



**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:**

**DOCKET NUMBER:** BC-2022-01740

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His administrative separation be upgraded to a medical retirement.

**APPLICANT'S CONTENTIONS**

In 2003, while on active duty, he sustained a serious knee injury and had multiple surgeries on his knee. He also had an additional unfitting medical condition to his shoulders. Due to his injuries, he was unable to pass his fitness tests and was demoted and subsequently discharged because of high year tenure (HYT) based on his new date of rank (DOR). He was never referred to a Medical Evaluation Board (MEB) for his unfitting medical conditions that occurred in the line of duty (ILOD). The Air Force was aware of his unfitting medical conditions, but still he was wrongfully demoted and improperly separated. He was denied his right to a medical retirement.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force senior airman.

On 1 Jul 02, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for four years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 22 Oct 02 for a period of six years.

On 25 Jan 16, the applicant's commander recommended the applicant be demoted to the grade of Senior Airman under the provisions of AFI 36-2502, "*Airman Promotion/Demotion Programs*," Chapter 6, paragraph 6.3.5, Failure to Keep Fit.

On 29 Jan 16, the applicant concurred with the proposed demotion action; did not submit written matters on his behalf; waived a personal hearing; and did not consult counsel.

On 3 Feb 16, Adverse Actions found the demotion action legally sufficient.

On 9 Feb 16, the demotion authority approved the applicant's demotion to senior airman and the applicant indicated he would not submit and appeal to the appellate authority.

On 10 Feb 16, Special Order *Work-Product* indicates the applicant was demoted from the permanent grade of staff sergeant to the permanent grade of senior airman, with a DOR of 8 Feb 16.

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Controlled by: SAF/MRB  
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On 7 Jun 16, the applicant received an honorable discharge. His narrative reason for separation is “Non-Retention on Active Duty” and he was credited with 13 years, 7 months, and 16 days of total active service.

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

**AIR FORCE EVALUATION**

The AFRBA Staff Physician Adjudicator concluded there was insufficient evidence to support the applicant’s requested change to his record. After a thorough review of the case file, the options presented to the commander for either a reduction in grade or administrative separation were completely in accordance with applicable guidance and regulations. The overall complaint in this case was the applicant should have undergone processing via the Disability Evaluation System (DES) for his medical conditions. It is important to note that according to AFI 36-3212, “*Physical Evaluation for Retention, Retirement, and Separation,*” the mere presence of a physical defect or condition does not qualify a member for disability retirement or discharge. The physical defect or conditions must render the member unfit for duty. Disability evaluation begins only when examination, treatment, hospitalization, or substandard performance result in referral to a MEB. Further, Department of Defense Instruction (DoDI) 6130.03, “*Military Medical Standards: Appointment, Enlistment, or Induction,*” Section 19, Paragraph 1 states “Current deformities, disease, or chronic joint pain of pelvic region, thigh, lower leg, knee, ankle and or foot that have interfered with function to such a degree as to prevent the individual from following a physically active vocation in civilian life, or that would interfere with walking, running, weight bearing, or the satisfactory completion of training or military duty” may be disqualifying for service retention. Although the applicant had many short-term profiled physical restrictions stemming from either recovery from surgery or by subjective symptoms of pain, he was routinely able to return to a position of having no restrictions and therefore released to full duty. Clearly when clinical entries for his weight management are compared to clinical entries for physical complaints, his level of reported abilities were vastly different. The medical parameters of pursuing process via the DES were simply not applicable. There was no evidence an applied error or a calculated injustice occurred in this case.

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 14 Mar 23 for comment (Exhibit D) 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 of the AFRBA Staff Physician Adjudicator 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the

assertion supported by a preponderance of the evidence. 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.

**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 the 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-2022-01740 in Executive Session on 26 Apr 23:

<i>Work-Product</i>	Panel Chair
	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 12 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Staff Physician Adjudicator, dated 31 Jan 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 14 Mar 23.

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.

1/2/2024

*Work-Product* \_\_\_\_\_

Board Operations Manager, AFBCMR

Signed by: *Work-Product*