

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01156

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

AF Form 707, *Officer Performance Report (OPR)*, with a closeout date of 17 February 2018, be amended to reflect the following:

1. Section IV (Rater Overall Assessment), "Received Letter of Reprimand (LOR) for substantiated allegations of fraternization and engaging in unprofessional relationship w/enlisted member while serving as [redacted] FSS/CC," be redacted.

2. Section IX (Performance Factors), item 3 (Professional Qualities), unmark "Does Not Meet Standards."

3. Section XI (Referral Report), "a Commander Directed Report of Investigation on 8 September 2017 substantiated allegations against you of fraternization and engaging in an unprofessional relationship with an enlisted member while you were the [redacted] FSS/CC, which resulted in curtailment of your orders as Branch Chief, Personnel Readiness and Mobilization. Additionally, the [redacted] WG/CC reprimanded you for these actions in a Letter of Reprimand dated 27 September 2017," be redacted.

APPLICANT'S CONTENTIONS

The LOR referenced in the contested OPR was issued by the wing commander, on 27 September 2017. At the time of issuance, the commander was neither in his administrative or operational chain of command. There was a case to be made that he was still under the operational control of the [State] Air National Guard (ANG) at the time of issuance. However, he ceased being a member of the Wing upon his assignment to the [redacted] Mission Support Squadron on 5 July 2017. As such, the LOR should have been deemed null and void, as the wing commander had no authority to issue the LOR under the provisions of AFI 36-2907, *Adverse Administrative Actions*, paragraph 2.1.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former ANG lieutenant colonel (O-5).

According to the OPR for rating period 2 June 2017 through 17 February 2018, the evaluation was referred due to Section IV (Rater Overall Assessment), "Received Letter of Reprimand (LOR) for substantiated allegations of fraternization and engaging in unprofessional relationship w/enlisted member while serving as [redacted] FSS/CC;" Section IX (Performance Factors), item 3 (Professional Qualities), marked "Does Not Meet Standards," and Section XI (Referral Report), "a Commander Directed Report of Investigation on 8 September 2017 substantiated allegations against you of fraternization and engaging in an unprofessional relationship with an

enlisted member while you were the [redacted] FSS/CC, which resulted in curtailment of your orders as Branch Chief, Personnel Readiness and Mobilization. Additionally, the [redacted] WG/CC reprimanded you for these actions in a Letter of Reprimand dated 27 September 2017.”

On 27 September 2018, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was honorably discharged in the grade of O-5. He served 17 years, 5 months and 1 day of total service for pay. The Authority and Reason for Separation reflects, “AFI 36-3209, paragraph 2.46.2: Resignation Resulting in General Discharge.”

On 7 January 2019, Special Order **Work-Product**, was published indicated the applicant was honorably discharged from the Air National Guard and as a member of the Reserve of the Air Force effective 7 September 2018, under the authority of AFI 36-3209, paragraph 2.46.2.

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

AIR FORCE EVALUATION

NGB/AIPO recommends denying the application. The applicant was reassigned from the [State] ANG to the ANG Readiness Center (ANGRC) on 9 June 2017. Shortly after being reassigned to the ANGRC, his former State leadership became aware of allegations that prompted an investigation into the applicant’s conduct prior to his reassignment. Upon completion of that investigation, the applicant received an LOR from his previous [State] ANG command, which was initiated on 27 September 2017. On 10 October 2017, the [State] ANG requested the applicant’s assignment to the ANGRC be curtailed and he return to the State. The LOR was finalized by the [State] ANG on 12 October 2017. The assignment curtailment was approved on 20 December 2017, with a tour end date of 26 January 2018. As a result, the ANGRC initiated the referral OPR in question capturing the LOR the applicant received in October 2017, which the applicant fully acknowledged on 27 April 2018.

AFI 36-2907 defines who can use counseling, admonitions and reprimands. The applicant states the LOR given to him by the [State] ANG in October 2017, while he was assigned to the ANGRC, and subsequently caused the referral OPR, was improperly issued based on AFI 36-2907 (dated 22 May 2020), paragraph 2.1 which states, “Use of Administrative Counseling’s, Admonishments, and Reprimands. General officers, commanders, first sergeants, supervisors, and other individuals in the member’s administrative or operational chain of command can issue administrative actions.”

The AFI 36-2907 guidance the applicant referenced was not the version written at the time of the incident. The AFI 36-2907 version in place at the time of the incident was dated 26 November 2014. The relevant paragraph (4.1) from the version read, “Who Can Use Counseling, Admonitions, and Reprimands. Commanders, supervisors, and other persons in authority can issue administrative counseling, admonitions, and reprimands.” Therefore, at the time of this incident, a commander (in this case, the wing commander) at the home state/unit of an ANG member assigned to the ANGRC was a person in authority who was allowed to administer administrative counseling’s, admonishments and reprimands. Commanders at the ANG state-level can request curtailment of orders for cause for members assigned to the ANGRC at any time, demonstrating their authority as described in the AFI. Therefore, the OPR which referred to the LOR was properly administered.

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 26 April 2022 for comment (Exhibit D), but has received no response.

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 reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/A1PO and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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

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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-01156 in Executive Session on 1 September 2022:

- , Panel Chair
- , Panel Member
- , Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 April 2021.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PO, w/atchs, dated 20 April 2022
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 April 2022.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR