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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:**

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**DOCKET NUMBER:** BC-2024-00850

**COUNSEL:** Work-Product

**HEARING REQUESTED:** Work-Pr...

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**APPLICANT'S REQUEST**

His rank of technical sergeant (E-6) be reinstated with a date of rank (DOR) of 2 September 2014.

**APPLICANT'S CONTENTIONS**

He believes his administrative demotion was the result of targeted retaliation by flight and squadron leadership, stemming from his conduct during a deployment to Kuwait. He was sent home early and does not dispute his early return to home station was due to his own negligence and poor decisions. However, after attending therapy sessions with the Department of Veterans Affairs, he has concluded his leadership, under the direction of his commander, built a case against him for the purpose of terminating his military service.

In support of his request, he provides all derogatory documents and medical records documenting his 2016 in-patient hospitalization for depression and suicidal ideation. The first instance of his declining performance is shown on his EPR for the period 1 December 2014 to 30 November 2015. It was during that period he deployed and was sent home early for multiple infractions. The decline continued through the reporting period of the following EPR from 1 December 2015 to 31 January 2017. During this period, he transitioned to a new supervisor and was demoted. Over the course of his final three EPRs, his performance improved significantly, following the departure of certain individuals and the end of toxic leadership.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 29 August 2000, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Regular Air Force.

On 1 September 2014, the applicant was promoted to the rank of technical sergeant.

On 17 April 2015, the applicant received a Letter of counseling (LOC) for making a false statement to his supervisor about completing a task. On 21 April 2015, he submitted a rebuttal to the LOC.

While deployed to Kuwait, the applicant received the following adverse actions:

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a. On 17 June 2015, the applicant received an LOC for being verbally counseled five times concerning his work performance and complacency. On 20 June 2015, he submitted a rebuttal to the LOC.

b. On 12 July 2015, the applicant received a Letter of Admonishment (LOA) for failing to perform his duties at a technical sergeant level.

c. On 19 July 2015, the applicant received a Letter of Reprimand (LOR) for being derelict in the performance of his duties by failing to properly turn in tools after he discovered he had taken them to his quarters. On 22 July 2015, he submitted a rebuttal to the LOR.

On 18 August 2015, the applicant received an Article 15 for being derelict in the performance of his duties when he negligently failed to properly set the brake on the light cart as it was his duty to do, and when he negligently failed to properly close the pintle hook assembly following towing operations as it was his duty to do. On 19 August 2015, he submitted a rebuttal to the Article 15.

On 10 December 2015, the applicant received an LOR for being derelict in the performance of his duties. Specifically, he did not properly account for a controlled key at the end of his shift, and he chose to ignore inspection flags for five eTools. On 15 December 2015, he submitted a rebuttal to the LOR.

On 10 February 2016, the applicant received a referral EPR for the period of 1 December 2014 thru 30 November 2015, specifically, pertaining to the applicant's dereliction in the performance of his duties and violating Article 92 of the Uniform Code of Military Justice. On 16 February 2016, he submitted a rebuttal to the referral EPR.

On 11 April 2016, the applicant received an LOC for not properly disposing of two AGE generators after being told to do so nearly six months prior. On 20 April 2016, he submitted a rebuttal to the LOC.

On 7 June 2016, the applicant received an LOR for failing to ensure the proper ordering of several pieces of equipment as required. On 10 June 2016, he submitted a rebuttal to the LOR.

On 21 June 2016, the applicant's commander recommended the applicant be demoted to staff sergeant under the provisions of AFI 36-2502, *Airman Promotion/Demotion Programs*, paragraph 6.3.4.

On 13 July 2016, the assistant staff judge advocate found the demotion action legally sufficient and recommended approval.

On 22 July 2016, the demotion authority determined that demotion was appropriate, and the applicant was demoted to staff sergeant with a new DOR of 22 July 2016. The applicant appealed the demotion decision on 29 July 2016.

On 9 January 2017, the applicant received a referral EPR for the period of December 2015 thru 31 January 2017.

On 24 July 2024, Board staff requested the Secretary of the Air Force Inspector General (SAF/IG) provide copies of any investigative reports involving the applicant for the contested period. On 6 August 2024, SAF/IG informed Board staff their search did not identify any IG records associated with the applicant.

On 31 August 2020, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was separated from active duty for the purpose of retirement in the rank of staff sergeant. He was credited with 20 years and 2 days of total active service.

On 20 October 2020, the Secretary of the Air Force Personnel Counsel determined the applicant did not serve satisfactorily in any higher grade and would not be advanced under the provision of 10 U.S.C. § 9344.

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

## APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 1034 and AFI 90-301, *Inspector General Complaints Resolution*, reprisal against military members for making protected disclosures is prohibited.

10 U.S.C. § 1034(g)(2), Correction of Records When Prohibited Action Taken. In resolving an application for which there is a report of the IG, the AFBCMR shall review the report of the IG.

10 U.S.C. § 1034(h), Review by the Secretary of Defense (SECDEF). Upon the completion of all administrative review, the member or former member who made the allegation, if not satisfied with the disposition of the matter, may submit the matter to the SECDEF. The SECDEF shall decide to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

Air Force Instruction 36-2907, *Adverse Administrative Actions*, states “Adverse administrative actions are intended to improve, correct, and instruct subordinates who violate established Air Force standards whether on or off duty. Misconduct generally should be addressed at the lowest possible level, as soon as possible, to ensure an Airman’s career is not negatively affected unnecessarily. The decision to utilize these quality force management tools should be based primarily on two factors: the nature of the incident, and the previous disciplinary record of the Airman. In deciding what type of action to take, consider the seriousness of the Airman’s departure from established standards. Additionally, adverse administrative action should be used as part of a progressive discipline process; however, there is no requirement to issue a lower-level action to address an Airman’s first instance of misconduct. Some misconduct warrants a more severe form of action or action from higher in the chain of command.”

Air Force Instruction 36-2502, *Airman Promotion/Demotion Programs*, paragraph 6.3, Reasons to Demote, paragraph 6.3.4., “Failure to fulfill Responsibilities, states, Airmen may be demoted for failing to fulfill airman, noncommissioned officer, or senior noncommissioned officer responsibilities under AFI 36-2618, *The Enlisted Force Structure*, Chapter 3 through 5.

On 25 August 2017, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual assault, or sexual harassment. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of

mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
2. Did that condition exist/experience occur during military service?
3. Does that condition, or experience actually excuse or mitigate the discharge?
4. Does that condition, or experience outweigh the discharge?

## AIR FORCE EVALUATION

AFPC/DPMSPP (Enlisted Promotions) recommends denying the applicant's request for reinstatement of his rank to technical sergeant. The applicant served on active duty from 29 August 2000 to 31 August 2020 and retired effective 1 September 2020. In 2016, a demotion action was initiated due to failure to fulfill responsibilities, with supporting documentation including multiple LOCs, LORs, an LOA, and an Article 15. The applicant was officially demoted to staff sergeant on 22 July 2016.

As of 1 February 2020, the applicant's promotion eligibility status was marked as ineligible, and a memo dated 20 October 2020 indicated the applicant would not be advanced under 10 U.S. C. § 9344, due to unsatisfactory service in any grade higher than staff sergeant. The applicant's request for reinstatement of his previous rank of technical sergeant was not approved by leadership. After a review of the applicant's official record and provided documentation no error or injustice was found in the demotion process.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed an extensive review of all available records including the applicant's submissions and contentions and finds insufficient evidence to support a change in rank from staff sergeant to technical sergeant.

The applicant was diagnosed with an adjustment disorder, but his symptoms appeared after failing to meet responsibilities during deployment and being sent home early. There is no sufficient evidence to link his poor performance or demotion to his mental health condition. The applicant himself admitted that his return home was due to his own negligence and poor decisions, and he accepted responsibility for his performance issues in his reprimands. In response to his demotion, he acknowledged the lingering scrutiny and stated that he sought mental health support to cope with the stress.

The applicant's depression, which he attributed to guilt over receiving an Article 15 and being sent home early from deployment, began around 2015. His mental health condition, diagnosed as chronic adjustment disorder, seems to be a consequence of his deployment-related issues and performance failures. However, his personnel records and medical encounters indicate that the mental health issues began after his failure to fulfill duties and subsequent return from deployment, not as a cause of his demotion.

After reviewing the records, the psychological advisor concluded that the applicant's demotion was not caused by his mental health condition. There was insufficient evidence to support the claim that a mental health condition mitigates his demotion or discharge, and no error or injustice was found in the discharge process. The petition was given liberal consideration due to the mention of a mental health condition, but ultimately, the evidence did not support the applicant's request for relief. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

**1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?** The applicant selected Other Mental Health on his application. The applicant stated that he has been receiving mental health support.

**2. Did the condition exist or experience occur during military service?** The applicant reported going to mental health since he was sent back early from deployment. The applicant is service connected for chronic adjustment disorder.

**3. Does the condition or experience excuse or mitigate the discharge?** While the applicant was diagnosed with a mental health condition (adjustment disorder), his symptoms began after he failed to fulfill responsibilities while deployed and after he was sent home from deployment. There is insufficient evidence to support that his poor performance or demotion was the result of any mental health condition. The applicant stated that he was sent home due to his own negligence and poor decisions that were his own doing. He acknowledged his performance issues on most of his reprimands, accepting full responsibility. In response to his demotion, he stated, "Being the TSgt who was sent back early is something I have not gotten over. The scrutiny doesn't go away; it only lingers. Since my return, I've been put in the position to fail over and over again. I've been going to Mental Health to help me cope with these stressors." The applicant mentioned in an encounter dated 21 July 2015 that his depression was the result of his inability to do his job. The applicant stated during his mental health Compensation & Pension examination, "I noticed the depression hit really hard around 2015. I was sent home from a deployment early and I received an Article 15. It was a combination of guilt because of the Article 15 and being sent home early. It was a sense of worthlessness that set the depression off." The applicant is 30 percent service-connected for chronic adjustment disorder, which seems to have its etiology after he was sent back early from deployment and after his performance issues. The symptoms appear to be the result of being sent back early from deployment and his reprimands for duty performance.

It appears to be sufficiently documented in his personnel record and treatment encounters that the applicant's mental health issue began after his inability to fulfill his responsibilities and after he was sent home for this failure. His demotion appears to be the response to his inability to fulfill these obligations. Therefore, the psychological advisor concludes that his demotion was not the result of any mental health condition.

**4. Does the condition or experience outweigh the discharge?** The applicant's mental health condition does not excuse or mitigate his demotion.

The complete advisory opinion is at Exhibit D.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 6 August 2024 for comment (Exhibit E) but has received no response.

## FINDINGS AND CONCLUSION

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1. The application was not timely filed.
2. The applicant exhausted all other available administrative remedies 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 applicant's mental health issue began after his inability to fulfill his responsibilities and after he was sent home from his deployment for this failure. His demotion was the result of is inability to fulfill those responsibilities and not the result of any mental health condition. The Board concurs with the rationale and recommendation of AFPC/DPMSP and the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends that his demotion was the result of targeted retaliation by flight and squadron leadership, he submitted no documentation to support that claim. Board staff requested the Secretary of the Air Force Inspector General (SAF/IG) provide copies of any investigative reports involving the applicant for the contested period. SAF/IG informed Board staff their search did not identify any IG records associated with the applicant. 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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-2024-00850 in Executive Session on 19 December 2024:

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 5 March 2024.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSP, dated 7 May 2024.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 22 July 2024.
- Exhibit E: Notification of Advisories, SAF/MRBC to Applicant, dated 6 August 2024.

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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.

9/28/2025

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Associate Director, AFBCMR

Signed by: USAF

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