

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXXXXXX.

DOCKET NUMBER: BC-2022-01460

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His letter of reprimand (LOR) dated 20 May 21 be removed from his records.
2. He be considered for promotion to the rank of major (O-4) by a special selection board (SSB).

APPLICANT'S CONTENTIONS

He was given an LOR, which after his appeal was rescinded.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a captain (O-3) in the Air Force.

On 20 May 21, the applicant received an LOR for marrying an enlisted member on 18 Feb 21. An investigation revealed the marriage was the result of a dating relationship in violation of Article 134 and Article 92, Uniform Code of Military Justice (UCMJ) and AFI 36-2909, *Air Force Professional Relationships and Conduct*. In his rebuttal dated 22 May 21, he stated while he married an enlisted member, he did not violate the UCMJ. His conduct did not prejudice good order and discipline or bring discredit upon the Armed Forces. He made every single effort to ensure his 20-year friendship, which began when they were both young airmen, was not advertised. They were never in the same career field, chain of command, group or wing. There was no dating or courting period prior to their marriage. They previously served together as enlisted members and made decisions to ensure they did not prejudice good order and discipline. They were not seen together in public, nor did they attend any base functions jointly. They were always consummate professionals and never once acted in any way that would call into question their professionalism. On 2 Jun 21, his commander determined the LOR would be filed in his officer selection record (OSR) and an unfavorable information file (UIF) established.

Per AF Form 1058, *Unfavorable Information File Actions*, dated 5 Apr 22, the applicant's commander removed the UIF.

On 5 Apr 22, the applicant's commander directed the LOR be removed from his records in the best interest of the Air Force.

The military personnel data system (MilPDS) reflects the applicant has one promotion deferral for the rank of major, the CY21D Major Line of the Air Force-A Promotion Board.

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

APPLICABLE AUTHORITY/GUIDANCE

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, nonjudicial punishment (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.

DAFI 36-2501, paragraph 6.2.1, the AFBCMR or a federal court can direct an officer for consideration by SSB.

AFI 36-2909, *Air Force Professional Relationships and Conduct*, paragraph 3.2.3.1., Officer-Enlisted marriages, generally. Officer-enlisted marriages entered into while the spouses were in officer or enlisted status, respectively, may constitute fraternization if the marriage has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority or morale.

AIR FORCE EVALUATION

AFPC/DP2SSM recommends approval for removal of the LOR. The applicant received an LOR based on the preponderance of evidence in accordance with AFI 36-2907, *Adverse Information*. However, the applicant's commander reviewed the LOR and directed it be rescinded, effective 5 Apr 22.

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 6 Sep 22 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 the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSM and finds a preponderance of the evidence substantiates the applicant's contentions. In this respect,

the Board notes the applicant provides a memorandum from his commander dated 5 Apr 22 supporting the rescission of the LOR. Moreover, based on the circumstances, the Board finds the applicant's marriage did not constitute an unprofessional relationship, nor did the marriage compromise good order and discipline. In view of the Board's recommendation for removal of the LOR, the Board also recommends the applicant be considered by an SSB for promotion to the rank of major. 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. His letter of reprimand (LOR) dated 20 May 21, be void and removed from his record.
- b. He be considered by a special selection board (SSB) for the CY21D Major Line of the Air Force-A Promotion Board.

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-2022-01460 in Executive Session on 20 Oct 22:

, Panel Chair
, 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 23 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DP2SSM, dated 15 Jun 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 6 Sep 22.

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.