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

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RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00759

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: Work-P...

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APPLICANT'S REQUEST

1. Unsubstantiate and expunge the Non-Judicial Punishment (NJP) imposed against him, to include any titling in the Defense Clearance Investigations Index (DCII).
2. His rank to master sergeant (E-7) be restored retroactively.
3. He be given back pay based upon the corrections and the impact to the pay and entitlements (e.g., Basic Allowance for Housing) he would have received.
4. Other and further relief as the Board deems just and proper.

APPLICANT'S CONTENTIONS

In a 171-page Legal Brief, the applicant through counsel, contends that a material error and/or injustice exists based on the unsupported and erroneous decision to reduce him from the grade of master sergeant (E-7) to technical sergeant (E-6) pursuant to Article 15, Uniform Code of Military Justice (UCMJ) based on the accusation of a single witness's statement despite other evidence weighing against the witness.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 28 May 02, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Regular Air Force.

On 24 Feb 05, according to AF Form 3070, *Record of Non-Judicial Punishment Proceedings*, the applicant received an Article 15 for violation of Article 128 of the UCMJ. He was given 45 days extra duty.

On 12 Jul 21, according to AF Form 3070B, *Record of Non-Judicial Punishment Proceedings (TSgt thru CMSgt)*, the applicant received an Article 15 for violation of Article 92 of the UCMJ. He was reduced in rank/grade to technical sergeant (E-6) with a new date of rank of 12 Jul 21.

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On 31 May 22, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was released from active duty in the rank of technical sergeant (E-6). He was credited with 20 years and 3 days of active service.

According to Special Order No. [Work-Product], dated [Work-Product], the applicant will be advanced to the grade of master sergeant (E-7) on the USAF retired list by reason of completing a total of 30 years active service plus service on the retired list on 27 May 32. Authority: section 9344 of 10, U.S.C., plus SAFPC memo dated 24 Jun 22.

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

AIR FORCE EVALUATION

AFPC/DPMSSM (Special Programs) recommends denying the request to expunge the applicant's NJP. The applicant's Article 15 dated 6 Jul 21 is in his military personnel official record. Upon review, the applicant had three duty days from the date he received the Article 15 to provide a response, which he did on 9 Jul 21. In accordance with the National Defense Authorization Act, 10 USC Section 615(a)(3), the Article 15 meets the requirements of adverse information. The applicant does not state the Article 15 was not in accordance with Air Force Instruction (AFI) 36-2907, *Adverse Administrative Actions*.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant's commander issued an Article 15 based on the preponderance of evidence in accordance with AFI 36-2907. Although the applicant believes the adverse action was an error and injustice, AFPC/DPMSSM could not provide any input on that matter; only if the adverse action met AFI requirements.

The complete advisory opinion is at Exhibit C.

SAF/MRBP (Personnel Council) deferred to the appropriate offices of primary responsibility to address counsel's arguments and evidence related to the merits of the demotion. However, they recommend the AFBCMR give no weight to the SAFPC determination in deciding whether relief is warranted as this determination is not relevant to whether the demotion represents an error or injustice. The advisory only spoke to the issue of the SAFPC satisfactory service determination under 10 USC 9344 and counsel's argument that it supports granting the requested relief. The SAFPC finding in no way means that the decision to demote the applicant was somehow erroneous or unjust. The determination by SAFPC under 10 USC 9344 merely means that, on-balance, the applicant's service in the grade of master sergeant (E-7) was satisfactory, despite the misconduct and subsequent demotion. SAFPC arrived at this determination by comparing the length and quality of his service in the grade against the misconduct that caused the demotion. This finding entitles the applicant to be advanced to the higher grade on the retired list after 30 years of total service. Again, this does not mean that SAFPC concluded that the demotion was erroneous.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 24 Jul 23 for comment (Exhibit E), and the applicant though counsel replied on 23 Aug 23. In his response, counsel contended the advisory opinion from AFPC/DPMSSM, failed to contribute meaningfully to the analysis requested by the applicant. The review merely includes irrelevant regulatory provisions and lacks

analysis of the evidence presented by the applicant. It recommends denial of relief solely based on the applicant not stating the Article 15 was not in accordance with a specific regulation. However, counsel argues that the relevant regulation at the time of the incident was different and that regardless of the burden of proof, the evidence demonstrates an error or injustice. The applicant's challenge is not about procedural matters like response time or UIF requirements but about the weight of evidence, which the review fails to address. Therefore, counsel suggests disregarding the AFPC/DPMSSM review entirely.

Counsel also contended the advisory opinion from SAF/MRBP, refrains from making a recommendation to the AFBCMR, instead deferring to other offices to address the merits of the demotion. The advisory opinion responds to the applicant's mention of a SAFPC determination regarding his satisfactory service, stating that this finding does not invalidate the demotion decision. However, counsel argues that this determination is relevant as it demonstrates his good military character, which could counter the accusations against him. The applicant presents evidence of his unblemished record and character references to support this argument. Additionally, the document highlights inconsistencies in the evidence against the applicant and concludes that he has demonstrated by a preponderance of evidence that he was subjected to an error or injustice. Therefore, the document recommends correction of his military records pursuant to 10 U.S.C. § 1552.

The applicant's complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION

AFBCMR/MH found insufficient evidence to support the applicant's request that his PTSD (post-traumatic stress disorder) diagnosis help confirm that his NJP should be removed, and his rank restored. While the applicant through counsel makes several requests, the psychological advisor only focused on the mental health contention. Specifically, counsel contended the applicant's PTSD helps confirm that his NJP should be removed, and his grade restored. There is insufficient evidence that the applicant's PTSD or other mental health conditions confirm that his NJP should be removed or that his grade should be restored, from a psychological perspective. Developing a mental health condition following misconduct and/or reprimand does not confirm that the applicant was falsely accused and should have the record expunged. It is not uncommon for service members to develop mental health symptoms following misconduct and being given consequences. In the applicant's case, he began developing mental health symptoms after he received NJP and lost rank. It is just as likely as not, that his symptoms arose as a result of him being reprimanded and losing rank. There is ample evidence that his current mental health conditions arose after his misconduct and would therefore not be a mitigating factor for his misconduct.

It is noted that he initially had mental health services on 11 Mar 05, which appeared to be in relation to NJP he received on 16 Feb 05. He was diagnosed with adjustment disorder and partner relational problems. His symptoms appear to be in response to divorce ("Depressive symptoms began after divorce proceedings and custody battle began."). His symptoms likely resolved, as his next mental health encounter was not until 23 Jul 21 (approximately 16 years later).

His recent NJP was on 6 Jul 21, he renewed mental health services on 23 Jul 21. This note indicated that his symptoms are the result of recent stressors which included being accused of saying the word [Explicative] and being demoted. His off-post mental health provider noted on 20 Jun 22 that the onset of his symptoms began after his loss of rank and disciplinary action.

While angry outbursts can be part of the sequela of symptoms associated with PTSD, in the applicant's case it is not a mitigating factor. There is sufficient evidence that his PTSD symptoms, as well as his other mental health symptoms, began after his misconduct and punishment. His mental health conditions did not cause his angry outburst or his reduction in rank.

The complete advisory opinion is at Exhibit G.

AF/JAJI recommends denying the request to expunge NJP. There is insufficient evidence to demonstrate a material error or injustice. On 6 Jul 21, the applicant was offered NJP for violating Article 92, UCMJ. Specifically, his commander alleged he was derelict in the performance of his duties by negligently failing to contribute to a culture and climate of dignity and respect when he made the comment "I don't think those [Explicative] should be rioting", or words to that effect. After considering the applicant's response to the NJP, the commander found the applicant committed the offense alleged, and punished him with a reduction to the grade of technical sergeant (E-6) and a reprimand. The applicant also received NJP in 05 for striking his wife on the face with his hand.

The applicant submitted his request for correction of his military records. The applicant provided supplemental matters to be considered by the BCMR. Applicants may apply to the AFBCMR to correct an alleged error or injustice to their military records. The applicant's request does not involve an error in his military records, but further emphasizes his disagreement with his commander's findings during the NJP process and the subsequent punishment.

On 31 Aug 23, a psychological advisor provided a report based on the applicant's assertion that he has PTSD. The psychological advisor determined there was insufficient evidence presented to support the applicant's request that his NJP be removed, and his grade restored due to his PTSD or other mental health conditions. Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records ((AFBCMR)*, paragraph 3.4.4, provides "[t]he applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice." As this is not a *de novo* review, their scope is limited to determining whether there was an error to the detriment of the applicant. They found no error and defer to the fact finder. However, deference to the fact finder is not blind deference, as findings of fact can be evaluated for arbitrariness and capriciousness. Nevertheless, in the context of correcting military records, an "unusually deferential application of the 'arbitrary or capricious' standard" is applied. *Roberts v. United States*, 408 U.S. App. D.C. 211, 217 (2014). Under this deferential standard, they found the applicant's claims are no more than a disagreement with the fact finder's decisions and further find the fact finder was in the best position to evaluate the information available to him to support the NJP. Even if the applicant's counsel is correct, and the commander based his decision on the testimony of a sole witness, that fact does not negate the commander's findings.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 10 Oct 23 for comment (Exhibit I), and the applicant through counsel replied on 10 Nov 23. In his response, counsel contended the commander admitted action was taken primarily due to optics and pressure. Despite evidence contradicting the accusation, the applicant received a demotion, leading to PTSD. He argued that the punishment was unjust, with multiple advisory opinions failing to acknowledge key evidence and focusing on irrelevant details. Counsel requests relief from the AFBCMR, citing the totality of evidence and the impact on the applicant's mental health.

The applicant's complete response is at Exhibit J.

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. We took notice of the applicant's complete submission and counsel's contentions in judging the merits of the case; however, we are not persuaded a material error and/or injustice exists. Therefore, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Based upon the presumption of regularity in the conduct of governmental affairs and without evidence to the contrary, we believe the handling of the applicant's requests were proper and in compliance with appropriate applicable authorities. The applicant has failed to sustain his burden of establishing the existence of either an error or an injustice warranting favorable action on his requests. In view of the above, and in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application

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 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-2023-00759 in Executive Session on 30 May 24:

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 28 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM dated 9 Jun 23.
- Exhibit D: Advisory Opinion, SAF/MRBP dated 24 Jul 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jul 23.
- Exhibit F: Applicant's Response dated 23 Aug 23.
- Exhibit G: Advisory Opinion, AFBCMR/MH dated 31 Aug 23.
- Exhibit H: Advisory Opinion, DAF/JAJI dated 3 Oct 23.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Oct 23.
- Exhibit J: Applicant's Response, dated 10 Nov 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.

9/22/2025

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	Associate Director, AFBCMR
	Signed by: USAF
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