



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01810

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His retired rank [sic] be restored to chief master sergeant (E-9).

APPLICANT'S CONTENTIONS

His Area Defense Counselor advised him to proceed with nonjudicial action. He believes his reduction in grade was not fair and had he defended himself under a fair trial, the jury would have come to a different disciplinary decision. He knows for a fact that other military members have been accused of the same charges and did not receive the same punishment. He suffers from alcoholism and in the civilian sector, employees are not punished to the extreme he was punished. He has made great strides in his sobriety, and he was three years sober on 28 Jul 24. The claim of insubordination against him was not proven but was a "he said, she said" situation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve senior master sergeant (E-8) awaiting retired pay at age 60.

On 6 Nov 21, the applicant was offered nonjudicial punishment (NJP) action pursuant to Article 15, Uniform Code of Military Justice (UCMJ), in violation of: Article 89, for on or about 23 Jul 21 he behaved with disrespect towards a superior commissioned officer; and Article 112, for on or about 25 Jul 21, he was found drunk on duty. As a result, he was reduced to the grade of E-8 with a new date of rank of 16 Dec 21.

On 5 Feb 22, according to documentation provided by the applicant, he submitted an appeal to the NJP authority and requested he be allowed to retire in the grade of E-9 rather than reenlist as he had intended. He explained a reduction in rank [sic] would affect his retirement pay and cause a financial and emotional burden on him and his family. He further explained he was an alcoholic and his attempts at staying sober. He believed that his punishment was out of step with the typical progression of punishment. While he admitted his conduct was not chief master sergeant material, it was his first offense and based on his 29 years of becoming conduct, his reduction in rank [sic] should be suspended or set-aside.

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On 30 Mar 22, the applicant's appeal was denied. He received a reprimand and was reduced in grade to E-8 with a new date of rank of 16 Dec 21.

On 9 May 22 and 3 Jun 22, the NJP action was found legally sufficient.

On 1 Apr 22, according to Reserve Order **Work-Product** dated 23 Mar 22, the applicant was placed on the Reserve Retired List in the grade of E-9, awaiting retired pay at 62 years of age (28 Jul 32). The order was amended on 12 Apr 22 by Reserve Order **Work-Product** due to an administrative error and his retired pay grade corrected to E-8.

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

APPLICABLE AUTHORITY/GUIDANCE

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance, known as the Wilkie Memo, 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, injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memo.

On 7 Jan 25, the Board staff provided the applicant with a copy of the supplemental guidance (Exhibit G).

AIR FORCE EVALUATIONS

AF/JAJI recommends denying the application. Because "[t]he applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice," DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, 4 Oct 22, para. 3.4.4, the BCMR 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 BCMR can reverse an arbitrary or capricious decision for an abuse of discretion. *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").

Every reasonable inference 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. The applicant accepted NJP proceedings as the forum in which to address the allegations. Reduction in rank [sic] is a permissible punishment through NJP in accordance with AFI 51-202, *Nonjudicial Punishment*, 6 Mar 19, para. 3.16 and Table 3.1. It is the commander's discretion, in consultation with the servicing staff judge advocate, to impose an appropriate punishment within the parameters of what is legally permissible. *Id.* at para. 3.14. This includes consideration of

matters submitted in mitigation. AF/JAJI finds insufficient evidence to demonstrate a legal error or injustice and therefore recommends the Board deny relief.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request to retire at the grade of E-9 from a psychological perspective. While the applicant has been diagnosed with alcohol dependence, it does not mitigate his misconduct from a mental health perspective. Alcohol dependence is an unsuiting condition. Despite the applicant's alcohol dependence, he was determined not to have any mental health diagnoses (26 Aug 21) while in service. He has no mental health diagnoses post-service and is not service connected for any mental health condition. While substance usage (drinking) to manage stress is characteristic of a person who has alcohol dependence, the decision to engage in misconduct following substance use is not excused or mitigated. The applicant's misconduct of disrespecting a superior commissioned officer and being drunk on duty is not mitigated by his alcohol dependence. These are rather conscious and deliberate decisions, following the actual substance usage

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 22 Oct 24 for comment (Exhibit E), and the applicant replied on 20 Nov 24. In his response, the applicant reiterated his contention that in his almost 30-year career in the Air Force and having disciplined troops, there has always been a progression of discipline starting with verbal counseling, to letter of counseling, to letter of reprimand, and further discipline if necessary. This process was skipped over in his case, and he believes it to be unfair for his actions. His only other infraction was in 1992. He admits he was drunk on duty on 25 Jul 21 but was not drunk on duty during the alleged insubordination infraction on 23 Jul 21. He never threatened his commander but rather was standing up for the troops he supervised. In hindsight, he would have requested a closed-door meeting with his commander to discuss. The insubordination accusations were never investigated by the military. He was one of eight members to have been forced to leave the squadron based on harassment from the commander. The commander has since been removed. Regarding the Psychological Advisor's comment that he did not mark any mental health conditions on his application, he was not aware he had to check the block. His alcoholism is a mental disorder/disease. He understands his response will not change any minds and he will have to accept the injustice that he endured.

The applicant's complete response is at Exhibit F.

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 not the victim of an error or injustice. The Board concurs with the rationale and/or recommendation of AF/JAJI and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant asserts the NJP he received, specifically the reduction in grade, was unfair and inconsistent with the treatment of other service members facing similar

charges. He also cited mitigating factors, including his struggles with alcoholism, and characterized the events leading to his punishment as a “he said, she said” situation. However, the Board finds the NJP action was imposed in accordance with applicable Air Force instructions and procedures. The issuing authority acted within the scope of his authority under the UCMJ, and the NJP action was legally sufficient. While the Board acknowledges the applicant’s personal circumstances and perceived inequity, there is no evidence of legal error, abuse of discretion, or injustice in the imposition of the NJP or the resulting reduction in grade. The punishment was within the issuing authority’s discretion and consistent with the range authorized by law and regulation.

Furthermore, in accordance with the supplemental guidance issued by the USD P&R, dated 25 Jul 18 (Wilkie Memorandum), the Board carefully considered the applicant’s request for relief on the basis of equity, injustice, or clemency whenever there is insufficient evidence to warrant relief for an error or impropriety. The Board notes the applicant’s reduction in grade resulted from misconduct that included being drunk on duty and insubordination toward a superior commissioned officer. After weighing these factors, the Board does not find the applicant’s history of alcoholism excuses or mitigates the misconduct. Therefore, the Board recommends against correcting the applicant’s records.

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 evidence did not demonstrate material error or injustice, 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-2024-01810 in Executive Session on 11 Mar 25:

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 3 May 24 & 10 Dec 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 8 Oct 24.
- Exhibit D: Advisory Opinion, BCMR Psychological Advisor, dated 22 Oct 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Oct 24.
- Exhibit F: Applicant’s Response, w/atchs, dated 20 Nov 24.
- Exhibit G: Letter, SAF/MRBC, w/atch, (USD P&R Supplemental Guidance), dated 7 Jan 24.

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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.



Expired certificate

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Work-Product, AFBCMR

Signed by:

Work-Product

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CUI//SP-MIL/SP-PRVCY

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