

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00862

XXXXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

1. His administrative demotion to the rank of staff sergeant (E-5) be void and removed from his records.
2. His original date of rank (DOR) of 1 Jan 13 for the rank of technical sergeant (E-6) be reinstated.
3. He be provided all backpay from Jul 19 to Jul 22.
4. His enlisted performance reports (EPR) be corrected to remove all derogatory information and the affected EPRs be reaccomplished and resubmitted through his chain of command.

### APPLICANT'S CONTENTIONS

He was administratively demoted for fitness assessment (FA) failure; however, his primary care manager (PCM) stated he had a condition that precluded him from obtaining a passing FA score and recommended removal of the FAs from his record. The justification for the administrative demotion no longer exists.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a technical sergeant (E-6) with DOR and effective date of promotion of 1 Jul 22.

Per the Administration Demotion of Airman Memorandum dated 11 Jun 19, the applicant was administratively demoted to the rank of staff sergeant with a new DOR of 17 Jul 19 in accordance with DAFI 36-2502, *Enlisted Airman Promotions and Demotions*, for failure to keep fit. On or about 1 May 19, the applicant failed to meet the minimum standard with a composite FA score of 40. It was the applicant's third FA failure within a 24 month period.

The applicant provides his FA appeal memorandum dated 24 Jun 22. The applicant requested his three FA failures dated 18 Jan 18, 4 Feb 19 and 1 May 19 be removed from his records. He was referred to a pulmonary specialist and diagnosed with asthma after failing a lung function test. His PCM completed a Medical Condition Determination for FA Test Failures on 24 Jul 19 stating the applicant had a documented medical condition that precluded him from achieving a passing FA score. The applicant's squadron commander (SQ/CC), group commander (GP/CC) and wing commander (WG/CC) endorsed the removal of the three FA failures.

The applicant's records do not include any referral EPRs for FA failure.

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

### **APPLICABLE AUTHORITY/GUIDANCE**

DAFMAN 36-2905, *Physical Fitness Program*, paragraph 8.1.2., Unit commanders or equivalent will consider adverse administrative action upon a member's unsatisfactory fitness score on an official FA. Paragraph 8.2. Fitness Appeals. If a member believes the administration of their FA or FA score was in error or unjust, the member may submit an appeal to the installation commander or equivalent.

DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, The evaluation report appeals board (ERAB) will not consider nor approve requests to 10.2.4.1. Void an evaluation when the error or injustice can be corrected administratively. 10.2.4.2. Void an evaluation while keeping attachments to that evaluation. 10.2.4.3. Void an evaluator's section while keeping comments or ratings of subsequent evaluators. 10.2.4.4. Void an evaluator's comments but keep the ratings (or vice versa). 10.2.4.5. Delete required information or add unauthorized information to an evaluation. 10.2.4.6. Change (except for deletions) an evaluator's ratings or comments if the evaluator does not support the change. When an evaluator supports changing ratings, all subsequent evaluators must also agree to the changes (including the commander on EPRs, the reviewer on OPRs, and the Management Level Review Board President on PRFs). (T-1). Justification is required from the original evaluators. See Attachment 2, paragraph A2.3. 10.2.4.7. Re-accomplish an evaluation without the applicant furnishing the new evaluation.

### **AIR FORCE EVALUATION**

AFPC/DPMSPP recommends granting the request. AFI 36-2502 states that in cases where the demotion reason has been removed, to include removal of FA failures from the Air Force Fitness Management System, the original DOR and effective date will be restored. The removal of the FA failures would require the demotion action be removed and his original rank of technical sergeant with an effective date and DOR of 1 Jan 13 be restored. In addition to providing retroactive pay, his 2020, 2021 and 2022 EPRs should be reaccomplished to reflect his corrected rank and promotion eligibility. The applicant should also be considered for supplemental promotion consideration to the rank of master sergeant (E-7) for the 19E7, 20E7, 21E7 and 22E7 promotion cycles.

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 13 Jun 23 for comment (Exhibit D) 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 the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSPP and finds a preponderance of the evidence substantiates the applicant's contentions. The evidence shows the applicant had a medical condition which precluded him from achieving a passing FA score and his WG/CC concurred with the removal of the three FA failures from his record. Accordingly, the

Board recommends the administrative demotion to the rank of staff sergeant be null and void and the applicant's rank of technical sergeant with original DOR and effective date of 1 Jan 13 be restored. Due to the restoration of his rank, the Board also recommends his EPRs be corrected to reflect his current grade and promotion eligibility and he be considered for supplemental promotion consideration to the rank of master sergeant. 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. The Administrative Demotion of Airman Memorandum dated 11 Jun 19 be void and removed from his records.

b. His rank of technical sergeant (E-6) with DOR and effective date of 1 Jan 13 be reinstated and he receive the associated back pay.

c. His AF Forms 910, *Enlisted Performance Report (AB thru TSgt)*, for the reporting periods ending 31 Jan 20, 31 Jan 21, 30 Nov 21 and 30 Nov 22 be corrected to reflect his current rank and promotion eligibility in accordance with DAFI 36-2406, *Officer and Enlisted Evaluations System*, Table 102, Note 3.

d. He be considered for supplemental promotion to the rank of master sergeant (E-7) for the 19E7, 20E7, 21E7 and 22E7 promotion cycles.

## 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-2023-00862 in Executive Session on 15 Aug 23:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 21Mar 23.

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

Exhibit C: Advisory opinion, AFPC/DPMSPP, dated 11 May 23.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Jun 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.