

the Mental Health Flight. The IO addresses the working relationships between two specific majors within the flight, and the working relationship between a major and a civilian within the flight. He also addressed the use of employees to serve as escorts, on duty time, for a flight member's civilian court appearances. He also looked into whether or not assigned flight members engaged in "questionable behavior" involving patient records. **This allegation was not substantiated.**

Allegation 3. Mental Health Flight personnel engaged in improper or criminal conduct. The IO addressed whether during an August 2006, Health Service Inspection (HSI) of the Mental Health Flight enlisted staff members were directed to engage in unethical actions and patient records were taken home by one of the assigned staff members. He also assessed whether improprieties occurred and, if so, what command actions were taken by group leadership. **This allegation was not substantiated.**

Allegation 4. Mental Health Flight leadership is ineffective, and as a consequence, the unit is not mission ready. The IO examined how effective the group supervisory and command chain investigated and addressed alleged misconduct and personnel concerns. He concluded that despite a poor working environment the mission was being accomplished and **this portion of the allegation was not substantiated.** However, he concluded that the **allegation of leadership ineffectiveness was substantiated.**

Allegation 5. There has been a "downward spiral of morale" and hostility in the Mental Health Flight. The IO found the flight work environment to be poor and the majority of testimonies reported an environment filled with high stress and low morale. **This allegation was substantiated.**

Allegation 6. Abuse of command authority and racial discrimination. Although the IO found there were problems in the professional working relationships between flight members, **this allegation was not substantiated.**

In his summary letter (Exhibit F) the IO advised the applicant that if she was not satisfied with the outcome of the investigation she could request further review through command channels and she also had the right to petition the Air Force Board for Correction of Military Records (AFBCMR).

In support of her request, the applicant provides a personal statement, copies of her pay records, an unsigned copy of her AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (MSgt thru CMSgt)* along with documents pertaining to the nonjudicial punishment action, a copy of her DD Form 214, *Certificate of Release or Discharge from Active Duty*, email correspondence and documents extracted from her military personnel records.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force who enlisted on 8 December 1987. She was progressively promoted to the rank of master sergeant, having assumed that grade effective and with date of rank with a date of rank of 1 September 2004.

On 19 July 2010, the applicant's commander offered her nonjudicial punishment proceedings under Article 15 UCMJ for one specification of a violation of Article 121, larceny and wrongful appropriation. On 3 June 2010 the applicant was charged with stealing a Dane-Elec 16 Gigabyte Micro Secure Digital Memory Card valued at \$69.95 from the Base Exchange. The applicant consulted counsel, waived her right to trial by court-martial and accepted the Article 15 proceedings. She elected to make a written presentation as well as a personal appearance before the commander. On 26 July 2010, the commander determined the applicant committed the alleged offense. The applicant's imposed punishment was reduction to the grade of E-6 (technical sergeant), with a new date of rank of 26 July 2010, forfeiture of \$1,742.00 per month for two months of which, the portion of the forfeitures in excess of \$1,742.00 pay per month for one month was suspended through 25 January 2011, after which time it would be remitted without further action, unless sooner vacated and a reprimand. The applicant appealed the commander's decision. The appellate authority denied the applicant's appeal. The Article 15 proceedings were reviewed and determined to be legally sufficient.

The applicant was released from active duty on 31 January 2011, with an honorable characterization of service and credited with 20 years, 2 months, and 6 days of active duty service. Her rank at the time of retirement was Technical Sergeant, E-6, with a date of rank of 26 July 2010.

On 20 October 2011, the Secretary of the Air Force found that the applicant did not serve satisfactorily in any higher grade and would not be advanced in any higher grade under the provisions of section 8964 of Title 10 United States Code.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states the applicant alleges the charge against her were unjust in that her commander refused to accept her defense, and she was steered into accepting the Article 15 by her defense counsel. The applicant, however, offers a fairly implausible explanation for her innocence.

While her rather elaborate story arguably provides something of a defense of the theft charge, the commander was evidently not persuaded, and was likely more impressed by the eyewitness and videotaped accounts of the BX security personnel, with no motive to fabricate. The applicant does not allege error in how the Article 15 was processed. At the time of the nonjudicial actions, the commander had the best opportunity to evaluate all of the evidence in this case. With that perspective, the commander exercised the discretion granted to him by the applicant when she accepted the Article 15. The legal review processes showed the commander did not act arbitrarily or capriciously in making his decision. A review of the applicant's AF Form 3070 indicates her rights were observed throughout the process of the nonjudicial punishment action. The applicant does not make such a compelling argument that the Board should overturn the commander's original decision on the basis of injustice. The commander's ultimate decisions on the Article 15 actions were firmly based on the evidence of the case and the punishment decision was well within the limits of his authority and discretion. The applicant has not shown a clear error or injustice.

The complete AFLOA/JAJM evaluation is at Exhibit C.

AFPC/DPSOE recommends denial. DPSOE states that AFLOA/JAJM has reviewed this case and found no error or injustice and recommends denial of the applicant's request to remove the Article 15 and restore her retirement pay grade to MSgt. They defer to the AFLOA/JAJM recommendation.

The complete DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 19 June 2012 for review and comment within 30 days (Exhibit E). To date, this office has not received a response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took careful notice of the applicant's complete submission in support of her appeal; however, we agree with the opinions and the recommendations of the Air Force offices of primary

responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. The applicant's contentions that the nonjudicial punishment, initiated on 3 June 2010 and imposed on 26 July 2010 was improper and was actually reprisal for her filing of a 2008 congressional complaint on her unit leadership are duly noted; however, we do not find the evidence provided is sufficient to overcome the findings of the AMC/IGQ, which found the applicant's leadership did not reprise against her for the congressional complaint but instead, her allegations led to a commander directed investigation which was conducted from 7 February 2008 to 24 March 2008 and approved by the Numbered Air Force commander on 4 April 2008. A preponderance of the evidence established indicates that, during the processing of the Article 15 action, the applicant was offered every right to which she was entitled. The applicant has not provided any evidence showing that the imposing commander or the appellate authority abused their discretionary authority, that her substantial rights were violated during the processing of the Article 15 punishment, or that the punishment exceeded the maximum authorized by the UCMJ. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting her reinstatement to master sergeant.

4. The applicant alleges she has been the victim of a reprisal. We note the contention set forth by the applicant that her commander was aware that the item she was accused of stealing was later recovered in the store; nevertheless, he took nonjudicial punishment action against her and imposed a harsh punishment of reduction in grade and forfeiture of \$1,742.00 per month for two months as a reprisal for her filing of the 2008 congressional complaint on her unit leadership. We note the applicant filed a congressional complaint in 2008 alleging that the Medical Group, Medical Operations Squadron, and Mental Health Flight leadership engaged in behavior with racial discrimination overtones; there are, or have been, inappropriate dual and unethical relationships between supervisors and subordinates in the Mental Health Flight; Mental Health Flight personnel engaged in improper or criminal conduct; Mental Health Flight leadership is ineffective, and as a consequence, the unit is not mission ready; there has been a "downward spiral of morale" and hostility in the Mental Health Flight; and there is abuse of command authority and racial discrimination. Her complaint resulted in a Commander Directed Investigation. The allegations of leadership ineffectiveness and a downward spiral of morale and hostility in the Mental Health Flight were substantiated; however, the remaining five allegations were not substantiated. The Numbered Air Force commander acknowledged and closed the investigation on 4 April 2008. In the summary letter to the applicant, the investigating officer advised her that because the complaint was not an IG specific matter, if she was not satisfied with the outcome of the investigation she could request further review through command channels and she

also had the right to petition the AFBCMR. No evidence has been provided to demonstrate that the applicant took further action on the matter. As such, based on the authority granted to this board pursuant to Title 10, U.S.C., Section 1034, we reviewed the complete evidence of record to determine whether the applicant has been the victim of reprisal. We note the timing of the applicant's nonjudicial punishment, which was the consequence of her own actions, occurred over two years after the CDI was closed. Based on our review of the complete evidence of record and the complete report, in our view, the AMC/IGQ investigation appears thorough and the final determination to close the investigation is supported by the applicant's apparent lack of follow-up action. Therefore, the Board does not find that the applicant has been the victim of reprisal pursuant to Title 10, U.S.C., Section 1034.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 20 September 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01124 was considered:

- Exhibit A. DD Form 149, dated 15 March 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records
- Exhibit C. Letter, AFLOA/JAJM, dated 21 May 2012.
- Exhibit D. Letter, AFPC/DPSOE, dated 4 June 2012.
- Exhibit E. Letter, SAF/MRBR, dated 19 June 2012.

Panel Chair