
RECORD OF PROCEEDINGS

IN THE MATTER

DOCKET NUMBER: BC-2022-01293

OF: JXXXXXX

COUNSEL: XXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Record of Promotion Propriety Action (PPA) be expunged from his record, and he be reinstated on the P0520B lieutenant colonel (O-5) promotion list with the corresponding original projected date of promotion.

APPLICANT'S CONTENTIONS

He received a PPA that stripped him of his promotion to lieutenant colonel a month prior to him "pinning on." The action was an extreme injustice following severe penalties levied against him which included: a Letter of Reprimand (LOR); being removed from a command position; being removed from a highly classified, special access program; made promotion ineligible for one year; being isolated in an empty office with zero responsibilities; and receiving a quick turn Permanent Change of Station (PCS) move with no regard for his family. The punishments that he received destroyed his career and the isolation and segregation that he endured for six months led him to seek professional mental health treatment.

Upon receipt of the LOR, he was informed by his squadron commander that the only reason he received the LOR was due to coercion by the wing leadership and that the case was now closed. He accepted responsibility because, as the squadron's Director of Operations, he should have done a better job of controlling a toxic work culture that existed within the squadron. The LOR is to serve as a rehabilitation tool, not as an instrument of extreme persecution destroying an individual's ability to be made whole again. There was never an attempt to rehabilitate him, and he was made an example because he refused to provide names to the investigating officer of other members who participated in the squadron's toxic work culture.

In response to the PPA, he submitted an Inspector General (IG) complaint and after several months he was informed that the 16th Air Force IG would investigate only to be informed months later that his wing leadership, the very individuals his complaint was against, would conduct the investigation and would eventually absolve themselves of all responsibility.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force major (O-4).

On 29 Sep 20, the WG/A3 appointed an Investigation Officer (IO) to investigate all aspects of the facts and circumstances concerning an allegation of sexual harassment against the applicant that between on or about 1 Sep 19 and on or about 31 Aug 20, the applicant sexually harassed members of his squadron by striking them in the genitalia, or allowing members to strike each other in the genitalia.

On 18 Nov 20, a Command Directed Investigation (CDI) was completed, and the IO found the allegation of sexual harassment to be SUBSTANTIATED.

On 23 Nov 20, the applicant was issued a *Letter of Reprimand* (LOR), by his squadron commander (SQ/CC), for participating in, and perpetuating, a workplace culture which involved hitting other male Airman in the testicles between the period of May 2019 and October 2020.

On 3 Dec 20, the wing judge advocate completed a legal review of the CDI and concurred with the IO's findings.

On 4 Dec 20, according to the LOR, he submitted a written response to his SQ/CC requesting that the LOR be downgraded.

On 8 Dec 20, the SQ/CC, upon considering the applicant's response, decided to uphold the LOR with a recommendation to the wing commander (WG/CC) that it be filed in the applicant's Officer Selection Record (OSR).

On 14 Dec 20, the WG/CC decided the LOR will be filed in the applicant's OSR and on 15 Dec 20, the applicant acknowledged the WG/CC's decision.

On 6 Jan 21, according to AF Form 4363, *Record of Promotion Propriety Action*, the SQ/CC notified the applicant that he was initiating a PPA action and recommended removal of the applicant's name from the promotion list. The specific reasons for this action include:

"You participated in, and perpetuated, a workplace culture between on or about May 19 and Oct 20 which involved you hitting other male Airman in their testicles. The members you struck included other officers as well as an enlisted member, all of whom were subordinate to you based on your rank and leadership position as the Director of Operations. Furthermore, I ordered you to refrain from engaging in the behavior in May 19, and you assured me you would cease. For this misconduct you received a Letter of Reprimand (LOR), dated 23 Nov 20.

After careful review and deliberate consideration based on the behavior and your response contained within the attached documentation, I find you not professionally or morally qualified to assume the duties of the next higher grade."

On 11 Jan 21, the applicant filed an AF Form 102, *Inspector General Complaint Form*, alleging on or about May 19 until on or about Jan 21 his SQ/CC of abuse of authority against him and other members of the squadron.

On 19 Jan 21, according to AF Form 4363, the WG/CC recommended the applicant's removal from the promotion list.

On 22 Apr 21 and on 5 May 21, the Judge Advocate General and the General Counsel both determined the record to be legally sufficient.

On 19 May 21, the Secretary of the Air Force (SecAF) approved the applicant's removal from the promotion list.

On 20 May 21, the applicant acknowledged SecAF's decision.

On 12 Jul 21, according to the *Referral Completion Report*, the WG/CC, in response to the applicant's Inspector General complaint, published their findings regarding the applicant's Inspector General complaint and found the following allegations made by the applicant to be NOT SUBSTANTIATED:

Allegation 1. On or about May 20 until Jan 21, the Reconnaissance Squadron Commander (RS/CC) abused his authority in violation of AFI 90-301.

Allegation 2. On or about Jan 21 through Mar 21, the RW/A3 and the RS/CC punished the applicant excessively, ostracized him, and used him a scapegoat.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction 36-2501, *Officer Promotions and Selective Continuation*, Chapter 5, *Promotion Propriety Actions*, paragraph 5.1, Promotion is not a reward for past service. It is advancement to a position of greater responsibility based on the requirements of the Air Force and the officer's future potential. If an officer has not met the requirement for exemplary conduct set forth in 10 U.S.C. §8583 or is not mentally, physically, morally, or professionally qualified to perform the duties of the next higher grade, it is in the best interest of the Air Force for the proper authority to initiate action to delay the promotion, to find the officer not qualified for promotion, or to remove the officer's name from the promotion list. Early identification of the officer and proper documentation are essential. Formal rules of evidence do not apply to a promotion propriety action. Paragraph 5.1.1. If cause to believe an officer is not suited for promotion has arisen, do not await completion of disciplinary action, trial, or other administrative process to initiate promotion propriety action. Such action does not require proof beyond a reasonable doubt. If one can fairly conclude from the evidence already at hand that an officer is unsuited for promotion, a removal action should be immediately initiated.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the applicant's request. The applicant's LOR meets the requirements of adverse information. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant does not contend that the LOR was unjust, only that the ramifications were extreme and thereby constitute an injustice. His commander issued the LOR based on the preponderance of the evidence and the applicant was provided additional time to the required three duty days from the date of receipt to provide a response, which he did on 4 Dec 20. His commander considered his response, decided to uphold the LOR, and he was informed that it would be placed in an Unfavorable Information File (UIF).

In accordance with (IAW) Air Force Instruction (AFI) 36-2907, *Adverse Administrative Actions*, paragraph 2.2, the standard of proof for adverse administrative actions is the “preponderance of the evidence.” This standard will be used when evaluating the evidence and every element of the alleged offenses. Additionally, IAW paragraph 2.2.1 a preponderance of the evidence exists when it is more likely than not that events have occurred as alleged. Preponderance of the evidence is not determined by the number of witnesses or exhibits, but by all the evidence and evaluating factors such as a witness’ behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationship to the matter being considered. Finally, IAW paragraph 2.4.5.1 for officers, LORs must be filed in the Unfavorable Information File (UIF).

Finally, IAW the National Defense Authorization Act, Title 10 United States Code Section 615, *Information furnished to selection boards*, paragraph (3)(a), In the case of an eligible officer considered for promotion to a grade specified in subparagraph (B), any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph 1. (3)(b) A grade specified in this subparagraph is as follows: In the case of a regular officer, a grade above captain, in the case of the Navy, lieutenant, or in the case of the Space Force, the equivalent grade.

The complete advisory opinion is at Exhibit C.

AFPC/DP2SP recommends denying the applicant’s request. His leadership completed a PPA to remove his lieutenant colonel selection due to a substantiated Commander Director Investigation of Sexual Harassment. The Investigation Officer substantiated the five (5) anonymous complaints against the applicant’s engagement in sexual harassment against members of his squadron.

An evaluation of the applicant’s request reveals that he has not provided any justification as to there being any legal, administrative, or material errors with his record. Specifically, he has not provided any substantiated evidence of reprisal because of a PPA initiated by his squadron commander and wing commander.

In accordance with AFI 36-2501, *Officer Promotions and Selective Continuation*, Chapter 6, *Special Selection Boards (SSB)*, paragraph 6.3, *Conditions That May Warrant an SSB*, Grant SSBs for promotion to the grade of captain through colonel based on: Legal, Administrative, and Material Errors. Acting on behalf of the SECAF, HQ AFPC/DPPP and HQ AFPC/DPPPO can direct an SSB for an officer if it is determined: The action of the board that considered the officer was contrary to law or involved material error of fact or material administrative error, or; The board did not consider material information that should have been available in compliance with pertinent Air Force directives and policies.; An eligible officer did not meet a board or met the board in an incorrect promotion zone or competitive category.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Jan 23 for comment (Exhibit E), 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 rationales and recommendations of both AFPC/DPMSSM and AFPC/DP2SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends that his punishment was extreme and thereby constitutes an injustice, the Board notes that the applicant has not provided any justification as to there being any legal, administrative, or material errors with his record. Specifically, he has not provided any substantiated evidence of reprisal because of a PPA initiated by his squadron commander and wing commander. As such, the Board finds that both the LOR and PPA actions were within the commander's authority and the evidence presented does not demonstrate an error or injustice warranting removal of either the LOR, PPA, or show that either were unjust or inaccurate. 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-2022-01293 in Executive Session on 7 Feb 23:

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 28 Feb 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 3 Jan 23.
- Exhibit D: Advisory Opinion, AFPC/DP2SP, dated 11 Jan 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jan 23.

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.

4/13/2025

X

Board Operations Manager, AFBCMR

Signed by: