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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01945-2

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COUNSEL: Work-Product

AKA: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider her request for the removal of her non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), dated 10 August 2011, from her Officer Selection Record (OSR).

RESUME OF THE CASE

The applicant is a currently serving Air Force major (O-4).

On 15 March 2022, the Board considered and denied the applicant's request for the removal of her NJP under Article 15, UCMJ, from her OSR; finding the applicant had not submitted any new evidence or information that casts doubt on the legal sufficiency of the NJP. Additionally, Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03 directs historic adverse information that was issued prior to the date of the implementation of the policy to be filed in the Master Personnel Records Group (MPerRG).

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 26 August 2023, the applicant requested reconsideration of her request for the removal of her Article 15, UCMJ, from her OSR. She contends the Article 15 was expunged from her OSR, Unfavorable Information File, and permanent record on 10 October 2012 at the approval of her wing commander and supported through a legal review by the wing staff judge advocate. However, the Article 15 was then reinstated into her records in February 2021, due to the new DAFPM guidance. The recent guidance did not take into consideration those NJP actions that had been recommended for removal. The applicant's Article 15 should have remained removed from her records due to the 10-years expiration of the action.

The applicant's complete submission is at Exhibit F.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends granting the applicant's request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant was issued NJP action under Article 15, UCMJ, based on the preponderance of evidence in accordance (IAW) with the Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*.

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

IAW DAFI 36-2907 adverse information will remain in an OSR for 10-years, except for substantiated conduct, any single act of which, tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than one year. Also, IAW the National Defense Authorization Act, Title 10 United States Code Section 615(a)(3), an Article 15 meets the requirements of adverse information. If the above exception in the 10-year rule is met, the adverse information will be retained in the OSR beyond 10-years. Major Command and Field Command Staff Judge Advocates will provide a separate memorandum articulating if the officer's adverse information meets the exception to the 10-year retention rule for retention beyond 10-years. The memorandum will be included with the command action documents submitted to the Military Personnel Flight, Commander's Support Staff, or equivalent personnel support function for inclusion in the MPerRG. Early removal of adverse information from an OSR may only be directed pursuant to an Air Force Board for Correction of Military Records recommendation, except for the set aside of a court-martial or NJP action. In this instance, AFPC/JA did not provide documentation stating the single act of which, tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than one year. Thus, the applicant's issued NJP action under Article 15, UCMJ, should be removed from her OSR.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 September 2023 for comment (Exhibit H), 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 the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSSM and finds a preponderance of the evidence substantiates the applicant's contentions. Therefore, the Board recommends correcting the applicant's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), dated 10 August 2011 be removed from her Officer Selection Record (OSR).

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-01945-2 in Executive Session on 14 May 2024:

Work-Product, Panel Chair

Work-Product, Panel Member

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

Exhibit E: Record of Proceedings, w/Exhibits A-D, dated 15 March 2022.

Exhibit F: Application, DD Form 149, w/atchs, dated 26 August 2023.

Exhibit G: Advisory Opinion, AFPC/DPMSSM, dated 19 September 2023.

Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 25 September 2023.

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.

7/3/2024

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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