



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02057

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

She receive back from 12 Oct 18 through 29 Jul 19 at the grade of master sergeant (E-7).

APPLICANT'S CONTENTIONS

Her mental health issues were the reason for her demotion to technical Sergeant (E-6). She was a good airman until her mental illness took over; she asked for help, and her life continually got worse. Her commander served her with intention to demote paperwork while she was in a psychiatric hospital and then served her with intentions to demote three more times; each time backdating paperwork to fit the case until they were successful on 15 Oct 18. She hit 20 years active duty three months later but had to remain until Jul 19 pending the outcome of her Medical Evaluation Board (MEB) which determined a 70 percent mental health disability rating, which is why she thinks her demotion was unjust. She may not have been a good master sergeant during that time, but she asked for help, continued getting treatment throughout, and always tried to get better.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard master sergeant (E-7).

According to a memorandum for record (MFR) written by the Maintenance Group Operations Officer, dated 31 Oct 17, the applicant miscalculated her earned leave entitlements upon returning from a six-month overseas deployment. The applicant was not present for duty eight extra days and was supposed to return to duty on 13 Feb 17 but instead returned to work on 21 Feb 17. Additionally, the MFR indicated "Communication with [the applicant] was difficult, as she had several health issues that she was addressing with various types of doctors, medical testing and therapy. Member has been off work for several weeks addressing these issues. Command met with member in Apr and informed member of her absent without leave (AWOL) status and the proper number of days she was entitled to for post-deployment leave."

According to a MFR written by the Maintenance Group Operations Officer, dated 31 Oct 17, the applicant was ordered back to duty on 15 and 18 Sep 17 and was on AWOL status until medical leave started again 21 Sep 17. The applicant did not show up for work when summoned by her command. Additionally, the MFR indicated, "Communication with [the applicant] continues to be difficult, while she is still having health issues, and has been in various forms of intense out-

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patient treatment or hospitalized for extended periods of time. Member has been off work for several weeks addressing these issues. Command sent her a certified letter in late Sep regarding her AWOL status and was reminded of the proper procedures regarding management of extended periods of leave.”

On 12 Apr 18, the applicant was notified of demotion action from the grade of master sergeant (E-7) to technical sergeant (E-6) for failure to fulfill responsibilities as expected of a senior noncommissioned officer (SNCO). The specific reasons for the action were:

a. On 13-20 Feb 17, she failed to receive approval for leave and/or failed to provide substantiating documentation to satisfy the requirements for medical leave for multiple periods. As a result, she received a Letter of Reprimand (LOR).

b. On 23 Feb 17, she was reprimanded for government travel card abuse for using the card on three separate instances for personal purchases.

c. On 26 Apr 17, she left work at 1630 and failed to inform her supervisor that she left to participate in physical training. As a result, she received a Letter of Counseling (LOC).

d. On 2 Jun 16, she was counseled for failing to exercise proper supervision over one of her subordinates when she (subordinate) acted unprofessionally in the workplace.

e. On 12 Jun 17, she was absent from the workplace without prior coordination or notice to her supervisors.

f. On 8 May 17, she failed to route orders as requested for a chief master sergeant. Additionally, she failed to route orders for a subordinate airman on 27 Feb 17.

On 12 Oct 18, according to Special Order **Work-Pro...** dated 26 Sep 18, the applicant was demoted with prejudice to the grade of technical sergeant (E-6).

On 24 Oct 18, according to a *Commander's Impact Statement for Medical Evaluation Board (MEB)*, the applicant's commander indicated the applicant's "mental health conditions negatively affect the ability to perform the most basic Air Force Specialty Code (AFSC) functions of current assignment."

On 20 Nov 18, a MEB convened for the applicant's major depressive disorder and coronary artery disease. The board recommended the case be referred to an Informal Physical Evaluation Board (IPEB).

On 1 Apr 19, the IPEB found the applicant's major depressive disorder unfitting with 70 percent disability rating and coronary artery disease with 10 percent disability rating and recommended temporary retirement with 70 percent combined compensable percentage.

On 20 May 19, the Secretary of the Air Force Personnel Council (SAFPC) determined the applicant served satisfactorily in the higher grade of master sergeant (E-7) within the meaning of Section 1372, Title 10, United States Code.

On 28 Jul 19, according to Special Order Number **Work-Product** dated 3 Jun 19, the applicant was relieved from active duty and on 29 July 19, she was placed on the Temporary Disability Retired List (TDRL) with compensable percentage for physical disability of 70 percent.

On 27 Jul 20, according to Special Order Number [Work-Product], dated 7 Jul 20, the applicant was removed from the TDRL and permanently retired in the grade of master sergeant with compensable percentage for physical disability of 70 percent.

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

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 21 Jan 23, the Board staff provided the applicant a copy of the clarifying guidance (Exhibit F).

AIR FORCE EVALUATIONS

The AFRBA Psychological Advisor completed a review of all available records and finds sufficient evidence of a possible nexus between the applicant's demotion and her psychiatric condition(s). A review of the applicant's service records indicated an extensive history of significant mental health symptoms dating back approximately a decade before her demotion, although they reportedly only became severe enough to have substantially impacted her duty performance in the 2-3 years preceding the demotion action. By the applicant's own admission, she was not "a good airman" since returning from deployment in 2017, and her actions that precipitated the demotion were primarily centered around her unwillingness and/or inability to work. However, the applicant's commander in the statement he provided to the MEB clearly acknowledged that her job was greatly and negatively impacted by the applicant's mental health challenges, a view also supported by the reviewed provider notes. Therefore, there appears to be at least some evidence that the applicant's psychiatric condition played a role in her demotion, as it unquestionably did in her soon-to-follow retirement on the basis of medical disability.

The complete advisory opinion is at Exhibit C.

NGP/A1PP recommends granting the application. The applicant's unit leadership failed to comply and provide substantiating evidence that the applicant violated the AFI 36-2502, *Promotions and Demotions Programs*, concerning parameters of demotion. AFI 36-2502, does not define AWOL as a valid reason for demotion for an ANG member. AFI 36-2618, *The Enlisted Force Structure*, does not provide any actual requirements regarding the approval of leave or providing the substantiating documentation for sick leave. AFI 36-3003, *Military Leave Program*, para 3.11.5 states where a member is unable to return to duty from leave because of illness or injury, the member's responsibility is to notify the commander and provide a statement from the attending physician. In the demotion package there was no evidence of specific medical documentation

missing in the applicant’s request for leave. The applicant provided Releases of Information and letters from the physician required for convalescent leave. Leave was not approved on unregulated rules that notice of leave be submitted 72 hours in advance. Both the Director of Psychological Health and commander were aware of the hospitalizations and the applicant’s physician directive that the applicant was not physically in any condition to perform duties.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 11 Oct 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

- 1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
- 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 the victim of an error or injustice. The Board concurs with the rationale and/or recommendation of the AFRBA Psychological Advisor and NGB/A1PP and finds a preponderance of the evidence substantiates the applicant’s contentions. Therefore, the Board recommends correcting the applicant’s records as indicated below.
- 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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. On 12 Oct 18, she was not demoted to the grade of technical sergeant (E-6) but continued to serve at the grade of master sergeant (E-7) through her discharge on 28 Jul 19.
- b. She receive backpay at the grade of master sergeant (E-7) from 12 Oct 18 to 28 Jul 19.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02057 in Executive Session on 24 May 23:

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All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Jul 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.

- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Aug 22.
- Exhibit D: Advisory Opinion, NGB/A1PP, dated 26 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Oct 22.
- Exhibit F: Letter, SAF/MRBC, w/atc (Clarifying Guidance), dated 31 Jan 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.

6/4/2023

X *Work-Prod...*

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Board Operations Manager, AFBCMR
Signed by: USAF