



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2024-00208

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Remove AF Form 418, *Selective Reenlistment Program (SRP) Consideration for Airmen*, from his records.
2. Change his reentry (RE) code to "1" which denotes eligible for immediate reenlistment.
3. Or, in the alternative, refer him to the Integrated Disability Evaluation System (IDES) for a medical retirement.

APPLICANT'S CONTENTIONS

He was denied reenlistment because of his failure to maintain fitness standards over a 20-month period due to his injuries incurred in service and his perceived failure to complete professional military education (PME) courses required for promotion. He was not notified of the non-retention decision in the required timeframe per AFI 36-2606, *Reenlistment and Extension of Enlistment*, six months before his expiration term of service (ETS). Per this AFI, his commander is required to take a holistic approach, using the "whole person concept" when making a decision to retain. He received exemplary remarks and excelled over the course of his military career and was often praised for his dedication to duty.

Furthermore, his command was aware of his physical limitations. His service-connected injuries, to include his back, right leg, knees, and asthma, prevented him from performing his military duties. He was on a profile twice due to his knee issues. Per AFI 36-2905, *Fitness Program*, his medical records were never reviewed to determine whether he suffered from any medical condition which would have prevented him from successfully completing the fitness assessment. His command violated AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, when it failed to refer him to a Medical Evaluation Board (MEB). Even if his individual injuries did not warrant referral to the IDES, their combined effect did as evident in his failure to maintain fitness standards per DoDI 1332.18, *Disability Evaluation System*.

AFBCMR Docket Number BC-2024-00208

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

Additionally, there is no PME requirement for promotion to technical sergeant. Completion of Non-Commissioned Officer Academy (NCOA) is not required until after promotion to technical sergeant per AFI 36-2502, *Enlisted Airmen Promotion and Demotion Programs*.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve staff sergeant (E-5).

On 23 Sep 09, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving four years and four months of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

Dated 18 Nov 09, Reserve Order **Work-Product** indicates the applicant was assigned to the AFR Security Forces squadron as an Individual Mobilization Augmentee (IMA), effective 2 Oct 09. It is noted he was required to have a current medical and dental examination on file to ensure fitness for continued military service and was required to complete an annual Reserve component Physical Health Assessment including dental examination.

On 30 Sep 10, DD Form 214 reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving 8 months and 13 days of active duty for this period. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 7 May 13, DD Form 4/1, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant reenlisted in the AFR for six years.

Dated 29 Oct 13, AF Form 910, *Enlisted Performance Report (AB thru TSgt)*, for the period of 2 Oct 09 thru 1 Oct 11, reflects an overall rating of "Truly Among the Best (5)" with comments indicating he was a key member in a combat mission and to his unit with a "promote ahead of peers" recommendation.

On 15 Nov 13, the applicant was given a referral of his Enlisted Performance Report (EPR) for the period of 2 Oct 11 thru 1 Oct 13 because he did not meet fitness standards. On 17 Jul 13, he failed to achieve a minimum passing composite score of 75. The applicant acknowledged receipt and indicated he did not intend to provide comments to the referral notification.

On 10 Oct 15, the applicant was given a referral of his EPR for the period of 2 Oct 13 thru 1 Oct 15 because he did not meet fitness standards. It is noted the applicant refused to sign the EPR and the receipt acknowledgement of the referral notification.

On 6 Feb 17, the applicant was given a referral of his EPR for the period of 2 Oct 15 thru 31 Jan 17 because he did not meet fitness standards. On 29 Nov 16, he failed to achieve a minimum

passing composite score of 75. It is noted the applicant was contacted by phone and acknowledged receipt and indicated he did not intend to provide comments to the referral notification.

The applicant submitted two different AF Forms 418, both signed by his supervisor on 1 May 19 not recommending him for enlistment. On 1 May 19, the one form indicated his commander did not select the applicant for reenlistment stating, "Member failed to meet requirements of the IMA program" and the applicant indicated he intended to appeal the decision on 2 May 19. On 10 Jun 19, the other form indicated his commander did not select the applicant for reenlistment stating, "Member failed to meet minimum standards IAW AFI 36-2905 Fitness Program. Since June 2012, member has maintained fitness currency for only 27 of 83 months. Per AFI 36-2905, Chapter 3, paragraph 3.12.1, fitness currency is ultimately the member's responsibility. Members that are part of the IMA program have an increased level of independence and autonomy. Therefore, a great amount of responsibility is placed on the member to maintain currency. Member has failed on multiple occasions to maintain fitness currency. There were more than five significant gaps in currency, with the greatest lapse being 20 months. The member failed to utilize his inactive duty for training (IDT) days properly and did not maintain currency even though he completed all required IDT days throughout his time as a part of the IMA program. Furthermore, the member has shown a lack of progression and motivation with the IMA program. With a date of rank of 1 Oct 10, the member has only completed Airman Leadership School and has not completed NCOA within almost a nine-year timeframe of being a staff sergeant. With this in mind, along with the member's most recent fitness assessment failure on Apr 2019, I do not recommend reenlistment." On 12 Jun 19, the applicant acknowledged receipt and indicated he intended to appeal the decision.

On 2 May 19, AF Form 1411, *Extension of Enlistment in the Air Force*, indicates the applicant was recommended by his unit commander for a two-month extension due to an appeal. His ETS is listed as 6 May 19.

Dated 22 Jul 19, the appeal of his reenlistment denial, letter provided by the applicant, states on 10 Jun 19, he was notified he was non-selected for reenlistment and on 27 Jun 19, he was notified of his right to appeal. In his appeal, he states he is eligible to reenlist because he was not notified of his commander's intent in the prescribed timeframe (three days prior to ETS), nor was he provided all of the supporting documentation involved in the decision per AFI 36-2606. He goes on to state there was not a sufficient basis to deny his reenlistment referencing the PME requirement and his fitness failures due to his medical issues.

On 15 Aug 19, AF Form 1411 indicates the applicant was approved for a one-month extension due to an appeal. It is noted his ETS was extended until 31 Aug 19.

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

APPLICABLE AUTHORITY/GUIDANCE

Per AFI 36-2606, *Reenlistment and Extension of Enlistment*, dated 27 Jul 17, paragraph 2.2.1, the SRP objective is to ensure the Air Force retains only airmen who consistently demonstrate the capability and willingness to maintain high professional standards. Per paragraph 2.3.1, commander/civilian directors have total SRP selection authority as long as no other factors barring immediate reenlistment exist. Commander/civilian directors may non-select any airman for reenlistment at any time outside of the SRP window. Per paragraph 2.7.6, the Military Personnel Section (MPS) receives the SRP roster no later than seven months prior to the ETS for update and files the form accordingly. For IMA members, the SRP roster is produced by ARPC/DPT approximately 14 months prior to the ETS. The RIO Detachment is responsible for obtaining the required endorsements on the SRP notification memorandum and returning it to ARPC/DPT no later than seven months prior to member's ETS. Per paragraph 2.7.7, if a unit commander has not submitted an AF Form 418 denying a member reenlistment six months prior to ETS, the member will be considered eligible to reenlist. Per paragraph 2.7.10.4.1, unit commander notifies IMA members of non-selection for reenlistment via an AF Form 418 within 30 days of non-selection. The notification package must include all supporting documentation used in making the non-selection decision. The member must be provided information on available appeal options. Per paragraph 2.7.11.1, a Reservist may appeal non-selection for reenlistment through one of two options: the Senior Reserve Commander or an Appeal Board. Under either method, the decision of the Senior Reserve Commander is final (For IMA members this will be the RIO/CC). Per paragraph 2.7.11.2, the unit commander or RIO Det/CC informs the Reservist, in writing, they have until the next scheduled Unit Training Assembly (UTA)/Inactive Duty for Training (IDT) or 30 days, whichever is later, to provide documentation in support of his/her appeal to the MPS. Airmen may submit favorable information and written statements on their behalf from those that have knowledge of the case.

Per AFI 36-2905, *Fitness Program*, dated 21 Oct 13 incorporating changes through 27 Aug 15, paragraph 3.11.1.3, Regular Air Force (RegAF), AFR, and National Guard Bureau (NGB) (Title 10/Statutory Tour) airmen must retest within the 90 days following an unsatisfactory fitness assessment (FA). Unit commanders may not mandate airmen to retest any sooner than the end of the 90-day reconditioning period, however, airmen may voluntarily retest before the end of the 90-day reconditioning period. It is the airman's responsibility to ensure he/she retests before the 90-day reconditioning period expires as non-currency begins on the 91st day. NGB Title 32 must retest within 180 days following an unsatisfactory FA. Unit commanders may not mandate NGB Title 32 airmen retest any sooner than the end of the 180-day reconditioning period; however, airmen may voluntarily retest. Per paragraph 10.1.5.1, unit Commanders must make a discharge or retention recommendation to the separation authority or appropriate discharge authority for AFR and Air National Guard (ANG) members once an airman receives four unsatisfactory FA scores in a 24-month period and a military medical provider has reviewed the airman's medical records to rule out medical conditions precluding the airman from achieving a passing score. If the separation authority or appropriate discharge authority for AFR and ANG members disagrees with the unit commander's retention recommendation, discharge action is initiated pursuant to applicable discharge instruction. Per paragraph 10.1.5.3.1, drill status guardsmen have a limited number of duty days to complete their FA, and many airmen may not have the opportunity to test four times within a 24-month period. Unit commanders must make a discharge or retention recommendation to the appropriate discharge authority for an ANG Title 32 airman receiving four

unsatisfactory FA scores within a 36-month period. A military medical provider must have reviewed the airman's medical record to rule out medical conditions precluding the airman from achieving a passing score. Per paragraph 10.1.5.4, unit commanders may initiate administrative discharge only after the airman has received four unsatisfactory FA scores in a 24-month period; failed to demonstrate significant improvement (as determined by the commander) despite the reconditioning period; and a military medical provider has reviewed the airman's medical records to rule out medical conditions precluding the member from achieving a passing score. Per paragraph 10.4.5, members with unsatisfactory scores, or their commanders, may request a clinical case review to determine if there are documented medical conditions that prohibit program success. This does not require a face-to-face encounter with the member unless determined by the healthcare provider to be clinically indicated. Per paragraph 10.5.1, if an airman believes the administration of his/her FA or his/her FA score was in error or unjust, he/she may submit an appeal to the installation commander, or equivalent.

AIR FORCE EVALUATION

HQ RIO/IRO recommends denying the application finding no evidence of an error or injustice. The applicant was afforded the opportunity to appeal his non-selection for re-enlistment. The appeal board convened on 23 Aug 19, and thoroughly reviewed his appeal package for non-selection of reenlistment and denied his appeal. Per AFI 36-2606, paragraph 2.3.1, commander/civilian directors have total SRP selection authority as long as no other factors barring immediate reenlistment exist. Commander/civilian directors may non-select any airman for reenlistment at any time outside of the SRP window.

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 25 Jun 24 for comment (Exhibit D), and the applicant replied on 18 Jul 24. In his response, the applicant contends, through counsel, the advisory opinion does not address the underlining reason for his fitness failures which was due to his injuries incurred while on active duty. He began experiencing low back pain in 2006 and reported to medical providers in 2009 when he had a flare-up while carrying gear. His pain persisted and he received physical therapy in 2010. In 2012 he was diagnosed with asthma exacerbation and in 2015 he was seen at the emergency room which revealed he had minimal, scattered uncovertebral hypertrophy. These injuries impacted his ability to maintain fitness standards over the later part of his career and was the main reason he was not retained. His medical records were never reviewed to determine if he had a medical condition that prevented him from completing the required fitness standards. There are no counseling statements regarding his fitness failures or his use of IDT days. Furthermore, there is no PME requirement for promotion to technical sergeant. He acknowledges his commander had total SRP selection authority; however, there were other factors that had a bearing on the justification for his retention denial. He had unfit medical conditions and he should have been referred to the IDES, and he was not notified on the non-retention decision six months before his ETS.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request to be referred to the IDES so that he may be evaluated for a possible medical disability retirement. The ultimate burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit was assessed to be elusive and with inconsistencies as compared to data-based records. The record review did not find evidence of either an applied error or a calculated injustice was shown to the applicant regarding any unfitting physical health condition.

Strictly from a medical perspective, the applicant requests, due to injuries he suffered while in military service, his records/case be referred for evaluation within the IDES so he may be considered for a possible medical disability retirement. However, the initial criteria for such a referral include the identification of a potentially unfitting medical condition, not simply symptoms, but rather a potentially unfitting diagnosed medical condition. Per AFI 48-123, *Medical Examinations and Standards*, paragraph 5.2, which in conjunction with the Medical Standards Directory (MSD) includes medical conditions and defects that are potentially disqualifying and/or preclude continued military service. These standards are not all inclusive and other diseases or defects can be cause for rejection based upon the medical judgment of the examining health care provider (HCP). Airmen with conditions listed in this chapter and the MSD require evaluation for continued military service. All potentially disqualifying medical conditions and defects are first reviewed by the Deployment Availability Working Group (DAWG) per AFI 10-203, *Duty Limiting Conditions*, and AFI 41-210, *TRICARE Operations and Patient Administration Functions*. In the case of a potentially unfitting medical condition, summary medical documents are put together and as part of the Pre-IDES screening process and are reviewed by members of the DAWG for the disposition of either refer the case to a full MEB or recommend the individual be returned to duty (RTD). This is the first step in the screening process on all potential MEB cases.

In both statements, counsel and the applicant are somewhat elusive in specifications of injuries obtained during the applicant's time in service. Although some minor conditions were cited within counsel's brief, most comments centered around the nebulous term of injuries. The applicant's brief included the comments such as acknowledging medical reasons that attributed to multiple fitness failures, and not believing this was a justified basis to deny his request to reenlist. Him being diagnosed with asthma from the DVA and prescribed an inhaler and being service connected from the DVA for his back and right leg. Contributing these issues as having affected his ability to achieve satisfactory scores on his fitness test. However, despite his medical issues and his fitness currency being an issue, he has never received paperwork for these alleged issues, nor did he have the opportunity to have his records reviewed by a military medical provider in order to rule out any medical issues. First, given that the applicant's citing of his DVA disability impairment rating in the same apparent context of conditions perceived from his military service time, the Medical Advisor finds it paramount to brief the difference between the military and DVA disability evaluation. For awareness, service connection of a medical condition as found by the

DVA is not based upon the same criteria as the service disability system. It must be stressed, a service-connection decision by the DVA does not equate to what the DoD denotes as an unfitting condition which may be ratable within the DES. The determination of unfitness by the military is when a physical or mental health condition interferes with the member's ability to reasonably perform their military duties in accordance with their rank, grade, office, or rating. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. Therefore, a DVA disability impairment rating is not synonymous and/or equivalent in any way with the disability system within the Department of Defense (DoD).

As for the nebulous context of injuries, the Medical Advisor remained unsure as to what specific injury/injuries counsel and the applicant spoke of regarding a condition whereby he was unable to reasonably perform his military duties in accordance with his rank, grade, office, or rating. Therefore, not having a definitive statement or the identification of the specific adverse health condition that counsel and the applicant refer to, the Medical Advisor meticulously reviewed all health conditions/diagnoses found either within the electronic medical record data base as well as the paucity of non-specific health issues as cited in their perspective briefs. Having no evidence of any single non-mental health condition, or a combination thereof, rendering the applicant incapable of reasonably performing within the confines of his service duties, coupled with no identified duty limiting condition (AF Form 469, *Duty Limiting Condition Report*), and submitted medical documents showing continued release without limitations or without restrictions is sufficient and rates significant probative value in determining the applicant did not have an adverse health condition that would be considered unfitting for continued military service.

Noting, just eight days and six days from performing an Air Force fitness assessment which he failed, the applicant's responses on the associated Physical Health Assessments (PHA) were completely benign and would tend to assure passing of the fitness assessment test. Having no further documentation of deteriorating health during the few days from a benign PHA to performing the fitness test lent great value in determining his fitness failures were not due to any identified health condition. Therefore, his failures apparently stemmed from non-physical or non-health related concerns.

Lastly, counsel specifically opined the applicant's evaluation reports show he was able to meet fitness standards prior to the development of low back pain and other injuries, and it was only after these injuries got worse that he started to have issues with maintaining fitness standards. However, such information is not accurate and inconsistent when compared to his performance reports noting the applicant met fitness standards from Oct 09 through Oct 11 versus a claimed flare-up of low back pain in Feb 09.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 24 Sep 24 for comment (Exhibit G), and the applicant replied on 23 Oct 24. In his response, the applicant contends, through counsel, the advisory opinion he did not have an unfit medical condition prior to his separation is misleading. He had several documented medical conditions during his military service to include abrasion left knee, knee pain, bronchitis, upper respiratory infection, allergies, asthma, backache, low back pain, neck pain, headaches, hearing loss, cough, dehydration, anxiety, irritable bowel syndrome, fatty tumor, Post-Traumatic Stress Disorder (PTSD), pre-glaucoma, and tinnitus. He routinely identified his lower back pain and had x-rays on his lumbosacral spine in Sep 09, May 10, and Mar 11. While the reports did not indicate significant clinical findings, his back pain was of sufficient severity to require multiple x-rays over a two-year period. Per DoDI 6130.03 V2, *Medical Standards for Military Service: Retention*, radicular or non-radicular pain involving the cervical, thoracic, lumbosacral, or coccygeal spine, whether idiopathic or secondary to degenerative disc or joint disease, is an unfitting condition if the condition precludes satisfactory duty performance. He also suffered from neck pain due to an injury in 2013 which also impacted his ability to perform basic military tasks. He received disability ratings from the DVA for several medical and mental health conditions to include PTSD. Although his increased disability percentages were not awarded until Oct 21, that does not mean his conditions were not of sufficient severity to warrant those increased ratings prior to his separation from service. It is not uncommon for service members to fail to file a claim for disability compensation immediately following the development of new symptoms and it is well known that issues, such as depression, can play a role in this failure. His numerous medical conditions call into question his ability to perform the duties of his office, rank, grade, and rating. It is without question his conditions required referral to the IDCS which would have found him unfit and medically retired from service had this occurred.

The applicant's complete response is at Exhibit H.

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 HQ RIO/IRO and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant's discharge was consistent with the substantive requirements of the governing regulation and was within the commander's discretion when the applicant's leadership made the decision to non-retain him. The decision to non-retain him was partly due to his failure to maintain FA currency standards and not solely due to his fitness failures. Nonetheless, the Board finds the applicant was properly notified and counseled about his fitness failures and had an opportunity to provide a response on three separate occasions when he was presented with his EPR referrals. However, the applicant did not provide any response indicating his medical issues caused his fitness failures; he did not indicate any medical concerns on his PHAs which may have caused problems passing his fitness assessment; nor did he appeal any of his FA failures as was his right, per AFI 36-2905. Furthermore, staff sergeants can attend

NCOA, but it is not mandatory; however, a commander may still take this into consideration when deciding whether or not to retain a member. The Board finds this is a valid reason for retention consideration, especially given the length of time the applicant was a staff sergeant, for approximately nine years which demonstrates his lack of motivation. The Board acknowledges the applicant may not have been given ample time of command's decision to non-retain him before his 6 May 19 ETS; however, his ETS was extended for almost four months to give the applicant sufficient time to provide a repeal response to the non-retention decision. Lastly, the Board finds the applicant did not have any unfitting conditions, either separately or combined, which would qualify the applicant for a compensable medical separation. The mere existence of a medical or mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to his medical or mental health conditions. A Service member shall be considered unfit when the evidence establishes the member, due to physical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in a member's separation. The military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries, which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at or near the time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation. Therefore, the Board recommends against correcting the applicant's records. 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 and finds the application untimely.

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 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-2024-00208 in Executive Session on 16 Oct 24 and 30 Oct 24:

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Panel Chair
, Panel Member
Panel Member

AFBCMR Docket Number BC-2024-00208

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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, HQ RIO IRO, dated 10 Jun 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jun 24.
- Exhibit E: Applicant's Response, w/atchs, dated 18 Jul 24.
- Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 10 Sep 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Sep 24.
- Exhibit H: Applicant's Response, w/atchs, dated 23 Oct 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.

11/7/2024

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Board Operations Manager, AFBCMR
Signed by: USAF