



Work-Product

## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01634

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

Her Letter of Reprimand (LOR), dated 3 Mar 21, be removed from her Officer Selection Record (OSR) and the associated Unfavorable Information File (UIF).

### APPLICANT'S CONTENTIONS

On 3 Mar 21, she received an LOR and UIF, due to an arrest on the charge of domestic violence. Her civilian case was dismissed by the County Court and her arrest record will be expunged. For this reason, she requests that the LOR and UIF both be removed from her OSR because the basis for issuance no longer exists.

She was in a very abusive, toxic marriage and she gave her all in trying to leave that marriage with the information that she had at her disposal at the time. She was abused by her husband over the years and she wanted nothing more than to get out of the marriage for both her and her daughter's sake. She was unaware of the many resources available to help her, such as the Special Victim's Counsel (SVC) or the extent to how Family Advocacy also could have assisted. She was too afraid to speak up to her leadership for many reasons: fear of further abuse from her husband; fear of losing her daughter; fear of reprisal from leadership; fear of being discharged; fear of losing her house, which she solely paid for; and finally, fear of the financial impact on her daughter if her husband also lost his career. She thought she could handle this situation on her own.

She was arrested based upon a false allegation by her ex-husband that she inflicted bodily harm and her commander decided to issue the LOR prior to any disposition or investigation. Her charge has been dismissed by the County Court and she is currently in the process of expunging her arrest record. Despite the dismissal of her case, her commander denied her request to withdraw the LOR and instead chose to maintain this unjust LOR within her OSR. As there is no basis for the LOR, the UIF contains unsubstantiated information and it is a violation of Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*.

Pursuant to AFI 36-2907, paragraph 3.3.2, a commander is responsible for ensuring a UIF only contains substantiated unfavorable information about the events that occurred. Additionally, paragraph 2.4.6.1.1 states that an LOR may be rescinded in the following circumstances: in the rare situation in which new evidence show, by preponderance of the evidence, that the member did not commit the act underlying the original administration action, or if the issuing authority issued the administrative action in a way that violated the member's due process rights.

AFBCMR Docket Number BC-2022-01634

Work-Product

Controlled by: SAF/MRB

Work-Product

Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

Not only did she did not commit the act underlying the LOR, its issuance and maintenance is a violation of her due process rights. Her commander has unfairly punished her and jeopardized her career for being the victim in an abusive marriage, simply because she was the one who went to jail the night she had her ex-husband served with divorce papers. Her ex-husband's false allegations were proven to be unfounded in a court of law and the charge itself was unsubstantiated.

She submitted both an informal and a formal complaint under Article 138, *Uniform Code of Military Justice (UCMJ)*, requesting relief, but neither her commander nor the 19 AF/CC granted her request for relief to withdraw her LOR.

Despite being cleared of the charges by the civilian justice system, the LOR remains in her OSR and will have a significant adverse impact upon her career. She respectfully requests that the LOR be removed from her OSR and the associated UIF.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is an Air Force captain (O-3).

On 3 Mar 21, the applicant's commander issued her a LOR for domestic violence. The applicant acknowledge receipt and that she had three duty days to provide a response.

On 12 Mar 21, the applicant submitted her response to the LOR.

On 17 Mar 21, the applicant's commander considered her response to the LOR and decided to sustain the LOR and place it in an UIF.

According to documents provided by the applicant:

On 17 Sep 21, the Office of the State Attorney for the First Judicial Circuit of Florida announced a *NOLLE PROSEQUI* in the case of the applicant.

On 21 Sep 21, the applicant submitted to her commander a request for early removal of UIF and LOR withdrawal, stating that since her dismissed domestic violence charge was the basis for her LOR, that the LOR should be withdrawn and the UIF terminated.

On 22 Oct 21, the applicant submitted to her commander an Informal Complaint under Article 138, UCMJ, alleging that he had committed wrong against her by not withdrawing her LOR and requested relief that he withdraw the LOR.

On 26 Oct 21, the applicant's commander denied her request for relief stating that the facts and circumstances that established the basis for the LOR have not changed and that she did commit the offenses in the LOR.

On 28 Oct 21, the applicant submitted to the 19 Air Force Commander (19 AF/CC) a formal complaint under Article 138, UCMJ, alleging that her commander committed a wrong against her by denying her request to withdraw the LOR and terminate the UIF.

On 15 Jan 22, 19 AF/CC, denied the applicant's request stating that the commander did not abuse his authority and the decisions in her case were not arbitrary, capricious, unjust nor unfair.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

DAFI36-2907\_DAFGM2022-01, 27 Apr 22, *Department of the Air Force Guidance Memorandum* to AFI 36-2907, *Adverse Administrative Actions*, paragraph A6.2 Guidance for Adverse Information. A6.2.1. All adverse information an officer receives will be filed in the officer's Officer Selection Record (OSR) and will 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" per DoDI 1320.14. 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 credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. Adverse information includes, but is not limited to: Letter(s) of Reprimand (LOR).

A6.2.3. All adverse information as defined by this instruction will be permanently placed in the MPerRGp. Except for the set aside of a court-martial or nonjudicial punishment action, removal of adverse information from the MPerRGp may only be directed pursuant to an Air Force Board for Correction of Military Records (AFBCMR) recommendation.

A6.6.1. Wing commanders, delta commanders, or issuing authorities can no longer direct removal of derogatory data from the OSR as previously permissible in AFI 36-2907 and AFI 36-2608, *Military Personnel Records*.

## **AIR FORCE EVALUATION**

AFPC/DP2SSM recommends denying applicant's request to remove the LOR and the associated UIF. On 3 Mar 21, the applicant received a LOR, which is in her military personnel official record, and she had three duty days from that date to provide a response which she did so on 12 Mar 21. Subsequently, she states that she was falsely arrested and that the charge was initially dismissed on 17 Sep 21, and on Jun 22, the charge was expunged by civilian authorities. She asserts that since the charge was the basis for the LOR, the LOR should be removed from her record.

In accordance with DAFI 36-2907, paragraph 2.2, the Standard of Proof for adverse administrative actions is the "preponderance of evidence." This standard will be used when evaluating the evidence and every element of the alleged offenses. 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 facts such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationships being considered. Consider whether such proof is available before initiating the administrative action. If such proof is lacking, administrative action may be determined legally insufficient and, as a result, could be set aside. There is no requirement to prove any allegation beyond a reasonable doubt.

Paragraph 2.3.5 defines a LOR as an administrative censure for violation of standards which is more severe than a Record of Individual Counseling (RIC), Letter of Counseling (LOC), Letter of Admonishment (LOA) and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior. For Officers only: Only supervisors and members of the officer's current administrative or operational chain of command may issue an LOR to an officer. If the person who issues the LOR is not the officer's unit commander, the person who issued the reprimand must send it to the administrative unit commander. The administrative unit commander acknowledges and endorses the AF Form 1058, *Unfavorable Information File Actions*, establishing the UIF or, if a member has an existing UIF, adds the document to the member's UIF. The AF Form 1058, *Unfavorable Information File Actions*, does not need to be referred to the officer for a response because LORs for officers are mandatory UIF filings.

Additionally, in accordance with Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03, *Adverse Information for Total Force*, Attachment 1, 2. Section II, d, Approved court-martial findings of guilt are retained in the OSR permanently unless the findings are overturned on appeal or set aside in their entirety, and the member is not subsequently found guilty at a rehearing or new trial. If removed from the OSR for this reason, this is not considered adverse information and will not be filed in the MPerRGp. All other adverse information filed in the OSR will remain in the OSR: For O-6 and below boards and processes for ten 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. If the exception is met, the adverse information will remain in the OSR. Except for the set aside of a court-martial or nonjudicial punishment action, earlier removal of adverse information from the OSR may only be directed pursuant to an AFBCMR recommendation.

Based upon the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant's commander issued an LOR based upon the preponderance of the evidence IAW DAFI 36-2907.

The complete advisory opinion is at Exhibit C.

AFPC/JA concurs with the advisory opinion of AFPC/DP2SSM that applicant's request to remove the LOR and associated UIF be denied. The LOR issued to the applicant states, "It has come to my attention that on or about 6 Feb 21, you were arrested by the (name redacted) County Sheriff's Office following an argument between you and your spouse, (named redacted). Your spouse stated that you became upset, slapped his hand, tackled him, bit him twice on the arms and grabbed his genitals to inflict pain. You were issued a citation for domestic violence battery."

In support of her request to remove the LOR, she alleges that she was "falsely arrested" and "the charge has been expunged by the civilian authorities." She provides a civilian court order, which appears to be tied to the battery citation for which she received the LOR, which states in relevant part, "The Office of the State Attorney for the First Judicial Circuit of Florida announces a *NOLLE PROSEQUI* in the above captioned case for the reason(s): SUCCESSFULLY TERMINATED FROM PRETRAIL DIVERSION PROGRAM."

*NOLLE PROSEQUI* is a Latin phrase which means 'not wish to prosecute'. It is not an acquittal; rather, it is a prosecutorial decision to drop criminal charges against a defendant for one reason or another. The prosecutor dropped the charges against her, based on the documentation provided by the applicant, because she completed a pretrial diversion program. Pretrial diversion is a common

method employed by prosecutors as an alternative to prosecution of minor criminal charges against first time offenders. Upon successful completion of the program, the prosecutor formally dismisses the criminal charge(s) against the defendant. Again, it is not an acquittal. So while the charge against her may have been “expunged by civilian authorities”, it was not because she did not commit the crime for which she was charged. The applicant has not provided any evidence to substantiate her claim that she was “falsely arrested” or that the issuance of the LOR was otherwise an abuse of discretion. Consequently, the LOR should not be disturbed.

By regulation, Air Force commanders and supervisors are charged with the responsibility to administratively censure inappropriate or improper behavior in appropriate circumstances. As stated in DAFI-36-2907, paragraph 1.1, “Adverse administrative actions are intended to improve, correct, and instruct subordinates who violate Air Force standards whether on or off duty.” LORs are discretionary in nature, must be supported by the preponderance of the evidence, and will not be disturbed unless the evidence is not sufficient and/or the action constituted an abuse of discretion.

Based on the foregoing, the applicant has failed to prove any material error or injustice warranting relief. Accordingly, her request should be denied.

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 Jul 22 for comment (Exhibit E), and the applicant replied on 12 Jul 22. In her response, the applicant contends because her criminal history record was expunged and she was issued a NOLLE PROSEQUI from the Office of the State Attorney for the First Judicial Circuit of Florida that both the LOR and UIF are illegal and must be removed from her OSR.

In support, she provides documentation, to include the Order to Expunge Criminal History Records, NOLLE PROSEQUI, and letters of support. She also includes documentation (Article 138, and text messages) that details the abuse she endured in her marriage.

The applicant’s complete response is at Exhibit F.

#### **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 both AFPC/DP2SSM and AFPC/JA and determines that the applicant has not provided any evidence to substantiate her claim that she was “falsely arrested” or that the issuance of the LOR was otherwise an abuse of discretion. Thus, the preponderance of the evidence does not substantiate the applicant’s contentions. The Board finds, after carefully considering the facts and circumstances of this case, that the applicant’s commander did not abuse his authority in issuing the applicant the LOR and that his decision was neither arbitrary, capricious, unjust nor unfair. Therefore, the Board recommends against correcting the applicant’s records.

## 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-2022-01634 in Executive Session on 30 Aug 22:

Work-Product on, Panel Chair  
Work-Product Panel Member  
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 13 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSM, dated 21 Jun 22.
- Exhibit D: Advisory Opinion, AFPC/JA, dated 24 Jun 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jul 22.
- Exhibit F: Applicant's Response, w/atchs, dated 12 Jul 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.

4/14/2025

X

Work-Product

Board Operations Manager, AFBCMR

Work-Product

**AFBCMR Docket Number BC-2022-01634**

Work-Product