



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01949

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His letter of reprimand (LOR) dated 4 Jun 20 be removed from his record.
2. His unfavorable information file (UIF) be removed from his record.
3. He be removed from the control roster.
4. His selection for promotion to the rank of senior master sergeant (E-8) be reinstated.

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant contends, he was selected for promotion to senior master sergeant on 3 Mar 20. On 29 May 20, he engaged in a social media commentary on Facebook regarding the racially fueled protests after George Floyd's death to offer a different perspective. He shared how to peacefully get the message across without increasing the divide and his own experience identifying and overcoming implicit bias. For this, he received a LOR, UIF and control roster, which resulted in the cancellation of his promotion sequence number (PSN) for senior master sergeant. The applicant also received a referral enlisted performance report (EPR) for the period ending 17 Jun 20. Prior to this incident, the applicant was stratified #2/23 master sergeants and nominated as one of the Twelve Outstanding Airmen of the Year for 2019.

The LOR was an abuse of authority and a rush to act in support of a hot topic. There was no violation of the Uniform Code of Military Justice (UCMJ) or regulation. His case did not meet the preponderance of the evidence standard and was an excessive reaction to the circumstances, in violation of AFI 36-2907, *Adverse Administrative Actions*.

It is inappropriate to punish someone because of failure to adhere to standards that are unclear or non-existent. The summer of 2020 was a period of upheaval in American society. Nationwide protests were taking place. The military service chiefs did not immediately comment on the situation and there was no guidance published other than which generally governs participation in political activities. In this moment, another master sergeant (E-7) posted a statement on Facebook designed to provoke. Legitimate concerns about looting and the deaths of people during the protests were invalidated. The post ends with a terse statement about figuring out whether the applicant is a racist. In response, the applicant wrote "he did not feel racist" but understood what is now known as "racial bias." He stated the military helped him. The military was a group of individuals with different backgrounds who come together for a common goal. Every responder

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then “baits” the applicant to explain his position and accuses him of being a racist. He acknowledged his own implicit bias. The responses were personal attacks on his views and his alleged reputation or derogatory statements calling him names and that he was the problem. He took it upon himself to end the conversation.

After the conversation, other military members took it upon themselves to “cancel” the applicant. An airman posted the screen shot on 2 Jun 20 and called upon people with connections to expose him as a bigot. They tagged the Chief Master Sergeant of the Air Force (CMSAF) at the time and sent screenshots to the Air Force Enlisted Facebook page.

Two days later, on 2 Jun 20, he received a LOR for behaving in a manner unbecoming a senior noncommissioned officer (SNCO), which is not an offense under the UCMJ. The Article 92 violation was for failing to avoid offensive and/or inappropriate behavior. There are strict standards for what conduct constitutes a violation of the applicable regulations, such as the anti-harassment and equal opportunity regulations. Outside the bounds of those instructions, someone cannot be charged for an offense that does not exist and for conduct that was within the bounds of the law. It is a legal error to punish someone for an offense that does not exist and for conduct that was within the bounds of the law.

The following day after receiving the LOR, on 3 Jun 20, leaders from each service published memorandums addressing George Floyd’s death. The service chiefs encouraged troops to stay out of politics, eradicate racism and fulfil their duties if called upon to protect Americans rights to free assembly. There was no mention of avoiding discussion on social media platforms. In fact, this is where the Air Force’s top enlisted leader announced his personal take on the situation. The Chief of Staff (CSAF) and the CMSAF then convened a town hall on Facebook, inviting troops to ask questions about race and the current climate of the nation. The applicant was given an LOR for doing exactly what the CSAF and CMSAF challenged airmen to do, to engage in a discussion about the issues. However, people engaged in the mob of rage against him, conspired to report him to superiors and have him punished for opinions they did not like. It was inappropriate for the commander to punish him with an LOR containing alleged offenses that are not violations of any AFI or UCMJ. The drastic shift from #2/23 master sergeants to LOR, UIF and control roster is disproportionate. He took the initiative to engage in trying to diffuse and bridge an uncomfortable conversation. There has been a disproportionate and unjust reaction resulting from public shaming.

The entire process has been tainted by perceived political correctness after a group of individuals took offense to his discussion of a personally harbored bias, which was subsequently talked about openly in mandatory small group discuss across the military. He received an LOR for doing exactly what he was supposed to do, albeit without the tools the Air Force later gave its airmen to effectively engage in the discussions. His stumble in the discussion was understandable and minor compared to the punishment he received.

His commander also used the control roster as a punitive measure rather than a rehabilitative tool. His commander essentially punished him for having opinions people disagreed with. He did nothing described in AFD 36-27, *Equal Opportunity (EO) and Non-Discrimination Policy*. He sought out guidance from the EO office to verify he did nothing to violate any EO policy. Even when presented with the information, his commander invented a crime to punish him for.

On 29 Sep 20, he filed an inspector general (IG) complaint. The IG dismissed the complaint on 29 Sep 20 and recommended he file a request with the AFBCMR. The IG failed to fully inquire

as to the propriety of his commander's decisions. The IG determined the "perception" of discrimination was enough to issue an LOR. That a person perceives discrimination when none exists creates an entirely amorphous standard. Perception is not reality. Had the applicant been offered nonjudicial punishment (NJP), he would have elected court-martial. Instead, his commander chose the hardest path for the applicant to fight.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force master sergeant (E-7).

On 3 Mar 20, the applicant was informed of his selection for promotion to the rank of senior master sergeant and signed the statement of understanding (SOU) for promotion.

In an email submitted by the applicant, dated 2 Jun 20, the wing equal opportunity (EO) office stated the applicant's social media issue did not meet AFI 36-2706, *Air Force Equal Opportunity Program*, criteria or definition of discrimination.

On 4 Jun 20, according to documentation submitted by the applicant, he received an LOR. The LOR stated an investigation disclosed he behaved in a manner unbecoming of a SNCO by posting discriminating racial and ethnically offensive material on social media in violation of Article 92, UCMJ. Specifically, his 29 May 20 comment on a Facebook thread.

In a response to the LOR, dated 5 Jun 20, the applicant stated he reread the Facebook conversation and could see how his words could have been taken offensively and he was regretful. He sought out the guidance of the EO office and the EO professional expressed there was no evidence of any illegal activity or examples of racism. At no point did he attempt to insult, use harassing language or use derogatory labels in a racist manner.

Per the AF Form 1058, *Unfavorable Information File Action*, dated 10 Jun 20, submitted by the applicant, his commander established an UIF, placed him on the control roster and filed the LOR in the UIF.

In a response dated 15 Jun 20, the applicant requested reconsideration of the UIF and control roster. He stated he had not and would never enact racist ideas or racial bias towards his fellow airmen. The UIF and control roster would permanently and negatively impact his career and his family. He stated on the day he learned that a UIF would be established, he was invited to a small group discussion. The conversation began with an example of racial bias self-admittedly harbored by the command chief master sergeant. The command chief thanked the Air Force for helping him progress towards overcoming it. The applicant chose to speak about his circumstance and was met with positivity and comments of encouragement.

On 19 Aug 20, according to documentation submitted by the applicant, he requested the removal of the UIF and control roster from his record.

On 18 Sep 20, according to documentation submitted by the applicant, his commander denied his request for removal of the UIF and control roster.

The applicant received a referral EPR for the period ending 17 Jun 20. It states he posted offensive/discriminatory racial and ethnic comments on social media and received a LOR, UIF and control roster action.

On 29 Sep 20, SAF/IGS informed the applicant his 11 Aug 20 IG complaint concerning allegations against his commander was dismissed. The information gathered during their inquiry showed senior leaders acted in accordance with applicable guidance and within their discretion. Their inquiry also determined the commander was not required to initiate an investigation. His review of the Facebook thread provided the preponderance of evidence required for an LOR. SAF/IGS stated comments or actions did not have to meet regulation definition of discrimination to be perceived as discriminatory. Accordingly, there was insufficient evidence to indicate wrongdoing and an inadequate basis to warrant further investigation. The applicant was advised he could file an application for correction of his records to the AFBCMR.

The military personnel data system (MilPDS) reflects the applicant does not have a UIF and the LOR was not filed in his records. The applicant's projected promotion to the rank of senior master sergeant was canceled upon placement on the control roster in accordance with AFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*.

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

APPLICABLE AUTHORITY/GUIDANCE

AFPD 36-27, *Equal Opportunity (EO) and Non-Discrimination Policy*, paragraph 3.2. It is against Air Force policy to unlawfully discriminate, harass, intimidate or threaten a military or civilian on the basis of race, color, sex, national origin, religion or sexual orientation.

DAFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, Table 1.2., Determining Ineligibility for Promotion for Regular Air Force Airmen, Rule 5, is on the control roster. Rule 21, has a referral report.

AFI 36-2907, *Adverse Administrative Actions*, paragraph 4.2., Use of a Control Roster, Commanders use the control roster to establish a six-month observation period. Consideration should be given to prior incidents, acts, failures, counseling and rehabilitative efforts. A brief incident of substandard performance or an isolated breach of standards, not likely to be repeated, should not usually result in an individual's placement on the control roster.

AFI 36-2907, paragraph 2.3.5. LOR. Administrative censure for violation of standards which is more severe than a record of individual counseling (RIC), letter of counseling (LOC) and 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.

AFH 36-2618, *The Enlisted Force Structure*, paragraph 4.6.9. While every airman has a duty and obligation to act professionally and meet Air Force standards at all times, senior noncommissioned officers (SNCO) have a special obligation and responsibility to ensure the Air Force retains a climate and culture of dignity and respect.

AIR FORCE EVALUATION

AFPC/DP2SSM recommends denial. The applicant's commander issued a LOR, UIF and control roster based on the preponderance of evidence in accordance with AFI 36-2907. Table 3.2. Rules 2 and 4, state the disposition for a control roster and LOR is one year from the date the commander signs Section V of the AF Form 1058, which was 18 Jun 20. The applicant believes the adverse action was inaccurate, while they cannot provide any input on the matter, the adverse action met AFI requirements.

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 12 Sep 22 for comment (Exhibit D), and the counsel replied on 10 Oct 22. In the response, the counsel contended the advisory contends the evidence met the AFI standards; yet claims to not be able to opine on the accuracy of the information. AFPC/DP2SSM fails to conduct the appropriate analysis.

The AFI states that the preponderance of the evidence must be based on all the evidence. In this case, the commander issued the LOR without an assessment of the totality of the circumstances. He looked merely at the evidence maliciously forwarded to him and failed to consider the lack of guidance from higher headquarters, the intent to foster discussions about inherent bias or the remedial measures the applicant voluntarily engaged in to mitigate the social media mob mentality that took over the discussion thread. The commander's action was reactionary and based on other people taking offense where none was intended, which cannot meet the preponderance of the evidence standard.

The applicant's complete response is at Exhibit E.

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 AFPC/DP2SSM and finds a preponderance of the evidence does not substantiate the applicant's contentions. Counsel contends the applicant was unjustly punished for the same discussion encouraged by Air Force leaders and the EO office determined his comments did not rise to a level of discrimination; however, the Board finds the unfavorable personnel actions (LOR, UIF, control roster and referral OPR) were within his commander's discretion and authority and were not disproportionate for the offense committed. Moreover, the cancellation of his PSN for promotion to senior master sergeant was in accordance with AFI 36-2502 due to the control roster and referral EPR. In this respect, the Board finds the applicant's social media commentary violated the standards, professionalism and expectations the Air Force expects from its SNCOs and he failed to fulfil his responsibility as a SNCO per AFH 36-2618. Further, the Board does not find the applicant's social media posts and facilitated small group discussions sanctioned and encouraged by Air Force leadership are similar. Counsel also alleges SAF/IGS on 29 Sep 20 improperly dismissed the applicant's complaint without an analysis or investigation; however, the Board finds no error or injustice in the SAF/IGS dismissal of the applicant's 11 Aug 20 complaint. There is no evidence his commander abused his authority, acted in malice, reprised or retaliated against the applicant. The

Board concludes the applicant's contention his punishment was unjust appear to be merely based on his opinion he did nothing wrong. However, insufficient evidence has been provided to sustain his burden of proof. 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-2022-01949 in Executive Session on 8 Nov 22:

Work-Product	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 12 Jul 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSM, dated 17 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Sep 22.
- Exhibit E: Applicant's Response, dated 10 Oct 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.

4/13/2025

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