

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

XXXXXXXXXXXXXXXXXX

**DOCKET NUMBER:** BC-2022-02951

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His letter of admonishment (LOA) dated 16 Apr 17 be removed from his records.

### APPLICANT'S CONTENTIONS

The LOA violates DAFPM 2021-36-03, *Department of the Air Force Policy Memorandum (DAFPM) on Adverse Information for Total Force Officer Selection Boards*. The LOA is overly broad, did not provide any adverse finding and did not meet the threshold as identified by DAFPM 2021-36-03. The LOA also does not indicate he intended to submit a response and did not include his response or any final determination indorsement. It is therefore incomplete and invalid.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a major (O-4) in the Air National Guard (ANG).

The applicant received an LOA dated 16 Apr 17 from the mission support group commander (MSG/CC) for his involvement in an unprofessional relationship with [redacted], an enlisted member in his squadron. The LOA stated in accordance with AFI 36-2909, *Air Force Professional Relationships and Conduct*, unprofessional relationships between officers and enlisted members have a high potential for damaging morale and discipline. As an officer and supervisor, his perceived ability to influence assignments, promotion recommendations, duties, awards and other privileges and benefits placed his relationship with [redacted] in a vulnerable position and led to a negative command/supervision climate within the section. The applicant acknowledged the LOA; however, the acknowledgement date is not indicated. There is also no indication whether he desired or did not desire to make a statement and the final determination signature is absent.

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

### APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, DAFI 36-2907, *Adverse Administrative Actions*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, 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.

### **AIR FORCE EVALUATION**

AFPC/DPMSSM recommends granting the request. The LOA in the applicant's record is incomplete and therefore constitutes removal.

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 13 Feb 23 for comment (Exhibit D) but has received no response.

### **ADDITIONAL AIR FORCE EVALUATION**

State ANG JA recommends granting the request. At a minimum, the LOA did not contain the requirements for legal sufficiency. Administrative action that is not legally sufficient can be construed as abuse of authority. In any event, it is not appropriate to maintain legally insufficient records in an individual's file. As such, it is recommended the 16 Apr 17 LOA be removed.

At the time the LOA was administered, DAFI 36-2907 was the controlling instruction. The LOA is signed by the commander and gives an ambiguous description of the alleged behavior. The LOA is signed by the applicant. The LOA indicated the applicant was entitled to provide a statement and supporting documentation but does not indicate whether the applicant provided any documentation. However, the language within the LOA indicates the commander would not consider any statement or supporting documents in a deliberative manner as required by instructions.

All Airmen are entitled to due process in administrative matters. Matters conducted without due process are legally insufficient and can be considered an abuse of authority. It is neither fair nor lawful to use such matters against an individual. DAFI 36-2907 contains the requirements for an LOA to be legally sufficient. All LOAs must state specifics on what a member did or failed to do, contain evidentiary documents, notification for a response within three duty days (or 45 calendar days), notification of a final decision and contain a Privacy Act statement.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 23 May 23 for comment (Exhibit F) 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 recommendations of AFPC/DPMSSM and the State ANG JA and finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, the Board notes the LOA was not accomplished in accordance with DAFI 36-2907. Due to the multiple administrative errors, the applicant was denied due process and the LOA is legally insufficient. 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 his letter of admonishment (LOA) dated 16 Apr 17 be removed from his records.

## **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-2022-02951 in Executive Session on 6 Jul 23:

, Chair, AFBCMR  
, 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 15 Nov 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSSM, dated 9 Feb 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Feb 23.
- Exhibit E: Advisory opinion, State ANG JA, dated 5 May 23.
- Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 23 May 23.

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.

**X**

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Board Operations Manager, AFBCMR