



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

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

---

---

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02434

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

---

---

**APPLICANT'S REQUEST**

He be retired in the grade of technical sergeant (E-6).

**APPLICANT'S CONTENTIONS**

Per AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, he should be retired as a technical sergeant as per Special Order *Work-Pr...* which shows his date of rank (DOR) to technical sergeant as 16 Oct 05.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a medically retired Air National Guard (ANG) staff sergeant (E-5).

Dated 14 Oct 05, Special Order *Work-P...* indicates the applicant was promoted to technical sergeant, effective 16 Oct 05.

For the period of 18 Mar 05 thru 17 Mar 07, NGB Forms 26, *Department of the Army and Air Force National Guard Bureau ANG Active Duty Performance Rating*, indicate the applicant received a superior overall performance rating. It is noted on both performance reports the applicant should be promoted at the earliest possible opportunity.

For the period of 18 Mar 07 thru 17 Mar 08, AF Form 910, *Enlisted Performance Report (AB thru TSgt)* indicates the applicant received an overall average performance rating (3).

For the period of 18 Mar 08 thru 17 Mar 09, AF Form 910 indicates the applicant received an overall needs improvement performance rating (2). It is noted the applicant has had some difficulties in his personal life that have affected his professional life. The applicant provided no response to this referral enlisted performance report (EPR).

**AFBCMR Docket Number BC-2022-02434  
CUI//SP-MIL/SP-PRVCY**

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)

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

Dated 12 Feb 11, Special Order [Work-Product] indicates the applicant was demoted to staff sergeant effective 9 Jan 11 due to involuntary nonjudicial punishment (NJP) under State Military Code in accordance with ANGI 36-2503, *Administration Demotion of Airmen*, paragraphs 2.3 and 3.6 with prejudice.

Dated 26 Oct 11, Special Order [Work-Product] indicates the applicant was placed on the Temporary Disability Retired List (TDRL) in the grade of staff sergeant with a compensable percentage for physical disability of 70 percent, effective 24 Dec 11.

Dated 15 Dec 16, Special Order [Work-Product] indicates the applicant was permanently disability retired in the grade of staff sergeant with a compensable percentage for physical disability of 60 percent, effective 23 Dec 16.

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

**AIR FORCE EVALUATION**

NGB/A1PP recommends denying the application finding no evidence of an error or injustice. The applicant was demoted on 9 Jan 11 to the grade of staff sergeant (E-5) for involuntary NJP under State Military Code with prejudice. The applicant was medically retired effective 24 Dec 11. Since the highest grade of technical sergeant was terminated for cause, he is not eligible to retire at the higher grade.

The applicant was promoted to the grade of technical sergeant with a DOR of 16 Oct 05 and was demoted to the grade of staff sergeant with a DOR of 9 Jan 11. He was relieved from active duty and placed on the TDRL in the grade of staff sergeant. AFI 36-3203, *Service Retirements*, prescribes procedures for carrying out laws, policies, and DoD directives that govern retirements for service (but not for physical disability). Physical disability retirement procedures are in accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. Per AFI 36-3212, paragraphs 5.15 and 5.15.3, unless entitled to a higher retired grade under some other provision of law, members permanently retired for disability or placed on the TDRL retire in the highest grade in which the member served satisfactorily on active duty as determined by the Secretary of the Air Force (SAF). Service in a higher grade is usually satisfactory unless the higher grade was terminated for cause.

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 22 Dec 22 for comment (Exhibit D) but has received no response.

**ADDITIONAL AIR FORCE EVALUATION**

SAF/MRBP recommends denying the application. A preponderance of the evidence indicates the applicant's service in the grade of technical sergeant was not satisfactory. While the applicant held the grade at issue for five years, the misconduct the applicant committed was egregious and the Air Force Personnel Board (AFPB) has concluded in many similar cases that acts of domestic violence or other forms of assault against another is sufficient to render such service not satisfactory. Additionally, it is also important to note this case was not timely filed in that the events under review are more than three years ago and the applicant has provided no compelling justification which would warrant a waiver of the applicant's failure to timely file. SAF/MRBP recommends the AFBCMR deny the claim as untimely.

The applicant was retired for physical disability; therefore, AFI 36-3212 is relevant to the applicant's request. Per AFI 36-3212, paragraph 5.12, unless entitled to a higher retired grade under some other provision of law, service members permanently retired for disability or placed on the TDRL retire in the highest of the following grades (10 U.S.C. § 1372): 1) the grade in which the service member is serving on the date placed on the TDRL or on the date permanently retired for disability; 2) the Reserve grade the service member held at time of retirement if it is higher than the grade in which serving on active duty. The Reserve grade must be a valid Air Force Reserve (AFR) or ANG grade that is still in effect at the time of retirement; 3) a higher grade in which the service member served satisfactorily on active duty, as determined by the SAF; or 4) service members who are retired on or after 23 Sep 96 may be retired in the regular or reserve grade to which they had been selected and would have been promoted, had it not been for the physical disability for which they were retired.

In the applicant's case, he did previously hold a higher grade. The AFPB adjudicates enlisted grade determinations (EGD) in cases like this to determine whether the service in the previous higher grade was satisfactory. If the AFPB concludes the member's service in the previous higher grade was satisfactory, then the member is retired in the higher grade. However, if the AFPB concludes said service was not on balance satisfactory, the member retires in the grade held at the time of disability retirement. In making these determinations, both the positive attributes of the member's service in the grade at issue (as described in Enlisted Performance Reports (EPR) and decorations) and the adverse information forming the basis of the demotion are considered in determining whether the overall service in grade was satisfactory.

In this case, there is no documentation in the applicant's record regarding this determination. However, even if it is assumed this determination was not made in real time in 2016, the evidence in the record is not sufficient to conclude the applicant's service would have been deemed satisfactory. After a thorough review of the EPRs rendered while the applicant held the higher grade, and the adverse information that caused the demotion, a preponderance of the evidence indicates his service in the higher grade was not satisfactory. While the EPRs in the applicant's record indicate his service in the grade of technical sergeant was otherwise average (there were no decorations bestowed while he held this grade), the applicant was demoted for serious misconduct, which could very well have formed the basis for an administrative discharge. The applicant tested positive on a urinalysis test and was arrested for domestic battery. In the cases of other similarly

situated members, the AFPB has consistently not found service in a grade satisfactory when said service is mired with a positive urinalysis result and an arrest for domestic battery or other forms of violence.

The complete advisory opinion is at Exhibit E.

**APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 17 Apr 23 for comment (Exhibit F), 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 recommendations of NGB/A1PP and SAF/MRBP finding a preponderance of the evidence does not substantiate the applicant’s contentions. Per AFI 36-3212, since he was permanently retired for a physical disability, his service in a higher grade needed to be satisfactory as determined by the SAF; therefore, the Board finds no compelling reason to grant the applicant’s request to be retired in the grade of technical sergeant. He was demoted to the grade of staff sergeant for egregious misconduct and the Board finds his overall service in the grade of technical sergeant was not satisfactory. 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 Department of the 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.

**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-2022-02434 in Executive Session on 21 Jun 23:

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

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

*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 24 Sep 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, NGB/A1PP, w/atchs, dated 22 Dec 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Dec 22.

Exhibit E: Advisory Opinion, SAF/MRBP, dated 17 Apr 23.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Apr 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.

1/31/2024

*Work-Product*

Board Operations Manager, AFBCMR

Signed by:

*Work-Product*