MIL/SP-PRVCY

occasion/festivities. He made a poor decision which he acknowledged and was reprimanded by his leadership for his misconduct accordingly. Thus, the Psychological Advisor finds no nexus between his mental health condition and misconduct and no error or injustice with this discharge from service from a mental health perspective.

The Board may consider applying liberal consideration to his request specifically to upgrade his narrative reason for separation and due to his contention of a mental health condition. The following are responses based on information presented in the records to the four questions in the policy:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he experienced unnecessary anxiety, stress, and severe depression due to the prolonged timeline of his situation and appeal and reported he was seeking medical care for PTSD directly related to this event.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant experienced any anxiety, depression, or PTSD during service. He was evaluated by Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) following his incident and denied experiencing any anxiety or depression.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence his mental health condition to include anxiety, depression, or PTSD caused his incident/misconduct and does not excuse or mitigate his discharge.
4. Does the condition or experience outweigh the discharge?
Since there is no evidence his mental health condition may excuse or mitigate his discharge, his mental health condition also does not outweigh his discharge.

The complete advisory opinion is at Exhibit C.

AFPC/DP2SPP 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 for demotion actions. The demotion and appellate authority demoted the member based on his misconduct. Further, SAFPC already directed the member to be advanced to Chief Master Sergeant upon completion of his service through the Retired List to be effective on 28 Jul 2024.

The complete advisory opinion is at Exhibit D.

HQ AFPC/JA recommends denying the application. On 8 Oct 19, the applicant was issued an LOR and a UIF as a result of an alcohol related incident that occurred on 15 Sep 19. On 4 Nov 19, the applicant was served an Administrative Demotion for violation of AFI 36-2502, paragraph 6.3.4 (Failure to Fulfill Responsibilities) also stemming from the alcohol related incident on 15 Sep 19. As the applicant was retirement eligible at the time of demotion, he elected to submit his RILO package to SAFPC and requested to retire in lieu of the administrative demotion. On 20 Jul 20, SAFPC denied the applicant's request. The applicant was demoted to SMSgt, effective 29 Oct 20. The member retired, at the grade of SMSgt, effective 1 May 21.

AFI 36-2502, paragraph 6.3.4, states "Airmen may be demoted for failing to fulfill Airman, noncommissioned officer, or senior noncommissioned officer responsibilities under Air Force Handbook (AFH) 36-2618, *The Enlisted Force Structure*. Moreover, AFH 36-2618 (formerly AFI 36-2618) paragraph 4.6.1 states that senior non-commissioned officers should "epitomize excellence, professionalism, pride, and competence, serving as a role model for all Airmen to

emulate” and “reflect the highest qualities of a leader and professional and provide highly effective leadership.” The applicant, by his own admission, failed to set the right example by not having a plan in place before consuming alcohol and operating a vehicle.

The applicant (and his counsel) seem to rest their request for relief on the fact that the member’s formal charge of driving under the influence (DUI) was ultimately dismissed. However, the applicant (and counsel) fail to account for the fact that the demotion was not based on a formal charge of DUI. Instead, it was based on the member’s decision to drive, after consuming alcohol, with a blood alcohol content .08. This behavior showed a lack of leadership and maturity expected of a senior non-commissioned officer--especially a Chief Master Sergeant. Therefore, as the applicant showed a lack of leadership, maturity and regard for safety by choosing to drive while over the legal limit for alcohol consumption, the demotion action in his case was not a result of any error or injustice.

The complete advisory opinion is at Exhibit E.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Jun 22 for comment (Exhibit F), and the applicant replied on 12 Jul 22. In his response, he contends there is an inaccuracy referenced from the ADAPT referral report and there are several inaccuracies referenced from the Technician’s ADAPT report. Also, the Mental Health agency that reported inaccurate and false statements appears to have been inappropriately used as an investigative agency instead of a helping agency and he plans to address this potential Fraud Waste and Abuse issue outside of this forum. In addition, there are also facts left out of the Psychological Advisor report that can bring context and a different view of a few statements.

The applicant also contends the Subject Matter Expert letters include inaccuracies and he has provided accurate statements to clarify. The inaccuracies that are identified to exist in the AFBCMR claim itself can be confirmed. The Subject Matter Expert letters also leave out pertinent information that can drastically change the view of statements taken out of context.

JA has demonstrated a pattern of including incorrect information and misleading language when attempting to reference the facts of his case. Furthermore, there is silence when questions on the validity of information arises. Also, the JA advisory does not include comments on the inappropriate extended time it took to adjudicate this case; another major issue that has been consistently ignored and avoided by all JA departments. The time taken to adjudicate this case is the glaring evidence that demonstrates the injustice in the proper handling of this case.

The applicant’s complete response is at Exhibit G.

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. The Board concurs with the rationale of the AFRBA Psychological Advisor, AFPC/DP2SPP and HQ AFPC/JA and finds a preponderance of the evidence does not substantiate the applicant’s contentions. While the applicant asserts that his case was mishandled and took an extended amount of time to adjudicate, this does not change the fact that he made a poor decision

to drive after consuming alcohol, which he acknowledged and was reprimanded by his leadership for his misconduct accordingly. The Board also concluded there was insufficient evidence to support relief through liberal consideration or fundamental fairness. Therefore, the Board recommends against correcting the applicant's records.


4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-03674 in Executive Session on 24 Aug 22 and 12 Sep 22:


 <i>Work-Product</i>	Panel Chair
 <i>Work-Product</i>	Panel Member
 <i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Oct 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Mar 22.
- Exhibit D: Advisory Opinion, AFPC/DP2SSP, dated 21 Apr 22.
- Exhibit E: Advisory Opinion, HQ AFPC/JA, dated 27 Apr 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Jun 22.
- Exhibit G: Applicant's Response, dated 12 Jul 22.
- Exhibit H: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 8 Aug 22.

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.

5/15/2023


Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF