



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

AUG 14 1998

Office of the Assistant Secretary

AFBCMR 98-00178

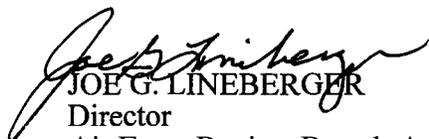
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MEMORANDUM FOR THE EXECUTIVE DIRECTOR, AIR FORCE BOARD
FOR CORRECTION OF MILITARY RECORDS (AFBCMR)

SUBJECT: AFBCMR Application of [REDACTED]

I have carefully reviewed the evidence of record and the recommendation of the Board members. A majority found that applicant had not provided sufficient evidence of error or injustice and recommended the case be denied. I concur with that finding and their conclusion that relief is not warranted. Accordingly, I accept their recommendation that the application be denied.

Please advise the applicant accordingly.


JOE G. LINEBERGER

Director
Air Force Review Boards Agency

AUG 14 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98 00178

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect his date of rank for promotion to the grade of senior airman as 14 Jul 92 rather than 4 Sep 97.

APPLICANT CONTENDS THAT:

The procedures for an administrative demotion are unreasonable.

There were numerous errors in the administrative action taken against him.

In support of his request, the applicant provided a personal statement, copies of his Enlisted Performance Reports (EPRs), weight management documentation, letters of reprimand (LORs), character references, demotion notification, the special order demoting him from the grade of senior airman to the grade of airman first class, and other documents associated with the matter under review.

Applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) indicates that the applicant is currently serving on active duty in the grade of senior airman, with a DOR of 4 Sep 97. His Total Active Federal Military Service Date (TAFMSD) is 14 Jul 89.

Available documentation reflects that the applicant entered Phase I of the Weight Management Program (WMP) on 12 Apr 94.

On 16 Dec 94, the applicant received an LOR for unsatisfactory progress in the WMP, in that he had gained two (2) pounds.

On 30 Jun 95, he received an LOR for failure to lose any body fat percentage.

Applicant entered Phase II of the WMP on 28 Dec 95. He was placed on probation on 24 Jun 96. On 6 Jan 97, the applicant was reentered into Phase I as a result of exceeding his weight by 18 pounds and his body fat by one percent, which was his third failure to make satisfactory progress in the WMP.

On 13 Jan 97, the applicant's commander notified him of his intent to recommend to the demotion authority that he be demoted. The applicant did not concur with the proposed demotion action and submitted statements in his own behalf. After considering the information presented, his commander still felt demotion was appropriate and continued processing the case to the demotion authority. The applicant received the notification of the demotion action and acknowledged receipt on 2 Apr 97. He indicated he would not appeal the decision.

By Special Order AA-05, dated 21 Mar 97, the applicant was demoted from the grade of senior airman to the grade of airman first class, effective and with date of rank of 5 Mar 97.

On 4 Sep 97, the applicant's commander requested that the applicant original rank be restored, which the demotion authority approved.

AIR FORCE EVALUATION:

The Enlisted Promotion Branch, AFPC/DPPPWB, reviewed this application and recommended denial. DPPPWB noted that the applicant was administratively demoted to the rank of airman first class on 5 Mar 97 for failure to progress on the Weight Management Program (WMP). Following his six months of satisfactory progress, his commander reinstated him to senior with a new date of rank of 4 Sep 97.

According to AFI 36-2503, paragraph 1.5 and paragraph 1.5. 1, the demotion authority can restore the individual's original grade between 3-6 months of the effective date of demotion. The effective date and the date of rank are the date on which the demotion authority approves restoration in writing. Applicant demotion was effective 5 Mar 97. He was restored to senior airman with new date of rank of 4 Sep 97.

In the opinion of DPPPWB, the restoration action taken for the applicant was procedurally correct and there was no evidence there were any irregularities or that the case was mishandled.

A complete copy of the DPPPWB evaluation, with attachment, is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant indicated that he has requested the Board adjust his DOR because there are currently no options for a commander to suspend demotion in an administrative demotion action. When demotion action is warranted in an Article 15, the commander has several options available to him. The Manual for Courts-Martial, Part V, paragraph 6 allows a commander to suspend punishment to include a reduction in grade. AFI 51-202, Nonjudicial Punishment, paragraph 8.3.1. states "When reduction in grade is later suspended, the offender's original date of rank (DOR) held before the reduction is reinstated. The applicant feels that reinstatement of the DOR for administrative demotion should at least be equal to that of Article 15 actions. His commander fully supports his requests, as evidenced by his Statement, and believes it to be in the best interest of the Air Force to approve his request. He hopes the Board's decision to adjust his DOR will set precedence on future cases that are similar to this one.

Applicant's complete response and additional documentary evidence, including a statement from his commander, are at Exhibit D.

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 probable error or injustice. The Board took notice of the applicant's complete submission in judging the merits of the case, including the statement from the 52nd Munitions Support Squadron commander, who appears to be the applicant's current commander. However, a majority of the Board agrees with the opinion and recommendation of the Air Force office of primary responsibility (OPR) and adopts their rationale as the basis for its conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of sufficient evidence that the information used as a basis for his demotion was erroneous, that the demotion action was processed in a manner contrary to the governing regulation, or

there was an abuse of discretionary authority in the applicant's case, a majority of the Board finds no compelling basis to recommend granting the relief sought in this application.

RECOMMENDATION OF THE BOARD:

A majority of the panel finds insufficient evidence of error or injustice and recommends the application be denied.

The following members of the Board considered this application in Executive Session on 9 Jun 98, under the provisions of AFI 36-2603:

Mr. David C. Van Gasbeck, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Kenneth L. Reinertson, Member

By a majority vote, the Board voted to deny the request. Mr. Peterson voted to grant the request but did not desire to submit a minority report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 Jan 98, w/atchs.
- Exhibit B. Letter, AFPC/DPPPWB, dated 27 Jan 98.
- Exhibit C. Letter, SAF/MIBR, dated 9 Feb 98.
- Exhibit D. Letter, applicant, dated 23 Feb 98, w/atchs.


DAVID C. VAN GASBECK
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

27 JAN 1988

MEMORANDUM FOR AFBCMR

FROM: AFPC/DPPPWB
550 C Street West, Ste 09
Randolph AFB TX 78150-4711

SUBJECT: Application for Correction of ~~Military~~ Records ~~_____~~

Requested Action. The applicant, is requesting adjustment of his date of rank (DOR) from 4 Sep 97 to 14 Jul 92.

Reason for Request. The applicant was administratively demoted to the rank of A1C on 5 Mar 97 for failure to progress on the Weight Management Program (WMP). Following 6 months of satisfactory progress, his commander reinstated him to SRA with a new date of rank of 4 Sep 97. He believes procedures for administrative demotions are unreasonable.

Facts. Per AFI 36-2503, para 1.5 and para 1.5.1, the demotion authority can restore the individual's original grade between 3-6 months of the effective date of demotion. The effective date and the date of rank are the date on which the demotion authority approves restoration in writing. Applicant demotion was effective 5 Mar 97. He was restored to SRA with new date of rank of 4 Sep 97.

Discussion.

a. On 13 Jan 97, the applicant's commander notified him of his intent to recommend to the demotion authority that he be demoted. The applicant nonconcurred with the proposed demotion action and submitted a letter on 13 Jan 97 on his behalf. After considering the information presented, his commander still felt demotion was appropriate and continued processing the case to the demotion authority. The applicant received the notification of demotion action and acknowledge receipt on 2 Apr 97. He indicated he would not appeal the decision. The demotion action was found legally sufficient, and the applicant was reduced to A1C per Special Order ~~_____~~ issued by the ~~_____~~ (USAFE), 21 Mar 97. On 4 Sep 97 the commander requested restoration to original grade, which the demotion authority approved.

b. It is the opinion of this office the restoration action taken for the applicant was procedurally correct and there is no evidence there were any irregularities or that the case was

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mishandled. However, should the AFBCMR grant the applicant's request, his original date of rank before the demotion was 14 Jul 92.

Recommendation. ~~Denial~~, based on the rationale provided.



Chief Inquiries/AFBCMR Section
Enlisted Promotion Branch

Attachment:

Extract Cy, AFI 36-2503



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Personnel

ADMINISTRATIVE DEMOTION OF AIRMEN

This instruction sets administrative standards for demoting. Section A applies to all Air Force enlisted personnel on active duty. Section B applies to US Air Force Reserves, but not to the Air National Guard. This instruction implements Air Force Policy Directive 36-25, *Military Promotion and Demotion*. This instruction requires you to collect and maintain information protected by the *Privacy Act of 1974*. Title 10 United States Code (U.S.C.), Section 8013 and Executive order 9397 substantiates this authority. On request, you must show or give a copy of the Privacy Act Statement before collecting personal information. System of Records F035 AF MP C, *Military Personnel Records System*, applies. Refer to attachment 1 for Glossary of Abbreviations, Acronyms and Addresses.

SUMMARY OF CHANGES

This is the first publication of AFI 36-2503, superseding AFR 39-30, dated 18 November 1991. This instruction clarifies the demotion authority's options on appeals and eliminates formatted notification memorandums. See AFMA 06 15002 DC 94_{ac}

Section A--Active Duty Airmen

1. Demotions. Don't use administrative demotions when it is more appropriate to take actions specified by the Uniform Code of the Military Justice (UCMJ).

- 1.1. Do not demote airmen who have separated.
- 1.2. Begin administrative demotion for action during the term of enlistment when the reason for the action occurred, except when the commander is not aware of the facts and circumstances until after that term of enlistment expires.
- 1.3. If the commander has sufficient reason to initiate demotion action, use the entire military record in deciding whether demotion is appropriate.
- 1.4. 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.
- 1.5. Do not suspend administrative demotions. The demotion authority, with administrative jurisdiction, can restore the individual's original grade. If the demotion authority restores the airman's original grade following the demotion, he or she must do so sometime between 3 months and 6 months after the effective date of the demotion.

15.1. Restoring grade should be an uncommon occurrence. The effective date and the date of rank (DOR) are the date on which the demotion authority approves restoration in writing.

1.6. Do not revoke demotion orders. File a source document such as AF Form 2096, **Classification/On-The-Job Training Action**, in the airman's unit personnel records group (UPRG) with the memorandum approving the restoration. Notify HQ AFMPC/DPMAJW by message of the restored grade per AFMAN 36-2622, *Base Level Military Personnel System* (formerly AFM 30-130, volume 1).

2. Who Can Demote.

- 2.1. The group commander, or equivalent level commander, may demote MSgts and below. Equivalent level commander is defined as a senior Air Force officer in the grade of Colonel. **EXAMPLE:** An Air Force officer in charge of an Air Force Element or a commander above the squadron level.
- 2.2. The major command (MAJCOM) commander, field operating agency (FOA) commander, or direct reporting unit (DRU) commander may demote grades SMSgt and CMSgt. This demotion authority may be delegated to the MAJCOM vice commander, chief of staff, deputy chief of staff for manpower and personnel (MP) or personnel (DP), Numbered Air Force (NAF), or equivalent level commanders but may not be further delegated.
- 2.3. The appellate authority is the next level commander and handles demotion appeals.
- 2.4. The Secretary of the Air Force (SIur) may demote to significantly reduce strength, grade levels, or both.

Supersedes AFR 39-30, 18 November 1991.
OPR: HQ AFMPC/DPMAJW (Ms Gloria Oxner)

Certified by: HQ AFMPC/DPMA (Col Joseph W. Moran)
Pages: 9/Distribution: F



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