



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00135

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Letter of Counseling (LOC) issued 12 Dec 22 be removed from his record to include his Officer Selection Record (OSR) and his Master Personnel Records Group (MPerRGp).

APPLICANT'S CONTENTIONS

The LOC is related to an on-going litigation to a current pending court-martial. The evidence presented did not support a Letter of Reprimand (LOR) and even though the wing commander downgraded it to a LOC, their decision making was still biased due to the on-going court martial litigation. The LOC is targeted and pre-decisional.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

According to documentation provided by the applicant:

On 12 Dec 22, the applicant received a LOR from his wing commander as the result of an investigation which disclosed the following:

a. Between on or about 1 Jul 22 and on or about 16 Nov 22, on divers occasions, behave with disrespect toward your superior commissioned officer in command and in rank, then known to be your superior commissioned officer in command and rank by saying "not competent as a commander," or words to that effect in direct violation of Article 89, UCMJ, *Disrespect Toward a Superior Commissioned Officer*.

b. Between on or about 1 Jul 22 and on or about 16 Nov 22, on divers occasions, were derelict in the performance of duties in that you negligently failed to abide by your duty performance whereby supervisors and commanders had to constantly monitor or follow up in your activities, in violation of AFI 1-1, paragraph 2.4, and the behavior is direct violation of Article 92, UCMJ, *Negligent Dereliction of Duty*.

c. Between on or about 20 Sep 22 and on or about 26 Sep 22, publicly embarrass an enlisted member not in your chain or command nor an individual that you directly supervise, by email detailing his minor misconduct to a large percentage of the squadron without prior coordination

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Controlled by: SAF/MRB

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

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with the enlisted member's supervisor and/or leadership, which was in violation of Article 133, UCMJ, *Conduct Unbecoming of an Officer and Gentleman*.

On 16 Dec 22, the applicant acknowledged the allegations contained within the LOR and submitted a response through the Area Defense Counsel (ADC).

On 20 Dec 22, the wing commander, considering the applicant's response, decided to reduce the LOR to a LOC and informed the applicant that the LOC would be forwarded to his commanding officer to be filed in his OSR.

On 5 Jan 23, the applicant acknowledged receipt of the LOC.

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

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the applicant's request. The applicant's LOC 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. On 12 Dec 22, his commander initially issued a LOR and the applicant provided a response through counsel. His commander considered his response and, based on the preponderance of the evidence, decided to reduce the action to a LOC and informed the applicant that the LOC would be placed in his Officer Selection Record.

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. IAW paragraph 2.4.5.1, any LOCs not filed in the UIF, must be filed in the officer's PIF.

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.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

[REDACTED]

The Board sent a copy of the advisory opinion to the applicant on 2 Mar 23 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSSM and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends that the LOC was "targeted and pre-decisional" 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. In fact, when presented with the applicant's response, the wing commander decided to reduce the proposed action from a LOR to a LOC. As such, the Board finds that the LOC was within the commander's authority and the evidence presented does not demonstrate an error or injustice warranting removal of the LOC or show that the LOC was unjust or inaccurate. Furthermore, under the presumption of regularity, it is assumed that responsible officials carried out these tasks in accordance with the provisions of the prescribing directives and the applicant was afforded all of his due process rights. 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-2023-00135 in Executive Session on 28 Mar 23:

Attorney-Client [REDACTED], Panel Chair
Attorney-Client [REDACTED], Panel Member
Attorney-Client [REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 5 Jan 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 1 Mar 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Mar 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.

4/15/2025

X

Board Operations Manager, AFBCMR

Signed by: