

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXX

DOCKET NUMBER: BC-2023-00157-2

COUNSEL: XXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request that his referral Officer Performance Report (OPR) and Letter of Reprimand (LOR) be removed from his military record.

RESUME OF THE CASE

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

On 27 Jun 23, according to *Case Management Tracking & Analysis System* (CMTARS) printout, he was emailed a copy of the AFRC/A1KK advisory opinion, dated, 21 Jun 23. The printout reflects that it was not addressed to his counsel.

On 15 Aug 23, the Board considered and denied his request to remove his referral OPR and LOR from his military record.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 26 Jun 24, the applicant requested reconsideration of his request to remove his referral OPR and LOR from his military record. He again contends by maintaining these adverse administrative actions in his military record, he is a victim of material error and injustice as he longer has a conviction on his record, and that he did not disclose his conviction on the advice of competent counsel. In support of his reconsideration request, the applicant submitted evidence his counsel was never provided the AFRC/A1KK advisory opinion in the original case.

On 24 Aug 24, according to the CMTARS printout, the applicant and his counsel were emailed a copy of the AFRC/A1KK advisory opinion, dated, 21 Jun 23.

The applicant's complete submission 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 remains unconvinced the evidence presented demonstrates an error or injustice. After careful consideration of the case in its entirety, to include the applicant's submissions, the Board finds that although his criminal conviction was eventually dismissed, it still did not relieve him of his duty and responsibility to comply with AFI 36-2009 to notify his chain of command of his misdemeanor domestic violence conviction.

Although the conviction was withdrawn and eventually dismissed upon completion of a diversionary program, the Board notes his conviction was still in place during the referral OPR reporting period. As such, the Board again finds the referral Officer Performance Report is accurate as written, and was well within the rater's authority and discretion. In addition, the Board finds the applicant failed to prove by the preponderance of the evidence that the behavior did not take place and the corrected actions were officially set aside and not just removed. 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 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-2023-00157-2 in Executive Session on 10 Apr 15:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit E: Record of Proceedings, w/ Exhibits A-D dated 15 Aug 23.
Exhibit F: Application, DD Form 149, w/atchs, dated 26 Jun 24.
Exhibit G: Documentary evidence, including relevant excerpts from official records.

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

Board Operations Manager, AFBCMR