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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01503

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

Her records and retired grade reflect senior master sergeant (SMSgt)/E-8 with a start date of Jan 19.

### APPLICANT'S CONTENTIONS

While serving as the First Sergeant with the Air National Guard (ANG), she voiced her concerns about major leadership problems in her unit and asked to be removed from her position. The Command Chief, also her supervisor, refused. She applied for and was hired into the wing Human Resource Administrator (HRA) position in Jan 19 and the position allowed for promotion to the grade of SMSgt/E-8. Her supervisor/Command Chief refused to release her from the First Sergeant position stating she needed to complete another deployment with her unit in Feb 19 before she could be transferred to the HRA position full-time and be promoted. She received backlash and retaliation due to whistleblowing on the command during this deployment. Upon returning from the deployment her immediate supervisor/Command Chief had retired, leaving her with no supervisor until his successor arrived the following year. She informed the two interim Command Chiefs of her promotion and was told she would have to board/interview again and that would be done once the new Command Chief arrived. As a result of this, she never received her promotion to E-8. Her mental health suffered from the complex trauma during her time with the unit and was noted by Psychological Health and she was assigned 50 percent disability for PTSD by the Department of Veterans Affairs (DVA).

In support of her request, the applicant provided the following as evidence: 1) LA Times article; 2) Resume; 3) various email and text message correspondence; 4) ANG Diversity Council Meeting attendees; 5) DD Form 214, *Certificate of Release or Discharge from Active Duty*; 6) a Memorandum for Record (MFR) from replacement Command Chief; 7) a MFR from the Director of Psychological Health; and 8) DVA rating decision, dated 7 Jun 21.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air Force Reserve master sergeant (E-7) awaiting retired pay at age 60.

On 13 Feb 16, according to AF Form 2096, *Classification/On-The-Job Training Action*, dated 19 Dec 18, the applicant's duty title was updated to First Sergeant.

According to DD Form 214, the applicant served on active duty from 28 Feb 19 to 12 Jul 19 in accordance with PREPLANNED CALL-UP as the First Sergeant.

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On 13 Jul 19, according to AF Form 2096, dated 10 Jul 19, the applicant's duty title was updated to HRA.

On 1 Oct 20, according to AF Form 2096, dated 20 Oct 20, the applicant's duty title was updated to Command Support Staff.

On 16 Feb 22, according to Special Order [Work-Product], dated 28 Mar 22, the applicant was honorably discharged from the ANG and transferred to the Air Force Reserve Retired List at the grade of E- 7.

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

### **APPLICABLE AUTHORITY/GUIDANCE**

On 25 Jul 18, the Under Secretary of Defense of Personnel and Readiness 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 6 Mar 23, the Board staff provided the applicant a copy of the guidance (Exhibit E).

### **AIR FORCE EVALUATION**

NGB/A1PP recommends denying the application. There is insufficient documentation substantiating the applicant's claim she should have been promoted. The applicant's record confirms via AF Form 2096 placement into the HRA position on 13 Jul 19; however, there is no official source document for promotion to SMSgt/E-8. In accordance with AFI 36-2502, *Enlisted Airman Promotion/Demotion Programs*, dated 12 Dec 14, paragraph 10.1.1.1, states "The fact a member meets each of the eligibility criteria outlined in this instruction does not automatically guarantee promotion to the next higher grade. Meeting minimum eligibility criteria only indicates a member can be considered eligible for promotion. Promotion is not a reward for past performance, but recognition of the member's potential to successfully serve in the higher grade." Paragraph 10.1.3.1. states "The authority to approve promotions to the grades of MSgt, SMSgt, and CMSgt is [The Adjutant General] TAG."

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 11 Aug 23 for comment (Exhibit D), and the applicant replied on 18 Aug 23. In her response, the applicant provided duplicate

supporting evidence already submitted with her application and the following new evidence: 1) letter of consideration for the HRA position; 2) ANG Instruction (ANGI) 36-2110, *HRA Program*, excerpt; 3) and various e-mails.

The applicant's complete response is at Exhibit E.

## **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, to include the applicant's additional supporting evidence, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/A1PP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board concurs with the advisory from NGB/A1PP. There is insufficient evidence substantiating the applicant's contention she should have been promoted. The applicant's record confirms placement into the HRA position on 13 Jul 19; however, there is no official source document for promotion to SMSgt/E8. In accordance with AFI 36-2502, dated 12 Dec 14, paragraph 10.1.1.1, "The fact a member meets each of the eligibility criteria outlined in this instruction does not automatically guarantee promotion to the next higher grade. Meeting minimum eligibility criteria only indicates a member can be considered eligible for promotion." Further, according to the same AFI, the authority to approve promotions to the grades of MSgt, SMSgt, and CMSgt remains with the TAG. The Board acts only within the authority of the Secretary of the Air Force and is without authority to order a direct promotion for ANG members.

Furthermore, based on the applicant's contention of mental health trauma and her service-connected PTSD, the Board applied fundamental fairness to her request in accordance with the USD P&R supplemental guidance (Wilkie memo), dated 25 Jul 18, specifically paragraph 6.h., and considered relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety. However, the Board finds no evidence her mental health condition was a contributing factor to her not being promoted to the grade of E-8. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant also indicated on her DD Form 149, block 14 "reprisal/whistleblower" is related to her request. Based on the authority granted to this Board pursuant to 10 U.S.C. § 1034, the Board reviewed the complete evidence of record to reach our own independent determination of whether reprisal occurred. Based on our review and absent of a formal Inspector General (IG) complaint, the Board concludes the applicant has failed to establish she was reprisal against. Therefore, in the absence of persuasive evidence to the contrary, the Board does not find the applicant has been the victim of reprisal pursuant to 10 U.S.C. § 1034.

## **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-2023-01503 in Executive Session on 6 Mar 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 8 Apr 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PP, w/atchs, dated 2 Aug 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Aug 23.
- Exhibit E: Applicant's Response, w/atchs, dated 18 Aug 23.
- Exhibit F: Letter, SAF MRBC (Clarifying Guidance), dated 16 Jan 24.

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.

5/15/2024

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