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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01844

COUNSEL: [REDACTED]

HEARING REQUESTED: [REDACTED]

APPLICANT'S REQUEST

To have his rank of master sergeant (E-7) reinstated.

APPLICANT'S CONTENTIONS

He was wrongfully accused of sexual harassment by two airmen. He believes senior airman J and technical sergeant B made these accusations under coercion of chief master sergeant A, whose wife was close friends with technical sergeant B. During questioning by his lawyer, senior airman J admitted she no longer wanted to be involved and refused to speak further. He overheard the entire conversation on speakerphone, which left him shocked. He believed senior airman J had no issues with him. He had previously instructed her to move her car from the back dock, and in response, she became irate and yelled at him in front of the staff. However, later that day, she apologized and hugged him.

Technical sergeant B also confronted him angrily when he reassigned her to a new supervisor in front of other senior noncommissioned officers, who chose not to testify, stating they didn't want to get involved. Their testimony would have been pivotal in proving his innocence, just as senior airman M's testimony would have been. Senior airman M confirmed that senior airman J was lying about her claim that he had grabbed her, and she had slapped him. He requested that law enforcement be called to the scene if any assault had occurred, but neither the colonel nor the chief master sergeant made that call. He was frustrated, wanting an official investigation outside of his leadership.

He was later informed that chief master sergeant A had been demoted and force-retired at the senior master sergeant rank for unbecoming behavior, but he did not take pleasure in his downfall. His lawyer reassured him that they would win the case, as his accusers were not forthcoming, according to the testimonies. He waited this long to speak out due to his ongoing battle with severe depression, but he could no longer let the matter go. Every time he is confronted by technical sergeant H or reminded of the situation, the depression and anger overwhelm him, especially knowing he did not commit any offenses.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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



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On 15 May 85, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Regular Air Force.

On 27 May 99, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant received an Article 15 for violating *Article 89*, (Disrespect Toward Superior Commissioned Officer; Assault of Superior Commissioned Officer), of the Uniform Code of Military Justice (UCMJ). He received forfeiture of \$250.00 pay per month for two months.

On 6 Dec 00, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant received an Article 15 for violating *Article 92*, (Failure to Obey Order or Regulation), of the UCMJ. He received a reduction in rank to staff sergeant, with a new date of rank of 6 Dec 00. The applicant submitted an appeal to the decision on 11 Dec 00.

On 9 Feb 09, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant received an Article 15 for violating *Article 134* (General Article), of the UCMJ. He received a reduction in rank to technical sergeant, with a new date of rank of 9 Feb 09. The applicant submitted an appeal to the decision on 17 Feb 09.

On 31 May 09, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from the Regular Air Force. He was credited with 24 years, and 16 days of active service.

On 15 Jul 09, the Secretary of the Air Force found the applicant did not serve satisfactorily in any higher grade and he would not be advanced on the Retired List under the provisions of 10 U.S.C. § 8964.

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

AIR FORCE EVALUATION

AF/JAJI recommends denying the application. There is insufficient evidence to demonstrate a legal error or injustice. In Feb 09, the applicant's commander offered him NJP under Article 15, of the UCMJ. The applicant consulted an attorney, accepted the NJP forum, provided a written presentation, and requested a personal appearance. The applicant's commander found that he had committed three specifications of oral communication of indecent language, in violation of Article 134, UCMJ, and that NJP was appropriate. Punishment consisted of reduction to the grade of technical sergeant, and a reprimand. The applicant appealed and submitted matters in writing. The applicant's commander and the next superior commander denied the appeal. On 15 Jul 09, the Secretary of the Air Force concluded the applicant did not serve satisfactorily in any grade higher than technical sergeant and he would not be advanced on the Retired List under the provisions of 10 U.S.C. § 8964.

At the time of the applicant's nonjudicial punishment (NJP) proceedings, there was no specific standard for NJP. Instead, commanders were required to consider that a member was entitled to demand trial by court-martial, in which case proof beyond a reasonable doubt of each element of every offense by legal and competent evidence was a prerequisite to conviction.

The applicant has the burden of providing evidence in support of his allegation(s) of an error or injustice according to Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board*

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for Correction of Military Records (AFBCMR), 4 Oct 22, paragraph 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”).

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 17 Jul 24 for comment (Exhibit D) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFBCMR Psychological Advisor recommends denying the application. There is no evidence the applicant suffered any mental health condition before his misconduct. He was diagnosed with adjustment disorder after his third Article 15. His mental health encounters during his service clearly document that his symptoms are the result of disciplinary action following his most recent act of misconduct. The notes indicate that he has difficulty concentrating as a result of pending litigation (20 Jan 09) and his reaction to the end of his career (6 Apr 09). His most recent misconduct occurred between Jun-Nov 08, with his third Article 15 originating on 20 Jan 09, both before he had a mental health condition or exhibited any mental health symptoms. His mental health encounters post-service continues to document that his mental health condition began after he was disciplined for his misconduct. A Compensation & Pension exam dated 27 Jul 16 noted that his depressive symptoms began when women he worked with accused him of harassing them and that it was after that he began experiencing depression.

Since his mental health condition began after his misconduct and after disciplinary action for his misconduct, the psychological advisor concluded that he does not have any mental health condition that would mitigate or excuse his misconduct which contributed to his demotions (the applicant was demoted to staff sergeant as a result of his Article 15 on 30 Nov 00, and he was demoted to technical sergeant as a result of his Article 15 on 12 Jan 09).

Having considered the entire record, including the applicant’s submissions and contentions and all pertinent materials, the psychological advisor found there is insufficient evidence to support the applicant’s request to restore his rank to master sergeant from a psychological perspective.

The complete advisory opinion is at Exhibit E.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 16 Sep 24 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. 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

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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.

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 Board concurs with the rationale and recommendations of AF/JAJI and the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant asserts he was wrongfully accused of sexual harassment, and his delay in reporting this was due to severe depression he experienced, there is insufficient evidence to support his claim. The applicant was offered and accepted NJP under Article 15 of the UMCJ for use of inappropriate language, which resulted in the most recent reduction of his rank to technical sergeant. Since his mental health condition began after his misconduct and after the disciplinary action for the misconduct, the Board agrees with the psychological advisor and concludes the applicant's mental health condition did not mitigate or excuse his misconduct which contributed to his demotion to technical sergeant. Therefore, the Board recommends against correcting the applicant's records.

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-2024-01844 in Executive Session on 27 Feb 25:

[REDACTED] Panel Chair
[REDACTED] Panel Member
[REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 May 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 17 Jul 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Jul 24.
- Exhibit E: Advisory Opinion, AFBCMR Psychological Advisor, dated 11 Sep 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Sep 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.

10/20/2025

X [Redacted]

Associate Director, AFBCMR
Signed by: USAF

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