



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03580

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Reinstatement of his rank of Master Sergeant (MSgt) (E-7) with the original date of rank (DOR) of 1 Dec 21.

APPLICANT'S CONTENTIONS

When reviewed in totality, the now-known facts of his case demonstrates his demotion was unjust as it was a rush to judgement, disproportionate, and unduly harsh. He suffered an unfortunate reaction to prescription medication that led police to being dispatched to his residence. At the time, he was receiving treatment for insomnia, panic attacks and hypertension for which he had been prescribed Trazadone, Ativan, Prozac, Propanolol, as well as Ambien for his sleep issues. Given that his Ativan prescription was for infrequent use and the Ambien had only recently been prescribed, he had never combined the two and had not been advised about mixing the medications. On the date in question, the local police department was dispatched to his home in response to a 911 call from his spouse. Although he later acquired evidence that clarified, and in some instances contradicted, the initial police report, the report indicated the authorities were responding to a "domestic assault." The officer's report stated that his spouse, although "hard to understand due to a language barrier" told him that the applicant had been drinking, "slapped her twice," "twisted her arm," and at some point "was on top of her and pushed her down on her upper chest." The police arrested, and transported him to the police station for booking, and made the observation that he seemed "confused about why he was there." Evidently his confusion was so significant that the officers needed to explain to him what happened and his mental and physical condition prompted officers to ask him if he was "supposed to drink alcohol with his medications and he said he did not know." At that point, officers requested that Jackson County Ambulance District (JCAD) personnel evaluate him. The report then claimed that JCAD administered a portable breathalyzer test that read 0.121 blood alcohol content (BAC). He was then transported to the local medical center for evaluation and treatment. The local police then contacted the base's Security Force and reported that he had been arrested for "domestic violence" and had been transported to the local medical center for possible "overdose due to mixing alcohol and medication." He was released from hospital the following day.

Immediately after the incident, his squadron commander (SQ/CC) took adverse action against him based solely on very early information and representations made by the local police department. The SQ/CC immediately issued him a no-contact order prohibiting him from any verbal, non-verbal, written, or third-party contact with his spouse and further immediately referred him to Alcohol and Drug Abuse Prevention and Treatment (ADAPT). The SQ/CC then submitted a Continuous Vetting Incident Report (CVIR) suspending his security clearance. On 26 Jul 23, the

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SQ/CC issued him a limited no-contact order that continued to prohibit him from having any “in-person” contact with his spouse. On or about 31 Jul 23, he accessed his unsecure Personnel Information File (PIF) and discovered a draft letter of reprimand (LOR) that appeared to reflect that the SQ/CC was intending to issue a reprimand even though the security forces report would not be complete days later, on 4 Aug 23.

On 15 Aug 23, the SQ/CC issued him a LOR that directly incorporated material from the police report. On that same date, he again accessed his PIF and found a pre-filled demotion package indicating that the SQ/CC intended to demote and also contained the same language as the LOR, which relied solely on the initial police investigation. On that same day, his spouse wrote a letter to the SQ/CC stating that he, his friend and her had gone to a local establishment, had a few drinks, and returned home. Further she stated that she did not see him drink any more after returning home and that she went to bed before him and that he had awoken later that night because he had been burned in a barbeque accident. She then helped tend to the burn and the two of them then fell asleep on the couch. She then wrote that he later woke up and “was talking very off and off towards me” and “was not himself and was staring at the wall.” She was clear to state that there was “no hitting or punching or choking” and that the “police did not listen to me and kept adding to the story.”

On 22 Aug 23, the SQ/CC met with him and served notice he was recommending he be demoted and of the intent to establish an Unfavorable Information File (UIF) and he be placed on a control roster for “Recurring alcohol related incidents” even though he had no previous alcohol-related incidents in his record. While the demotion action was pending, he consulted his psychiatrist, Dr C, who wrote a memorandum that supported his claims he was suffering from adverse side effects of his medication during the incident in question.

On 14 Nov 23, the municipal division of the county circuit court reduced the charge to a “peace disturbance” for which he received a ticket and paid a fine.

In sum, the SQ/CC based the demotion action, along with all preceding adverse actions against him, on early, unchallenged information derived solely from the one-sided police report. Material aspects of the police report and the basis for his demotion are contradicted or substantially mitigated by post-incident and post-demotion evidence:

- a. A preponderance of the evidence demonstrates he had unintentionally mixed prescription medication and was in the throes of never-before-experienced mood alteration with memory loss.
- b. The evidence indicates that alcohol was not a factor.
- c. His charges were reduced.
- d. His spouse’s clarification of the facts contradicted the initial police report.
- e. The SQ/CC’s post-demotion actions reinforce the disproportionality and injustice of the demotion.
- f. His own conduct and performance underscore the disproportionality of the demotion under a full review of the circumstances.

Therefore, for the numerous reasons described above, his demotion was an unjust, disproportionate punishment and when carefully considered, the totality of the circumstances warrants granting the requested relief.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Jul 23, according to <redacted> Police Department report, Case **Work-Product** the applicant was arrested for domestic assault.

On 15 Aug 23, he was issued an LOR by his SQ/CC as an investigation disclosed on or about 15 July 23 he was arrested by the <redacted> Police Department for domestic assault on his spouse while intoxicated with a BAC of .121. During his interaction with the officer, he confessed to using prescription drugs and consuming alcohol. Additionally, he confessed that he got into a verbal altercation with his spouse about her daughter and pushed her. On that same date, he acknowledged receipt and that he had three duty days to provide a response.

On 18 Aug 23, he provided a response to the LOR.

On 22 Aug 23, according to *Administrative Demotion of Airmen Memorandum*, his SQ/CC recommended he be administratively demoted to the grade of technical sergeant under the provisions of AFI 36-2502, *Airman Promotion and Demotion Programs*, paragraph 6.3.4. He was notified of his right to counsel and that he had until 25 Aug 23 to provide a response for consideration. On that same date, the applicant acknowledged receipt.

Additionally on 22 Aug 23, according to DAF Form 1058, *Unfavorable Information File Actions*, provided by applicant, he was notified of his SQ/CC's intent to establish a UIF and to place him on a control roster for the following rationale: Recurring alcohol related incidents.

On 25 Aug 23, according to DAF Form 1058, the applicant indicated that he did not concur with the proposed demotion; that he has submitted written response on his behalf; that he requests a personal appearance before the initiating commander, the SQ/CC; and that he has consulted with counsel.

On 7 Sep 23, the Demotion Authority, the Group Commander (GP/CC), after a legal review found legally sufficient basis to demote, demoted the applicant to the grade of E-6 with a new date of rank of 7 Sep 23. On that same date, according to Special Order **Work-Product** dated 25 Jan 24, the applicant was demoted to the permanent grade of technical sergeant with a date of rank of 7 Sep 23.

On 8 Sep 23, the SQ/CC notified the applicant of the demotion decision and that he had three duty days to indicate his desire to appeal.

On 19 Sep 23, the applicant appealed the demotion decision and submitted a written statement to the demotion authority, the GP/CC.

On 21 Sep 23, the GP/CC decided to forward the case to the appellate authority, the 15th Air Force Commander (15 AF/CC).

On 8 Nov 23, the 15 AF/CC denied the applicant's demotion appeal.

On 21 Nov 23, the applicant acknowledged the 15 AF/CC's decision.

On 29 Feb 24, according to DAF Form 1058, the applicant's squadron commander informed the applicant of his decision to remove his UIF early.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction (DAFI) 36-2502, *Enlisted Airman Promotion and Demotion Programs*, Chapter 6, *Administrative Demotion of Regular Air Force (REGAF) Airmen*, 6.1.1. The home station unit commander recommends demotion action to the demotion authority (paragraph 6.2). Deployed commanders must send demotion actions to the home station unit commander for action. (T-1). The home station unit commander will complete coordination with the appropriate demotion authority.

6.1.6. Do not suspend administrative demotions. The demotion authority, with administrative jurisdiction, can restore the individual's previous grade, if no other ineligible condition exists. If the demotion authority restores the Airman's previous grade following the demotion, he or she must do so sometime between three months and six months after the effective date of the demotion. **(T-1)**.

6.1.6.1. Restoring grade should be an uncommon occurrence. The effective date and the date of rank are the date on which the demotion authority approves restoration in writing. In cases where the demotion reason has been removed (e.g., removed fitness failures from Air Force Fitness Management System) the original date of rank and effective date will be restored. (T-1).

6.1.6.2. Do not revoke demotion orders. File the demotion order in the Airman's Personnel Records Display Application record along with the memorandum approving the restoration. Create a Case Management System case and include restoration package or memorandum and refer the case to AFPC/DP1SSP.

6.3. Reasons to Demote. 6.3.4. Failure to fulfill Responsibilities. Airmen may be demoted for failing to fulfill Airman, noncommissioned officer, or SNCO responsibilities under Air Force Handbook (AFH) 36-2618, *The Enlisted Force Structure*.

DAFI 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program*, 18 Jul 18, Chapter 3, *Air Force Alcohol and Drug Abuse Prevention and Treatment Program*. 3.8. *Referral Types: Self-Identification, Command Referrals, Medical Referrals, and Addictive Behavior Referrals*. 3.8.1. Self-Identification. Air Force members with substance abuse and misuse problems are encouraged to seek assistance from their unit Commander, first sergeant, a military medical professional, or mental health provider. Following the assessment, the Alcohol and Drug Abuse Prevention and Treatment Program Manager will consult with the Treatment Team when indicated and determine an appropriate clinical course of action.

AIR FORCE EVALUATION

AFPC/DPMSPP recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. After a complete review of the applicant's official military record and the provided documentation, they were unable to verify an injustice as the demotion order is currently filed within his record. In addition, there was no official documentation provided by the applicant or documentation located within his military record, that verifies his leadership recommended setting aside the administrative demotion or restoration of his rank. Therefore, as there is no official documentation which verifies his leadership recommendation to restore his rank, and the demotion order is currently the official document on record, his current rank of technical sergeant (E-6) is correct.

According to DAFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, paragraph 6.1.6.3. Initiating restoration beyond 6 months after the effective date of demotion will require a waiver. **(T-1)**. This exception is not intended for use as a rehabilitative tool for improved behavior. Requests should be limited to those extreme cases that warrant restoration. MPF forward fully documented waiver requests initiated by the demotion authority through the Airman's wing commander with coordination with the legal office (if they are not the demotion authority) to AFPC/DP3SP for final decision by AF/A1P. All levels of command may disapprove these requests and discontinue further processing.

The complete advisory opinion is at Exhibit C.

AFBCMR Medical Advisor recommends denying the request as there is no evidence of an error or injustice identified with his demotion from a medical perspective and defers to the conclusion of AFPC/DPMSPP. Upon review of the available documentation, while there is sufficient medical evidence to support his contention that he may have experienced adverse effects of ingesting multiple prescription medications, likely in combination with alcohol, notwithstanding the arguments posed by his counsel "that any mood or behavior alteration was not the result of alcohol but from mixing Ambien and Ativan for the first time;" however, no medical opinion can be offered as to whether the demotion action resulting from the applicant's behavior leading up to and following the ingestion of these substances was a "rush to judgement, disproportionate, and unduly harsh" as that is not a medical issue to consider. The only relevant medical issue in this case pertains to the question of whether the applicant may have experienced an adverse drug reaction at the time of the events that precipitated his demotion which may have impacted his behavior and memory. Indeed the crux of the argument posed by counsel rests on the contention that "an unfortunate reaction to prescription medication," followed by a series of misunderstandings involving family, friends, police, and the applicant's commander, had triggered the disciplinary cascade, which was ultimately "unjust because it was a rush to judgement, disproportionate, and unduly harsh."

From a medical standpoint, no opinion can be offered regarding the administrative aspects of the case and the Medical Advisor defers to the analysis and the conclusions provided by AFPC/DPMSPP. However, as stated by the applicant's psychiatrist, in his letter dated 28 Aug 23, the drugs the applicant was apparently prescribed, and had taken, at the time of the incident undeniably have the potential to cause altered mental status, possible memory loss, and other adverse neurological and behavioral consequences, particularly in combination with alcohol ingestion. In fact, in its 30 Apr 19 notice, the U.S. Food and Drug Administration "announced the agency is requiring a new boxed warning – the agency's most prominent warning – on certain prescription insomnia drugs (including zolpidem) to better ensure patients and their health care professionals have the information they need when considering use of these medications. The

boxed warning follows several reports of rare, but serious injuries and deaths resulting from various complex sleep behaviors after taking these medicines. These complex sleep behaviors may include sleep-walking, sleep driving and engaging in other activities while not fully awake, such as unsafely using a stove.”

However, medical evidence **does not** {emphasis added} support the arguments posed by the applicant’s counsel that alcohol likely was not involved in the incident precipitating the applicant’s demotion. Although counsel stated no medical records could be found of the 0.121 percent blood alcohol content (BAC) reported by the police and subsequently used in the demotion action, there are ample military records in the applicant’s file of a long-standing alcohol overuse history, dating back to at least 2007 when he received an LOR with a suspended demotion for a self-admittedly alcohol-related offense. As per the 2022 Mental Health note, the applicant had been command-directed to ADAPT prior to the events of Jul 23 for another domestic incident involving excessive alcohol consumption. That note indicated that the applicant had been using alcohol excessively for years, and stand is stark contradiction, together with other medical evidence mentioned above, to the applicant’s contention that he had “no history of alcohol incidents” prior to the events surrounding his demotion.

Furthermore, medical evidence also **does not** {emphasis added} supports counsel’s assertion the applicant was unaware of the potential effects of combining his medications. As mentioned above, records demonstrate that he had been receiving both Ativan and Ambien for at least 2 years prior to the incident and that neither had been “recently prescribed.” While no direct documentation was found that he had been advised regarding the potential adverse effects of his medications, such patient counseling is standard care in pharmacy, medical, and psychological practice and it is likely that he would have received ample information about the drugs at some point during his long treatment course, particularly with regard to the dangers of combining them not only with each other, but with alcohol.

The AFBCMR Psychiatry Advisor reviewed and concurs with the AFBCMR Medical Advisory findings and recommendation.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisories opinions to the applicant on 4 Mar 25 and per counsel’s request, again on 9 Apr 25, for comment (Exhibit E), and the applicant replied on 1 Apr 25. In his response he reiterated that: his demotion was unjust, particularly on account of post-incident evidence and actions that mitigated against the inflammatory, one-sided police report upon which the demotion was based; present evidence shows alcohol played much less a role than initially alleged; the charges against him were reduced to a municipal ticket; and his wife clarified that he did not consume excessive amounts of alcohol that night and did not hit or choke her as the police report indicated.

Additionally, he contended the BCMR Medical Advisor opinion overstates the evidence and ultimately undermines its own conclusions. First, the incident they describe occurred nearly 16 years earlier and did not result in any referral to ADAPT and thus did not appear to rise to the level of an alcohol-related incident within the meaning of AFI 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program* paragraph 3.8.1. Further, while the incident in 2022 appears to have resulted in his interaction with ADAPT, the Medical Advisor stretches its significance too far to support its conclusion. Ultimately, though, and whether and how much

alcohol was a factor is his demotion is only one small part of his basis for restoring his rank and he has asserted several other points which underscore the injustice of his demotion which the Medical Advisor has specifically avoided and deferred to AFPC/DPMSP.

Further, he contended the AFPC/DPMSP advisory opinion appears to argue that the restoration of his rank is not warranted because his BCMR application does not satisfy the demotion-restoration requirements in DAFI 36-2502. This is flawed for two reasons: 1) compliance with DAFI 36-2502's demotion-restoration procedure does not control, let alone circumscribe in any way the Board's review and authority; 2) DAFI 36-2502 does not require recommendations from an applicant's leadership to set aside a demotion. Further, the advisory opinion does not address all the applicant's arguments and if the Board adopts the rationale of the advisory opinion without addressing these deficiencies, it would like run amiss of its decision-making obligations under the *Administrative Procedures Act*.

Finally, in support his request for relief, he provides two additional letters of support from his current and most recent prior squadron commanders who both enthusiastically support his reinstatement.

In sum, notwithstanding the misguided advisory opinions issued in this case, in consideration of all the arguments and evidence, the Board has a compelling reason to grant relief.

The applicant's complete response is at Exhibit E.

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 thoroughly reviewing all exhibits, the Board concludes the applicant has not demonstrated that he was the victim of an error or injustice. The Board concurs with the rationale and recommendations of AFPC/DPMSP and the AFBCMR Medical Advisor, finding that a preponderance of the evidence does not substantiate the applicant's contentions. While the Medical Advisor noted the applicant's medication may have contributed to the incident, the fact remains that his blood alcohol content was 0.121. The applicant argues that the domestic violence charge was reduced to a municipal ticket and that his spouse's recantation negates both the arrest and the basis for the LOR and UIF. However, this does not change the fact that his spouse called 911 to report a physical assault, and photographs provide physical evidence consistent with abuse. The Board notes that the DPMSP advisory does not fully address the applicant's contentions and the Board recognizes that they have the authority to set-aside a demotion; however, the Board, through their own independent review did not find sufficient evidence to warrant overturning the commanders decision. The Board finds the actions taken by his commander to be neither arbitrary or capricious and were well within the bounds of his command authority and the applicant was given due process through his appeal to the 15 AF/CC. 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

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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-2024-03580 in Executive Session on 24 Jul 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 8 Oct 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSP, w/atchs, dated 14 Nov 24.
- Exhibit D: Advisory Opinion, BCMR Medical Advisor, w/ Psychiatry Addendum, dated 8 Jan 25.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Mar 25 and 9 Apr 25.
- Exhibit F: Applicant's Response, dated 1 Apr 25.

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.

9/18/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

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Attorney-Client