



**CUI//SP-MIL/SP-PRVCY**  
**UNITED STATES AIR FORCE**  
**BOARD FOR CORRECTION OF MILITARY RECORDS**

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**SECOND ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03470-3

**Work-Product**

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

The Board reconsider his request for the following:

1. His 22 Aug 19 nonjudicial punishment (NJP) be set aside.
2. His referral officer performance report (OPR) for the period ending 19 Feb 20 be removed from his record.
3. Any property, privileges and rights be restored.

He also makes new requests for a direct promotion to the grade of lieutenant colonel (O-5) and that he be awarded a Meritorious Service Medal (MSM) for his permanent change of station (PCS) assignment in 2020.

**RESUME OF THE CASE**

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

On 22 Aug 19, the applicant received an Article 15 for knowingly and wrongfully distributing a recording of the private area of [Wor...] which was made without the consent of [Wo...]. Upon determining a portion of the evidence in the applicant's case was obtained illegally by the Air Force Office of Special Investigations (AFOSI), the numbered air force commander (NAF/CC) executed a partial set aside of the Article 15 punishment for the two specifications that were based solely on the illegally obtained evidence.

The applicant received a referral OPR for the reporting period 27 Apr 19 to 19 Feb 20 for the Article 15 for wrongfully distributing an indecent visual image.

On 17 May 22, the Board considered and partially granted the applicant's request. In view of the NAF/CC setting aside two of the findings, the Board recommended his AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officer)*, imposed on 22 Aug 19, Block 15, Specifications 1 and 3 be redacted. However, the Board denied the applicant's remaining requests for removal of the NJP, referral OPR and any other corrections. The Board concluded there was insufficient evidence his commander abused his discretion in administering the NJP, finding the applicant committed the offense as alleged. Additionally, the commander's interpretation of "conduct unbecoming" was legally sufficient. The punishment imposed was within the permissible range for the applicant's offense. The remaining charge, Specification 2, stated the applicant between

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1 Jul 18 and 31 Jul 18 showed [Work-P...] an intimate visual image of [Wo...]. The AFBCMR Directive dated 20 Feb 23 correcting the applicant's record was placed in the applicant's automated records management system (ARMS) record on 6 Oct 23.

On 18 May 23 and 27 Jun 23, the Board reconsidered the applicant's request. The new evidence in support of his request included a sworn statement from [Work-Pr...] dated 20 May 21, AF/JAX memorandum dated 11 Jun 21 stating final action on the applicant's professional responsibility complaint was completed and letters of support. The sworn statement from [Work-Pr...] dated 20 May 21 stated he was not confident his AFOSI interview and text message conversations with the applicant represented the truth. The truth was he did not remember any evidence. He did not recall with any certainty or clarity anything the applicant showed him or that he may have seen, specifically the photo in question and whether or not it contained any nudity. The Board did not find the applicant's contentions and new evidence persuasive to conclude he did not engage in the misconduct for which he received the NJP and referral OPR. Further, the applicant contended his female counterpart engaged in the same misconduct but received no adverse action. In this respect, the Board noted per DAFI 36-2603, *Air Force Board for Correction of Military Records*, it was not an investigative body. Moreover, there was no evidence provided to sustain his burden of proof he received disparate treatment or that the NJP and referral OPR were unjust or in error.

For an accounting of the applicant's requests and the rationale of the earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit J.

On 18 May 23, the applicant was informed he was not selected for promotion by the CY23B Lieutenant Colonel Line of the Air Force Air Operations and Special Warfare (LAF-A) Central Selection Board (CSB).

On 28 Aug 23, the applicant requested reconsideration of his request. The applicant contends the remaining charge on the Article 15 is not true and there was no evidence to support the allegation. He requests the Board review the provided sworn statement. His career has suffered greatly because of the false charge. The applicant provides a new sworn statement from [Work-P...] dated 25 Aug 23, which states what the applicant was charged with was not true. He is the only person, other than the applicant, who could claim the alleged incident occurred and he already provided a statement highlighting the absence of any evidence. He states the applicant did not knowingly or wrongfully show him any intimate visual images of [Wor...] and any document or person that states this with any certainty are false.

The applicant's complete submission is at Exhibit K.

**APPLICABLE AUTHORITY/GUIDANCE**

Per 10 U.S.C. § 624(a), When the report of a selection board is approved by the President, the Secretary of the Military Department concerned shall place the names of all officers approved for promotion within a competitive category on the promotion list. 10 U.S.C. § 624(c), Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone. In this respect, the Board, which serves on behalf of the Secretary of the Air Force (SECAF), is without authority to promote an officer.

DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph 6.2.1, the AFBCMR or a federal court can direct an officer for consideration by special selection board (SSB).

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Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have “extraordinary adverse information”). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, NJP pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an AFBCMR recommendation.

AFMAN 36-2806, *Military Awards; Criteria and Procedures*, paragraph 3.19, Recommendations (to include reconsiderations and upgrades) submitted after the applicable time limitation are only considered if submitted pursuant to 10 U.S.C. § 1130. This legislation allows consideration of recommendations submitted beyond the time limitation. Paragraph 3.19.1., Requests are made by someone other than the member, who has firsthand knowledge of the acts or achievements. Every effort should be made to obtain an endorsement from someone in the member’s chain of command at the time of the act, achievement or service was performed. Paragraph 3.19.2., Procedure. The requester submits a written request to a member of Congress for endorsement on a recommendation, pursuant to 10 U.S.C. § 1130. Recommendations should include a narrative justification, citation, eyewitness statements and supporting documents. The member of Congress endorses the recommendation and submits it to the Air Force Legislative Liaison Office.

**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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board believes a preponderance of the evidence fails to substantiate the applicant’s contentions and the applicant has not sustained his burden of proof to demonstrate his NJP and referral OPR are not accurate as reflected. In this respect, the Board notes the applicant provides an updated sworn statement from **Work-P...** dated 25 Aug 23, which states the applicant did not knowingly or wrongfully show him any intimate visual images of **Wor...**. He further states the applicant should not have been charged as only he and the applicant could know the alleged incident occurred. In this respect, the Board finds **Work-Pr...**’s 25 Aug 23 sworn statement and the 20 May 21 sworn statement previously reviewed by the Board insufficient to conclude the applicant did not commit the offense as alleged that he wrongfully distributed an indecent visual image of **Wo...**. Since the Board finds insufficient evidence to remove the NJP and referral OPR, the Board does not recommend the applicant be awarded an MSM for his PCS assignment in 2020. Further, the applicant has provided no evidence he has exhausted the administrative remedy by pursuing his request for award of the MSM per 10 U.S.C. § 1130. With respect to the applicant’s request that he receive a direct promotion to the grade of lieutenant colonel; this Board, which serves on behalf of the SECAF, is without authority to promote an officer to the grade of lieutenant colonel. 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 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-2021-03470-3 in Executive Session on 16 Nov 23:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit J: Record of Proceedings, w/ Exhibits A-I, dated 23 Jan 23.
- Exhibit K: Application, DD Form 149, w/atchs, dated 28 Aug 23.
- Exhibit L: Documentary evidence, including relevant excerpts from official records.

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.

12/4/2023
<i>Work-Product</i>
Board Operations Manager, AFBCMR
<i>Work-Product</i>