



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00864

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His grade of master sergeant (E-7) be restored along with backpay.

APPLICANT'S CONTENTIONS

There were numerous errors, omissions, coercion and bullying tactics used by the legal office during his non-judicial punishment (NJP) proceedings. He should not have been demoted after almost 23 years of faithful and dutiful service. The initiating commander initially refused to choose the NJP forum until threatened by the legal office. The initiating commander took a leave of absence after the threat causing the legal office to withdraw the NJP. The new commander who was much more amenable to their suggestions, issued the NJP. The entire NJP processing from initially being served to close out took a total of 158 days, a significant deviation from the 39-day milestone. When given the evidence, it is noted the Report of Investigation (ROI) was closed and published the day he was called into the office and questioned. This investigation was never reopened nor was his evidence provided to the commander, legal office, or security forces. It appears he was found guilty despite the commander articulating the belief it was innocent ingestion, which is an extreme injustice.

The NJP caused him extensive mental anguish and forced him back into mental health where he was diagnosed with severe anxiety, depression, and Post-Traumatic Stress Disorder (PTSD). He provided evidence of his PTSD diagnosis and felt it was a mitigating factor to his case.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

Dated 8 Mar 23, Special Order *Work-Product* indicates the applicant was to be retired in the grade of master sergeant, effective 1 Mar 24.

On 13 Mar 23, the applicant received a positive urinalysis (UA) result, document provided by the applicant. The letter indicates the applicant's specimen was collected on 22 Feb 23 and the testing

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

laboratory identified a positive result for Tetrahydrocannabinol (THC) (Delta 8) level 52. On this same date, the ROI, provided by the applicant, noted he was advised of his rights per Article 31 of the Uniform Code of Military Justice (UCMJ) and he invoked his legal right to counsel and was not willing to make a statement or answer any questions. The ROI further goes on to state the applicant was ordered to take another UA. The results from this UA came back on 21 Mar 23 as negative, results provided by the applicant.

On 22 Mar 23, the applicant provided a response to the positive UA, document provided by the applicant. In this response, he contends he has never consumed an illegal substance before this incident. In February, he was visiting with his grandparents while helping with his father who was in the hospital. Upon learning of the positive UA, he contacted his father and grandparents and found out cookies he consumed were infused which made him sick. He assumed it was due to food poisoning. If he knew the cookies were infused with THC, he would not have mistakenly eaten them. Along with his response, he submitted several witness statements supporting his position.

On 14 Jun 23, AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt thru CMSgt)*, indicates the applicant received NJP, Article 15 for wrongfully using Delta-8 THC on or about between 23 Jan 23 and 22 Feb 23. He received a reduction in grade to technical sergeant (E-6) with a new date of rank of 14 Jun 23. It is noted the applicant's appeal was denied on 27 Jun 23.

On 20 Jun 23, the applicant submitted an appeal to his NJP, provided by the applicant. In his appeal, he contends his punishment of reduction in grade is inconsistent with the offense and is beyond rehabilitative, which is the intent of the NJP. His reduction in grade should be remitted if no further misconduct occurs within the 6-month probationary period.

Dated 26 Jul 23, Special Order *Work-Product* indicates the applicant was to be retired in the grade of technical sergeant, effective 1 Jan 24.

On 31 Dec 23, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of technical sergeant (E-6) after serving 22 years, 10 months, and 18 days of active duty. He was retired, with a narrative reason for separation of "Maximum Service or Time in Grade."

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

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. This advisory is limited to the applicant's mental health condition. A review of the records finds the applicant had consistently and repeatedly reported during service he unknowingly ingested or consumed cookies containing THC while he was on leave. He thought they were regular cookies when he had them as a midnight

snack with milk. He explained the cookies were made by his grandparents' roommate and father and he became ill after consuming them. These individuals and others submitted affidavits to corroborate his report. He was stunned to learn he tested positive for THC or Delta-8 after he submitted to a random UA. Since the applicant reported he had unknowingly consumed the THC-laced cookies, then it is not possible his mental health condition caused him to consume them. There is no evidence he had a mental health condition including anxiety, depression, or PTSD, or was in emotional distress impairing his judgment at the time he consumed the cookies. He asserted, if he had been aware the cookies were infused with THC, he would not have eaten them. There is evidence from his service treatment records he had developed anxiety and depression and possibly exacerbated his PTSD symptoms, in reaction to his legal and occupational problems of receiving an NJP for the positive UA test. He was given a diagnosis of adjustment disorder with mixed anxiety and depressed mood to reflect his situational stressors/problems. He also had relationship problems with his former spouse as they were getting a divorce. To reiterate, his objective service treatment records revealed his mental health condition, especially anxiety and depression, was the result of his legal and occupational problems and did not predate them. He received medication management treatment services for Attention-Deficit/Hyperactivity Disorder (ADHD) before he had these problems and no evidence his condition of ADHD caused him to consume the cookies. He received mental health treatment through the Alcohol and Drug Abuse and Prevention Treatment (ADAPT) psychoeducation course with individual psychotherapy services following his positive UA and NJP.

There are records he was diagnosed with PTSD during service from his traumatic deployment experiences to Afghanistan in 2011, and he claimed he had PTSD symptoms about a year before his positive UA and NJP. While this is plausible, there is no actual evidence to corroborate his report. He had consistently reported on numerous annual Physical Health Assessments (PHA) and Post-Deployment Health Assessments (PDHA) before his positive UA, he had no mental health issues including PTSD symptoms. His records show the only mental health treatment he received before his positive UA was medication management treatment from his primary care manager (PCM) for ADHD. He noted his PTSD symptoms were exacerbated and triggered after he witnessed a traffic accident in Oct 22 and from another instance where he witnessed a motorcycle accident, and a man was lying face down on the road. These instances may have preceded his positive UA but no evidence he was experiencing PTSD symptoms such as nightmares, hypervigilance, anxiety, depression, poor concentration, irritability, etc. at the time he unknowingly consumed THC-infused cookies. The development or exacerbation of his PTSD symptoms and his positive UA test appear to be two mutually exclusive events and have no relation to one another. There is no evidence he consumed the THC-infused cookies to cope with his mental health condition or symptoms. Again, the stressors of the aftermath of his positive UA and NJP exacerbated his PTSD symptoms and caused him to develop anxiety and depression according to his treatment notes. There is no evidence his mental health condition had caused, had a direct impact, or was a mitigating factor to his positive UA or NJP. The applicant was able to retire from the Air Force and earned an honorable discharge and there is no evidence his mental health condition was a factor in his discharge reason for reaching the maximum service or time in grade.

It is acknowledged he received service connection from the DVA for PTSD; however, receiving service connection does not indicate causation or mitigation of the discharge but that the condition

was somehow related to his military service and not necessarily related to the discharge. Therefore, there is no error or injustice identified with his discharge from a mental health perspective, and his request to restore his rank and receive back pay is not supported by his objective records. Liberal consideration is not appropriate to be applied to the applicant's petition because this policy does not cover his request for restoration of rank and back pay. This policy applies to upgrade discharge requests and his request is not under this category.

The complete advisory opinion is at Exhibit C.

AF/JAJI recommends denying the applicant's request to have his grade restored finding insufficient evidence to recommend relief on the basis of legal error. Because the applicant has the burden of providing evidence in support of an allegation of an error or injustice, DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, dated 4 Oct 22, paragraph 3.4.4, states the AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision for an abuse of discretion per *Roberts v. United States*, 741 F.3d 152, 158 (D.C. Cir. 2014) reviewing decision of a military corrections board under an unusually deferential application of the arbitrary or capricious standard.

A rational factfinder could conclude it more likely than not the alleged misconduct occurred under the applicable preponderance of the evidence standard. DAFI 51-202, *Nonjudicial Punishment*, dated 4 Jan 22, paragraph 3.4, states every reasonable inference from the evidence supports the decisions of the principals who resolved questions of fact and took the actions at issue. All procedural and due process requirements were complied with. There is no evidence of an abuse of discretion.

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 15 Nov 24 for comment (Exhibit E), and the applicant replied on 29 Dec 24. In his response, the applicant contends the evidence he submitted supports his claim of accidental ingestion of THC. He had no history of prior drug usage. Given the circumstances, the reduction in grade was disproportionately severe as this punishment did not reflect the accidental nature of the ingestion which is a plausible defense, and the original fact-finder failed to contact sworn witnesses to collaborate the events. Lastly, the legal office appointed to advise on the punishment actions should not have been involved as the applicant was working in this office prior to the incident.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was 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 the victim of an error or injustice. While the Board notes the recommendations of the AF/JAJI and the AFRBA Psychological Advisor against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions. Although the Board agrees with the AFRBA Psychological Advisor that his mental health condition had no nexus to his use of drugs, they find the applicant’s admission he inadvertently ingested THC and the witness statements he submitted support his contentions. Furthermore, the Board finds the ROI was fatally flawed when it did not address or investigate the wrongful or innocent use of THC. Despite the AF/JAJI advisory of legal sufficiency there were too many irregularities to conclude the principals actually reviewed all of the facts presented during the multiple months from the incident to the final NJP with changes in the involved principals. Therefore, the Board finds the issuance of the Article 15 with a reduction in grade was unduly harsh and disproportionate to the offense committed. Hence, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show the following:

- a. On 31 Dec 23, he was discharged in the grade of master sergeant (E-7) with a separation code and corresponding narrative reason for separation of RBD (Sufficient Service for Retirement).
- b. The non-judicial punishment and all corresponding documents be removed from his records.
- c. The non-judicial punishment demotion action to grade to technical sergeant (E-6) with a new date of rank of 14 Jun 23 be declared void and removed from his records and all corresponding documents be corrected to restore the grade of master sergeant (E-7) with his original date of rank.

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-2024-00864 in Executive Session on 18 Dec 24 and 6 Jan 25:

Work-Product Panel Chair
 , Panel Member
 Work-Product Panel Member

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

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- Exhibit A: Application, DD Form 149, w/atchs, dated 5 Mar 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 22 Jul 24.
- Exhibit D: Advisory Opinion, AF/JAJI, dated 7 Nov 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 24.
- Exhibit F: Applicant's Response, dated 29 Dec 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.

11/12/2025

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Board Operations Manager, AFBCMR
Signed by: USAF