



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-00275

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His referral officer performance report (OPR) for the period ending 4 Feb 21 be amended to remove all derogatory information, to include the derogatory comments, "Does Not Meet Standards" rating, supplemental letter of evaluation (LOE) and referral memorandum dated 22 Mar 21.

APPLICANT'S CONTENTIONS

The sole basis for the referral OPR were the allegations referred for court-martial. In Mar 22, he was exonerated and the court-martial found him not guilty of all charges. There are no administrative actions or inquiries pending and he has since returned to normal service. He would like to continue his service without the mention of any substantiated allegations that he was acquitted of in a court of law.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force major (O-4).

AF Form 707, *Referral Officer Performance Report (OPR)*, for the reporting period ending 4 Feb 21, shows he received a referral OPR. Section VI, *Reviewer*, block states an investigation revealed he admitted to engaging in an inappropriate and wrongful behavior with a minor. Section IX, *Performance Factors*, shows he was marked as "Does Not Meet Standards" for Professional Qualities. In a rebuttal response dated 22 Mar 21, the applicant requested for patience to allow him to work through the legal process and return to normal service with dignity and honor. The AF Form 77, *Letter of Evaluation (LOE)*, dated 23 Mar 21 reflects his numbered air force commander (NAF/CC) considered the applicant's comments and concurred the OPR should be a referral OPR.

The applicant provides the Entry of Judgment dated 12 Mar 22, which shows a general court-martial convened on 6 Mar 22. The applicant pled not guilty and was found not guilty of the following charges and specifications:

Charge I, Specification: Between 1 Apr 18 and 30 Apr 18, he committed a lewd act upon [redacted], a child who had not attained the age of 16 years, by intentionally touching her buttocks with an intent to gratify his sexual desire.

**AFBCMR Docket Number BC-2023-00275
CUI//SP-MIL/SP-PRVCY**

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

CUI//SP-MIL/SP-PRVCY

Charge II, Specification 1: Between 1 Jun 20 and 31 Aug 20, he solicited on the internet sexual partners for his wife, without her knowledge or consent.

Charge II, Specification 2: Between 1 Jun 19 and 30 Jul 19, he posted on the internet an intimate image of [redacted] without her consent.

Additional Charge, Specification: Between 1 Apr 18 and 30 Apr 18, he committed a lewd act upon [redacted] by communicating indecent language with an intent to gratify his sexual desire.

On 10 Apr 23, the evaluation report appeals board (ERAB) denied the applicant's request for correction of his referral OPR. The ERAB was not convinced of an error or injustice. While the applicant may have been found not guilty of the specific allegations, this did not make the statements on the OPR untrue, which states based on an investigation the applicant admitted to the wrongful behavior. Therefore, the statement was accurate at the time the OPR was completed.

On 16 May 23, the applicant was informed he was considered but not selected for promotion by the CY23B Lieutenant Colonel Line of the Air Force Air Operations and Special Warfare (LAF-A) Central Selection Board (CSB).

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

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, Department of the Air Force Policy Memorandum (DAFPM) 2020-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 Jan 21. DAFI 36-2907, *Adverse Administrative Actions* and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. 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/DP3SP recommends denial. In accordance with DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, paragraph 10.2.4.3, the ERAB will not consider nor approve requests to void an evaluator's section while keeping comments or ratings of subsequent evaluations. Further, paragraph 10.2.4.10.2.3. states the applicant must prove by a preponderance of the evidence that the behavior did not take place. If the behavior existed on or before the close out date of the report, the evaluation may still be valid if the report only reflects the behavior. The behavior was properly documented on the OPR as determined by the rating chain at the time of the close out of the evaluation period.

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 Jun 23 for comment (Exhibit D), and the applicant replied on 6 Jul 23. In his response, the applicant contended the justification given for denying his request is that the behavior existed or that he admitted to the wrongful behavior because the then on-going investigation made those determinations. His initial response to the referral OPR was to ask his leadership for patience as he was confident he would be cleared

with due process. He was not treated as innocent until proven guilty. His leadership chose not to wait for a determination on his guilt or innocence or even for the investigation to be completed prior to giving him a referral OPR for a false allegation. His full statement given to law enforcement was finally heard at the court-martial. Further, the false allegations occurred in the midst of an intense and protracted custody dispute with his ex-wife, who was leaving him for a police officer with whom she was having an affair. Proving a negative is a difficult task; however, he was acquitted of all allegations at trial. His 14 year service record shows no accusations of misconduct outside of those made by his ex-wife in the aftermath of ending their marriage. The OPR does not reflect who he is.

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/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant provides the Entry of Judgment in his general court-martial case which shows he was found not guilty of all charges and specifications. However, the Board finds the applicant has not sustained his burden of proof that the referral OPR for the period ending 4 Feb 21 is incorrect as reflected. The applicant contends the sole basis for the referral OPR were the court-martial charges. While the applicant's misconduct may not have risen to a level for the general court-martial to find him guilty of the charges and specifications, the Board finds the applicant has not sustained his burden of proof to find the investigation's conclusions were improper and note the applicant admitted to engaging in inappropriate and wrongful behavior with a minor. 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 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-2023-00275 in Executive Session on 31 Aug 23:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

CUI//SP-MIL/SP-PRVCY

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Jan 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SP, dated 12 Jun 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Jun 23.
- Exhibit E: Applicant's Response, dated 6 Jul 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.

9/11/2024

Work-Product

Board Operations Manager, AFBCMR

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