



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

*Work-Product*

**DOCKET NUMBER:** BC-2022-00537

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

His records be changed to reflect full retirement under Temporary Early Retirement Authority (TERA) in the grade of technical sergeant (E-6).

**APPLICANT'S CONTENTIONS**

In 2005, he was diagnosed and received treatment for obstructive sleep apnea (OSA)/narcolepsy. As a result, he faced a Medical Evaluation Board (MEB) and Reviews in Lieu of (RILO) annually. He fought to stay to serve his country. False information was used as a basis for his discharge. A change to the High Year Tenure (HYT) guidance that occurred after his demotion was used to justify his separation, just 13 days short of the grandfathered HYT for the grade of staff sergeant. If he had made it to 16 years of service, he would have been allowed to stay in service as a staff sergeant. Since separation, he has obtained a 100 percent disability rating from the Department of Veterans Affairs (DVA). If his request is not changed under TERA, he believes a medical retirement would be warranted due to his OSA/narcolepsy.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force staff sergeant (E-5).

On 4 Mar 14, the applicant's commander recommended he be demoted from the grade of technical sergeant to the grade of staff sergeant. The specific reasons for the action were between 30 Jun 11 and 14 Feb 14, the applicant failed his fitness assessment (FA) on six separate occasions. As a result, the applicant received two Letters of Reprimands (LORs), a referral Enlisted Performance Report (EPR), and demotion recommendation.

On 21 Mar 14, the Staff Judge Advocate found the demotion action legally sufficient.

On 11 Apr 14, the demotion authority directed the applicant be demoted from the grade of technical sergeant to the grade of staff sergeant in accordance with AFI 36-2502, *Airman Promotion Demotion Programs*, paragraph 6.3.5 and AFI 36-2905, *Fitness Program Table A14.1*.

On 27 Jul 15, the applicant received an honorable discharge. His narrative reason for separation is "Reduction in Force." He was credited with 15 years, 11 months, and 17 days of total active service.

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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

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

**AIR FORCE EVALUATION**

The AFBCMR Medical Advisor finds insufficient evidence to support the applicant's request for a medical retirement or discharge with severance pay due to OSA/narcolepsy. A review of the documents revealed that on frequent occasions, the applicant had concerns of tiredness after long hours of sleep. He underwent a variety of sleep tests and procedures after little to no success of practicing sleep hygiene and sleep hour regimens. He was diagnosed with narcolepsy in mid-06 and prescribed medication. The Air Force Personnel Center (AFPC) medical branch waived his condition and found him fit for duty and deployment.

For a condition to be considered for a MEB, certain criteria must be met which include having been incurred while in a military status and being found as unfit for continued military service. According to Department of Defense Instruction (DoDI) 6130.3, *Medical Standards for Military Service – Retention*, narcolepsy is a disqualifying condition for retention in service and therefore, one would think that an automatic MEB/Physical Evaluation Board (PEB) is applicable. However, Section 5.27 (sleep disorders) further denotes that in considering the condition of narcolepsy, it must persist despite treatment and impair function so to preclude satisfactory performance of required military duties of the member's office, grade, rank, or rating. Such additional criteria as stated was not in evidence of the reviewed records. Therefore, having no physical restrictions, coupled with waiver approval from AFPC on numerous RILOs, and self-stated abilities to perform his work duties lends overwhelming evidence that his fleeting diagnosis of OSA and narcolepsy were not unfitting and therefore, not potentially eligible for a MEB.

In regard to receiving a rating from the DVA, the military's disability evaluation system (DES) and DVA disability evaluation operate under separate laws. The military's DES, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. On the other hand, the DVA under Title 38, U.S.C., is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge.

The Medical Advisor finds the eventual decisions were performed in accordance with DoDI criteria and finds the separation process was appropriate without evidence of error or rendered injustice.

The complete advisory opinion is at Exhibit C.

AFPC/DP2SSR reviewed the applicant's record which revealed that the applicant was demoted from the grade of technical sergeant (E6) to the grade of staff sergeant (E-5), with a new date of rank of 11 Apr 14. At the time of the applicant's demotion to the rank of staff sergeant, the HYT for remaining on active duty in that rank was capped at 15 years total active federal military service. As a result, the applicant was separated from the Air Force due to the HYT for his current rank. Based on review of the applicant's master of personnel record, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit D.

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AFPC/DP2 recommends denying the applicant's request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant was demoted in accordance with the guidance in AFI 36-2905, dated 21 Oct 13 Attachment 14. The applicant separated on 27 Jul 15, under the provisions of AFI 36-3208, *Administrative Separation of Airmen (Reduction in Force)*. HYT for staff sergeant was 15 years total active federal military service.

The complete advisory opinion is at Exhibit E.

AFPC/DP2SSR recommends denying the applicants request based on the documentation provided by the applicant and analysis of the facts. TERA was available in law from Oct 92 to Sep 02; reinstated in law 31 Dec 11. Therefore, TERA was not in effect when the applicant was discharged from active duty. When offered by the Secretary of the Air Force during periods of Force Management, only available to overage Air Force Specialty Codes (AFSCs) and grades. Servicemembers pending separation, court-martial, dismissal have always been excluded even if they held an overage AFSC. At the time of demotion, the applicant's HYT was correctly adjusted to his 15-year point. Since he exceeded the HYT for his grade, his HYT was adjusted to 120 days from the date of demotion. At the time of the member's separation from active duty, TERA was no longer being offered. The applicant applied for retirement on 13 Jan 14 and 21 Jan 14 and both times, he was informed that he was ineligible for the TERA program. The first time due to submitting his retirement application before the program window opened and the second time, due to not meeting the minimum years of service to qualify for early retirement. At no point was the applicant ever approved for early retirement according to our records. Under TERA, the eligibility criteria for early retirement is different upon each fiscal year's manning and mission needs to meet congressionally mandated end strength requirements for the Air Force. Therefore, there is no evidence of an error or injustice.

The complete advisory opinion is at Exhibit F.

**APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to applicant on 1 Nov 22 for comment (Exhibit G), but has received no response.

**FINDINGS AND CONCLUSION**

1. The application was not 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 and recommendation of the AFBCMR Medical Advisor, AFPC/DPFDC, AFPC/DP2SSR, AFPC/DP2 and AFPC/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2022-00537 in Executive Session on 30 Nov 22:

*Work-Product*, Panel Chair  
*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 7 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 26 Aug 22.
- Exhibit D: Advisory Opinion, AFPC/DP2SSR, dated 29 Aug 22.
- Exhibit E: Advisory Opinion, AFPC/DP2, dated 1 Nov 22.
- Exhibit F: Advisory Opinion, AFPC/DPMSSR, dated 1 Nov 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Nov 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.

7/24/2023

*Work-Product*

Board Operations Manager, AFBCMR  
Signed by: USAF