
RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00043

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The applicant requests the following corrections be made to her record:

1. Her nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ) imposed on 28 Oct 14, be removed from her military records.
2. Her referral Officer Performance Report (OPR) be removed from her military records.
3. Her United States Air Force Reserve (USAFR) points be reinstated and considered "good years."
4. She be promoted to the grade of major (O-4).
5. She be reimbursed for the pay she lost.

APPLICANT'S CONTENTIONS

She received an Article 15 along with associated adverse action for something she did not do which led to a discharge board hearing. The hearing was dropped by the government before it took place. The whole situation was the result of a toxic and discriminatory command at the time.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an USAFR captain (O-3) awaiting retired pay at age 60.

On 6 Nov 98, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted into the USAFR for six years in the grade of airman first class (E-3).

On 29 Sep 06, according to AF Form 133, *Oath of Office*, the applicant was commissioned in the USAFR in the grade of second lieutenant (O-1).

On 29 Oct 09, the applicant was offered NJP action pursuant to Article 15, UCMJ, in violation of Article 92; for on or about (o/a) 10 Oct 09, she failed to obey General Order Number 1B, paragraph 2n, dated 1 Jun 07, by wrongfully visiting the sleeping quarters of an enlisted member of the opposite gender; and between o/a 9 Sep 09 and o/a 10 Oct 09 dated the same enlisted member. The punishment included forfeiture of \$2,116.00 pay per month for 2 months and restriction to the limits to her duty section and various base locations for 60 days, and a Reprimand.

On 12 Nov 09, the applicant appealed the action and on 14 Nov 09, the commander denied the applicant's appeal and determined the action would be filed in the applicant's Officer Selection Record (OSR) and on 21 Dec 09, the Appellate Authority granted the applicant's appeal in part and mitigated her punishment of forfeiture of \$2,116.00 pay per month for 2 months to \$500.00 pay per month for 2 months.

On 22 Dec 09 and 15 Jan 10, the NJP action was found legally sufficient.

On 29 Sep 10, according to Reserve Order **Work-Product**, dated 17 Aug 10, the applicant was promoted to the grade of captain (O-3).

On 28 Oct 14, the applicant was offered NJP action pursuant to Article 15, UCMJ, in violation of Article 107, between o/a Nov 12 and o/a Aug 13 she signed false travel vouchers that contained lodging expenses she did not incur; violation of Article 132, between o/a 1 Apr 13 and o/a 30 Jun 13, she made a fraudulent statement she paid for lodging with a personal check which was her personal residence; violation of Article 134, between o/a 1 Jan 13 and o/a 28 Feb 13, and o/a 1 Apr 13 and o/a 1 Jun 13, she wrongfully advised two enlisted members to submit false receipts in support of false travel vouchers; and between o/a 25 Jun 13 and o/a 5 Jun 14, she wrongfully impeded an investigation by offering to exchange money with an enlisted member so his lodging claims could be seen as legitimate when they were false. The punishment included forfeiture of \$469.00 pay per month for 2 months and a Reprimand.

On 1 Dec 14, the applicant appealed the action. On 10 Jan 15, the commander denied the applicant's appeal, and on 25 Feb 15, the Appellate Authority also denied the appeal.

On 9 Mar 15, the Referring Authority determined the action would be filed in the applicant's OSR and the applicant received punishment of forfeiture of \$469.00 pay per month for 2 months and a Reprimand.

On 15 Apr 15 and 6 May 15, the NJP action was found legally sufficient.

On 6 Mar 16, according to AF Form 707, *Officer Performance Report (Lt thru Col)*, the applicant's supervisor issued the applicant a referral OPR for the period 17 Nov 14 thru 16 Nov 15 based on ratings of Does Not Meet Standards in sections III and IX item 3, and comments in section IV and XI for committing travel voucher fraud by submitting false documents, advising two enlisted members to submit false travel documents and impeding the investigation.

On 29 Mar 16, the applicant provided a rebuttal to the referral OPR.

On 6 Apr 16, the applicant's additional rater considered the applicant's comments and concurred with the referral OPR and on 7 Jun 16, the reviewer also concurred.

According to documentation provided by the applicant:

On 20 Oct 15, the applicant's commander recommended the applicant be discharged for engaging in serious misconduct involving an unprofessional relationship with an enlisted member while deployed in 2009 and misconduct involving fraudulent travel vouchers and intentional misrepresentation of facts in official statements in 2012 – 2013.

On 15 Apr 16, the AFRC/IGQ dismissed the applicant's complaint as a matter not appropriate for the IG and referred the applicant to the Evaluation Reports Appeal Board (ERAB) and to submit an Article 138 Request for Redress. The ERAB confirmed the applicant has never submitted a request to their office for removal of her referral OPR.

On 26 Apr 16 and on 13 Sep 16, the applicant's commander notified the applicant of discharge action and Show Cause Action (SCA) for engaging in an unprofessional relationship in 2009 and for engaging in a scheme of fraudulent travel vouchers and false official statements in 2012-2013.

On 13 Sep 16, the applicant filed a complaint with the AFRC/IGQ for abuse of authority by her command for an unjustified Article 15 in 2015, referral OPR, security clearance and flying status.

On 10 Aug 17, the applicant was placed on administrative hold and ordered not to participate for pay or points in any active or inactive duty training due to being processed for involuntary separation action.

On 16 Apr 19, the SCA was cancelled and the applicant was immediately returned to full participation status in the AFR and indicated while the preponderance of evidence supported finding a valid basis for discharge for her misconduct for which she received NJP in 2009 and 2014, it was determined to be in the best interest of the Air Force she be returned to full participation status.

According to a memorandum from ARPC/DPTS, dated 1 Nov 20, the applicant completed 20 years of satisfactory service on 1 Dec 20, and would automatically be transferred to the Retired Reserve due to reaching her mandatory separation date (MSD).

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

AIR FORCE EVALUATION

DAF/JA recommends denying the application. As a preliminary matter, the legal review does not consider the facts of the applicant's guilt anew. It was within the NJP authority's discretion to interpret the facts, just as it was within his discretion to pursue Article 15 action. The military commander's discretion is given deference. The legal review only considers whether there was a legal error or injustice tending to undermine the applicant's NJP, and none is seen. DAF/JA finds the commander did not abuse his discretion in administering NJP, finding the applicant committed the offense as alleged, or imposing punishment; the punishment imposed was within the permissible range for her offense; and the NJP was given appellate review. The applicant has not submitted any new evidence or information that casts doubt on the legal sufficiency of the NJP. After the advice provided by counsel, the applicant could have demanded court-martial in lieu of NJP, and presented her case and any evidence before a jury of her peers, which she opted against.

Therefore, DAF/JA finds no basis to remove the applicant's NJP or the resulting OPR. As for the lost "good years" of Reserve service, the lost pay, and the failure to promote to O-4, assuming that

these requests are within the scope of the Board's authority, if they resulted from the NJP then they are also legally sufficient. Additionally, as regards to the promotion it is unclear from the record why she was not selected. For it is possible her previous NJP for having an inappropriate relationship with an enlisted member when she was a first lieutenant (O-2) could have been a factor. Due to the speculative nature of trying to interpret a promotion selection board's decision, DAF/JA does not determine the applicant's failure for selection for O-4 was legally erroneous or unjust.

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 7 Apr 21 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of DAF/JA against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has submitted multiple letters of support substantiating her claims of toxic leadership within the organization. Notably, the Board finds the memorandum from her superintendent particularly compelling. The superintendent, who had first-hand knowledge of the Article 15 violations involving the applicant and the organization, described the leadership as "the most toxic leadership I have ever seen." He further noted one of the two airmen implicated in the travel voucher fraud later admitted to erroneously accusing the applicant in an effort to protect himself.

The Board also observes the commander disregarded evidence that did not support the decision for the nonjudicial punishment. Taken together, the superintendent's memorandum and the numerous other letters of support in favor of the applicant convincingly demonstrate clear bias by the leadership, particularly against women within the organization. This evidence sufficiently justifies granting the applicant's request to void her nonjudicial punishment and her referred OPR.

Regarding the applicant's request for a direct promotion to the grade of O-4, the Board notes this is not within its authority to grant officer promotions. Such promotions require action by the Secretary of Defense, the Senate, and the President of the United States. This Board acts solely within the authority delegated by the Secretary of the Air Force in accordance with the Department of the Air Force Instruction 36-2603, *AFBCMR Guidelines*, who is subordinate to the Secretary of Defense. However, the Board does have the authority to direct the applicant be considered for promotion to O-4 through a special selection board (SSB).

Regarding the applicant's request her USAFR points be reinstated and considered "good years," and she be reimbursed for the pay she lost, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. In this respect, while the Board determined the applicant's nonjudicial punishment and referral OPR were an injustice, she did not participate while in a no pay, no points

status; as such, she should not be awarded or paid for this period. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show

- a. The nonjudicial punishment imposed on 28 Oct 14, under the provisions of Article 15, Uniform Code of Military Justice, be declared void and expunged from her records, and all rights, privileges and property of which she may have been deprived be restored.
- b. The AF Form 707, *Officer Performance Report (Lt thru Col)*, rendered for the period 17 Nov 14 thru 16 Nov 15 be declared void and removed from her records.
- c. The applicant be provided supplemental consideration for promotion to the grade of major for all appropriate cycles following the removal of her Article 15 and Officer Performance Report.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-00043 in Executive Session on 9 Jan 24:

Work-Product Panel Chair
Work-Product e, Panel Member
Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 Sep 20.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, DAF/JA, dated 30 mar 21.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Apr 21.

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.

11/19/2024

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Work-Product
Board Operations Manager, AFBCMR
Signed by: Work-Product