

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01824

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Her rank of master sergeant (E-7) be reinstated.

### APPLICANT'S CONTENTIONS

She proved she could handle responsibilities when she assumed the shop chief role. She revamped her work section and their section was awarded the team of the quarter award. She also focused on helping her airmen with their hardships. The mental wellbeing of her airmen was her top priority. She was selected to receive a "Must Promote" promotion recommendation statement and was selected for promotion to master sergeant for Cycle 21E7.

Her chain of command removed her promotion utilizing improper procedures. As of Nov 21, her records reflected her rank of master sergeant. However, on or about 6 Dec 21, she was informed by the senior enlisted leader (SEL) there was an error on her leave and earnings statement (LES) and that a request was submitted to the military personnel flight to correct her rank to technical sergeant (E-6). The notice of nonrecommendation occurred on 16 Dec 21, 46 days after her effective date of promotion. Per AFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, and Military Commander and the Law, commanders non-recommending, deferring or withholding promotions are to inform the member of the adverse action prior to the effective date of promotion.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a technical sergeant (E-6) in the Air Force.

On 23 Sep 21, the applicant's commander notified her that her promotion to master sergeant was placed in a withhold status in accordance with AFI 36-2502, *Airman Promotion and Demotion Programs*. The reason for the withhold action was a pending investigation against the applicant for violation of Articles 92 and 134 of the Uniform Code of Military Justice (UCMJ) and AFI 36-2710, *Equal Opportunity Program*. The notification memorandum stated the withhold action would be in effect until the reason for the withhold no longer applied. On 23 Sep 21, the applicant acknowledged receipt and indicated she understood she would not be promoted to the next higher grade until the withhold was terminated and she was recommended for promotion.

Based on the applicant's promotion sequence number (PSN), her promotion to master sergeant would have consummated on 1 Nov 21.

On 16 Dec 21, the applicant's commander informed her he was nonrecommending her for promotion to the rank of master sergeant in accordance with AFI 36-2502. It stated she would be ineligible for promotion and the projected promotion would be canceled. The specific reason was

in Aug 21, a commander directed investigation (CDI) was initiated after airmen under her supervision made allegations of misconduct against her. Her commander substantiated the finding of unlawful discrimination, sexual harassment, an inappropriate relationship, and failure to treat her airmen with dignity and respect. Based on the findings, her commander had severe doubt over her readiness to serve as a senior noncommissioned officer (SNCO). According to AFH 36-2618, *Enlisted Force Structure*, SNCOs are expected to provide highly effective leadership. The findings indicated further development was required before promotion to master sergeant.

On 16 Dec 21, the applicant acknowledged the nonrecommendation for promotion and indicated she understood she would not be allowed to assume the next higher grade due to the promotion nonrecommendation.

AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt thru CMSgt)*, dated 18 Jan 22 shows the applicant received punishment under Article 15, Uniform Code of Military Justice (UCMJ), effective 2 Feb 22 for dereliction of her duties between 14 Sep 20 and 2 Aug 21. The applicant willfully failed to treat her subordinates with dignity, fairness, and respect, in violation of AF1-1, *Air Force Standards*, and failed to refrain from sexually harassing subordinate members by making deliberate and unwelcome comments and gestures of a sexual nature, in violation of DAFI 36-2710, *Equal Opportunity Program*. Punishment included reduction to the rank of staff sergeant (E-5), suspended through 1 Aug 22, after which time it would be remitted without further action, unless sooner vacated.

On 25 Feb 22, the applicant received a referral commander directed enlisted performance report (EPR) for the reporting ending 16 Feb 22. The EPR stated she failed to treat subordinates with dignity, fairness, and respect for which she received nonjudicial punishment (NJP).

Per SAF/IG email dated 26 Sep 22, there is no CDI or report of investigation (ROI) in the Automated Training System (ACTS) with the applicant's name as a subject or complainant (Exhibit C).

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

## **APPLICABLE AUTHORITY/GUIDANCE**

AFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, Table 1.2, *Determining Ineligibility for Promotion*, Rule 8, is not recommended for promotion consideration or the promotion authority removes the individual from a select list. Rule 19, undergoing a suspended reduction imposed by Article 15 and Rule 21, has a referral performance report.

## **AIR FORCE EVALUATION**

AFPC/DP2 recommends denial. There is no error or injustice due to the applicant acknowledging the promotion withhold status on 23 Sep 21 and Article 15 on 18 Jan 22 for the CDI per AFI 36-2502. Although the commander nonrecommended the applicant for promotion to master sergeant on 16 Dec 21, after the promotion incrementation, the commander assumed the applicant was still within withhold status, which the applicant should have been. The applicant was also advised on 23 Sep 21 not to assume the rank until advised. Reinstatement should not apply due to administrative oversight (processing error). There is also consideration the Article 15 and the corresponding punishment issued was based on the applicant's current rank of technical sergeant.

On 23 Sep 21, the applicant's promotion was placed in a withhold status due to a pending CDI. Due to an administrative oversight, the promotion accidentally consummated in the military personnel data system (MilPDS). When discovered she was promoted in error, a case management

system (CMS) case was opened and AFPC corrected her rank back to technical sergeant and placed the master sergeant promotion in a withhold status. The CMS case was completed and closed on 8 Dec 21.

The complete advisory opinion is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 17 Nov 22 for comment (Exhibit E); but has received no response.

### **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 and recommendation of AFPC/DP2 and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes there was an administrative system error that allowed the applicant's promotion to the rank of master sergeant to consummate; however, the Board does not find the administrative error resulted in an injustice to the applicant. Therefore, the Board recommends against correcting the applicant's records.

### **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 (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01824 in Executive Session on 10 Jan 23:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Jul 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Email, SAF/IG, dated 26 Sep 22 (WITHDRAWN).
- Exhibit D: Advisory Opinion, AFPC/DP2, dated 27 Oct 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Nov 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

---

Board Operations Manager, AFBCMR