

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01607

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His administrative demotion to the grade of senior master sergeant be revoked and he be reinstated to the grade of chief master sergeant.

APPLICANT CONTENDS THAT:

The charges brought about were founded on circumstantial evidence. After a night in downtown Rota, he returned to his room and tripped over misplaced furniture. He notified emergency services personnel and was treated at the facility. Sworn statements from six crew members attest to the fact that his level of intoxication that evening did not lend itself to careless behavior.

Even in the dissenting statement, inconsistencies call into question its relevance. Crew members and medical personnel state that he was vomiting and that it was difficult for him to sit and remain compliant with the inspection. However, it was a combination of fatigue, pain and narcotic side effects that left him being atypical of his normally professional demeanor. He does not understand how his behavior, while drugged and in pain constitutes dereliction of duties.

Proper procedures were not followed regarding the presentation of charges. Upon his return to duty, he was presented with UCMJ charges: Article 87, missing a movement, Article 92, Dereliction of Duty, and Article 134, Drunkenness. He signed and acknowledged the charges. The charges were later rescinded and he was presented with administrative demotion. Instead of a trial, where evidence and witnesses could be presented, he was saddled with a quick and easy administrative demotion. He does not believe that is an appropriate avenue for a Senior NCO.

The proper avenue of rebuttal was not available to him. He was given no further recourse other than a letter of rebuttal and one further appeal. Over his 35-year service record, he has flown over 3500 sorties and amassed over 15,000 hours of flying time, of which over 1000 were combat missions. He has dedicated

his life to mission accomplishment and attaining the highest level of leadership.

A series of misunderstandings, inappropriate procedures and unfortunate circumstances have rendered him dishonored and in the face of evidence, that bears the contrary. He humbly asks the Boards consideration of all the facts and the breadth of the evidence presented when evaluating his appeal.

In support of his appeal, the applicant provides a personal statement and witness statements from the command directed investigation (CDI).

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

STATEMENT OF FACTS:

The applicant is a member of the Air Force Reserves serving in the grade of senior master sergeant. On 30 May 2009, the applicant was a chief master sergeant on temporary duty via Title 10 orders to Rota Naval Air Station, Spain. In his written statement, he admitted to consuming several beers between 2000 and 0130. Additionally, witness statements include the possibility of a shot of liquor. After returning to his billeting room, the applicant tripped on the frame of the bed and was injured by the resulting fall. Approximately one hour later, he awoke in severe pain with difficulty breathing. The medical report states he was admitted at 0440. The physical exam indicated a blood alcohol level of .286, more than three times, the legal limit. He was placed on (DNIF) duty not including flying, due to the rib injury. He was replaced by a master sergeant. The contingency mission was delayed by 12 hours due to crew rest violation of two of the crew members.

This incident led to a Commander Directed Investigation (CDI) in which the Investigating Officer (IO) was directed to investigate the following:

1. The applicant was on or about 31 May 2009, incapacitated to properly perform his duties through prior wrongful indulgence in intoxicating liquor - **unsubstantiated**.

2. The applicant was on or about 31 May 2009, drunk and which conduct was of a nature to bring discredit upon the Armed Forces - **substantiated**.

3. The applicant was on or about 31 May 2009, derelict in the performance of his duties as a Senior NCO, specifically a Chief, by failing to uphold the responsibilities of remaining physically and mentally ready to complete the required mission

as a result of the excessive use of alcohol in violation of AFI 36-2618, paragraphs 4.1 and 5.1 - **substantiated**.

The IO recommended the commander impose a Letter of Reprimand with placement of an Unfavorable Information File (UIF). He further stated that Letter's of Counseling and Admonishment would not be commensurate with level of misconduct or rank. He stated he did not believe administrative demotion was appropriate. He also stated administrative discharge would be too severe.

As a result of the CDI, the commander notified the applicant of his intent to demote him from the grade of chief master sergeant to senior master sergeant. The specific reason for the demotion action was the applicant's failure in NCO responsibilities as defined in AFI 36-2618, *The Enlisted Force Structure* by failing to maintain exemplary standards of behavior in his personal conduct. His extreme intoxication on the morning of 31 May 2009 led to his failure under paragraphs 4.1 and 5.1 as follows:

a. He was not mentally ready to accomplish the mission as required due to his excessive and irresponsible consumption of alcohol, which interrupted crew-rest for a critically important mission.

b. He failed to provide high quality leadership as required by 5.1.1; as noted; a SNCO's primary purpose is mission accomplishment." Although he was off duty, he was still on military orders and his excessive alcohol consumption impacted the scheduling of the mission and delayed a flight.

c. As a chief master sergeant he must epitomize the finest qualities of a military leader. His excessive alcohol consumption was the trigger for a series of events that brought discredit upon himself and caused a detrimental impact on a critical mission.

The applicant acknowledged his commander's intent and non-concurred with the proposed demotion action. He stated he would submit matters, waived his right to a personal hearing and consulted counsel. The applicant submitted a second notification letter requesting a personal hearing.

On 5 November 2009, the commander approved the demotion action. The applicant was notified of the decision on 6 November 2009 and elected to appeal the demotion action. On 3 May 2010, the appellate authority denied the applicant's appeal and concurred with the demotion authority's decision. The applicant was demoted to senior master sergeant effective 5 November 2009.

AIR FORCE EVALUATION:

AFRC/JA recommends denial. AFI 36-2503, *Administrative Demotions of Airmen*, 20 July 1994 was in effect at the relevant time of this demotion action. Paragraph 1.5 described demotion of Reserve airmen stating: demotions are administrative and apply to Reserve airmen in the grades of airmen through chief master sergeant. Do not use demotions in place of actions under the Uniform Code of Military Justice. Paragraph 1.3 states, if the commander has sufficient reason to initiate demotion action, use the entire military record in deciding whether demotion is appropriate; paragraph 1.4 states, when appropriate, give airmen an opportunity to overcome their deficiencies before demotion action is initiated. Commanders should maintain supporting documentation of all rehabilitation and probationary actions; paragraph 17.3 describes demotions basis of "failure to fulfill NCO responsibilities and refers to *The Enlisted Force Structure*, paragraphs 4.1 and 5.1. The CDI IO found that allegations 2 and 3 were substantiated, however, allegation 1 was not substantiated.

The applicant had an extremely high blood alcohol content on the morning in question as determined by a laboratory test made in conjunction with medical treatment and as corroborated by witnesses. His injury and subsequent medical treatment interrupted crew rest for one mission and required another NCO to be flown to Rota to take his place in the Presidential Support mission. The IO did not find sufficient evidence to conclude that intoxication was the cause of the applicant's incapacitation to perform his duties. The IO is correct in concluding that the injuries might have occurred even if the applicant had been sober. It would be unfair to blame the applicant and his possible overindulgence in alcohol for the consequences that followed, such as the interrupted crew rest or the flying in of the replacement crew member.

It is, however, fair to hold the applicant accountable for his behavior on the night in question, especially at the hospital, which was inappropriate and unbecoming a Senior NCO. As the IO mentioned, the applicant's conduct in the hospital in the presence of a superior commissioned officer who had to persuade him to remain in the hospital clearly brings discredit upon himself and the Armed Forces. In addition, he displayed drunken conduct in the presence of junior airmen in his squadron and the medical staff at the hospital. During the entire situation, he failed to demonstrate effective leadership, and failed to ensure his ability to maintain the highest level of readiness.

AFI 36-2503 states that demotion action will not be used in place of UCMJ action. In this case, the applicant was on Title 10 orders and was subject to the UCMJ action. However, that was the commander's option. There is no evidence that the demotion was used in place of, or as an end run around to the UCMJ. While the AFI recommends giving airmen the opportunity to

overcome their deficiencies, in appropriate cases before demotion action is initiated, there are some instances where it is neither necessary or appropriate. A chief master sergeant becoming so drunk that he is either unable or unwilling to cooperate with medical personnel and where drinking possibly has a negative effect on the mission would appear to be such a case.

The complete AFRC/JA evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 7 September 2012 for review and comment within 30 days (Exhibit D). As of this date, this office has received no 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 an error or injustice. We took note of the applicant's contentions regarding his demotion. Notwithstanding the applicant's view, we find insufficient evidence that the applicant was denied any rights to which he was entitled under the administrative demotion process, to include his right to appeal. We do not find the commander abused his discretionary authority or that his actions were arbitrary or capricious. The applicant has not provided evidence that shows the demotion was not processed in accordance with applicable policy and procedures. As such, we agree with the AFRC/JA and adopt its rationale as the primary basis for our determination and find that the applicant has not been the victim of an error or injustice. In the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.
 4. 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 issues involved. Therefore, the request for a hearing is not favorably considered.
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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 AFBCMR Docket Number BC-2012-01607 in Executive Session on 18 December 2012, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 Apr 12, w/atchs.
- Exhibit B. Letter, Applicant's Master Personnel Records.
- Exhibit C. Letter, AFRC/JA, dated 19 Jun 12.
- Exhibit D. Letter, SAF/MRBR, dated 7 Sep 12.

Panel Chair