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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00543

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Her referral officer performance report (OPR) for the reporting period ending 29 Mar 21 be removed from her records.
2. Her letter of admonishment (LOA) dated 24 May 21 be removed from her records.

APPLICANT'S CONTENTIONS

She was discriminated on the basis of her gender by her supervisor, the group commander (GP/CC). The derogatory information in her OPR is false. He made decisions with a discriminatory mindset against females. She waited to file an equal opportunity (EO) complaint after her permanent change of station (PCS) assignment. However, her complaint was not accepted because she did not file the complaint within 60 days. Neither she nor her area defense counsel (ADC) were aware of the requirement to file an EO complaint within 60 days. Her application to the evaluation report appeals board (ERAB) was denied due not having a substantiated EO complaint. Additionally, contrary to the OPR that she received performance feedback on 1 Mar 21, she never received an official feedback report in violation of DAFI 36-2406, *Officer and Enlisted Evaluations Systems*. The referral OPR and LOA were to prevent her from serving as the future GP deputy.

On 18 Nov 20, during a meeting to discuss stratification of officers within the group, the GP/CC told her she was only stratified on her 2014 OPR because she was a female. She was in disbelief and sent him a text message. He replied by phone and apologized. She did not file an EO complaint at the time as she hoped he would change his perspective. However, she later learned his apology was insincere, none of his actions towards women changed and the environment continued to deteriorate.

After she was relieved of command she learned of other discriminatory remarks by the GP/CC. Within a month of arriving at her new duty station, she filed an EO complaint, which was denied since she had not filed within 60 days. She then filed a Congressional complaint. In response, the wing commander (WG/CC) stated her situation was reviewed in line with another EO complaint. However, when she spoke to two witnesses, she was advised they were never contacted for an interview. Her EO complaint was never investigated. She provides letters of support and character statements.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS

The applicant is a currently serving lieutenant colonel (O-5).

The applicant received a referral OPR for the period ending 29 Mar 21. It states she was relieved from command for cause for failure to effectively lead airmen and cultivate a culture of compliance. In her rebuttal response dated 5 May 21, the applicant indicated she did not receive feedback on 1 Mar 21 as noted and addressed the duty and performance factors issues. She also stated the framed allegations were being evaluated by a commander directed investigation (CDI), which was still ongoing and the allegations had not been substantiated. Based on the false and misconstrued information cited, she requested the reviewer non-concur with her rater's assessment. Upon reviewing the applicant's rebuttal comments, the WG/CC upheld the referral OPR.

SAF/IGQ provides the report of investigation (ROI) for CDI Concerning Alleged Failures to Fulfill Commander's and Airmen's Responsibilities dated 3 May 21. On 12 Apr 21, an investigating officer (IO) was appointed to conduct a CDI into allegations of failure to uphold standards and train airmen to execute the mission. Six allegations were investigated. The following allegations pertained to the applicant:

Allegation 1: The applicant, as commander, failed by culpable inefficiency to ensure her unit was trained and developed to execute its primary mission as it was her responsibility to do. **(SUBSTANTIATED).**

Allegation 2: The applicant failed to lead people by cultivating a culture of compliance and accountability and enforcing Air Force standards as it was her responsibility to do. **(SUBSTANTIATED).**

On 24 May 21, the applicant was issued a letter of reprimand (LOR). It stated an investigation disclosed as the squadron commander (SQ/CC) she, by culpable inefficiency, failed to ensure her unit was trained and developed to execute its mission and failed to effectively lead people by cultivating a culture of compliance and accountability and enforcing Air Force standards, as it was her responsibility to do. When questioned about the failures, she claimed she never received feedback despite being provided feedback on a continual basis. The GP/CC stated he was disappointed by her lack of candor regarding feedback and her behavior was not commensurate with a commander's or officer's obligations. On 27 May 21, upon review of her response, the LOR was downgraded to an LOA.

On 6 Jul 21, the applicant filed an EO complaint and requested a waiver to accept the formal EO complaint. On 19 Nov 20, the day after the incident, she confronted the GP/CC through a text message and explained his comment had hurt her. He immediately called and apologized. In Apr 21, she learned of two other incidents. She had planned to file her complaint in Apr 21 but was advised by her ADC to wait until her PCS to avoid reprisal. The applicant in her complaint alleged on 18 Nov 20 the GP/CC made the comment she was only stratified because she was a female and listed witnesses. On 24 Nov 21, the major command (MAJCOM) EO office denied accepting the complaint. In accordance with AFI 36-2710, *Equal Opportunity (EO) Program*, the EO office will not accept a complaint more than 60 calendar days after the alleged offense occurred unless the installation commander approves. As a result of her memorandum, the EO office contacted the applicant's former WG/CC. The WG/CC stated there was not sufficient justification to initiate another CDI.

In response to the applicant's Congressional complaint, the applicant's former WG/CC in a memorandum dated 15 Jun 22 stated the applicant was relieved of command for performance. Upon assuming command on 15 Jun 21, he took responsibility for a CDI into the GP/CC's behavior toward women. The investigation was independently reviewed and the investigation met the standards within applicable instructions. The IO's conclusion was made available to him in Sep 21 and he concurred with the IO's finding the allegations were UNSUBSTANTIATED.

On 5 Dec 22, the ERAB returned the applicant's appeal for removal of her OPR without action. The ERAB determined there was insufficient evidence corroborating a material error or justice.

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

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 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.

DAFI 51-509, *Appointment to and Assumption of Command*, paragraph 14.2. For cause-an officer may be relieved of command for cause, including instances where the superior competent authority has lost confidence in the officer's ability to command due to misconduct, poor judgment, the subordinate's inability to complete assigned duties, the interests of good order and discipline, morale, the good of the organization or other similar reasons.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denial for removal of the LOA. The applicant's commander issued a LOA based on the preponderance of evidence in accordance with DAFI 36-2907, *Adverse Administrative Actions*. In accordance with the National Defense Authorization Act (NDAA), 10 U.S.C. § 615(a)(3), the LOA meets the requirements of adverse information.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 30 Mar 23 for comment (Exhibit E), and the applicant replied on 18 Apr 23. In her response, the applicant highlights there was an error or injustice. As stated in the OPR rebuttal, her adaptive solutions and advocacy for change were disregarded or overruled. However, many of her suggestions were implemented after she was relieved of command. She was also forbidden to provide the full context of the discriminatory situation. It was stated her rebuttal comments could not contain any reflection on character, conduct, integrity or motive of an evaluator unless she could fully substantiate and document them. On 18 May 21, she was advised the GP/CC stated she had three duty days to change her OPR rebuttal. The GP/CC attempted to influence and silence her. She chose not to change her rebuttal. The actions occurred due to the GP/CC's discriminatory nature and comments. She was never provided a feedback session and was removed from command without a complete investigation. Throughout the process, the witnesses were never contacted.

The applicant's complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION

AF/JAJI recommends denial on the basis of any legal error. Proper procedural requirements were complied with in both the OPR and LOA. The record reflects the applicant was afforded due process before the referral OPR became a matter of record. In accordance with DAFI 36-2907, the LOA documented the reasons for the action, the applicant was provided three duty days to respond and submit matters for consideration. Her commander considered her submission and notified her of his decision as to the final disposition and the applicant signed the acknowledgement. The record reflects the applicant was afforded due process with regard to the LOA.

In accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, the applicant has the burden of providing evidence in support of their allegations of an error or injustice. The applicant has offered no evidence to indicate her commander's decisions were a result of discrimination or otherwise an abuse of discretion. While the applicant alleges the actions were motivated by discrimination based upon sex, the records reflect an EO investigation was conducted into allegations the GP/CC and were not substantiated. The investigation and resulting report were evaluated and found legally sufficient by the reviewing staff judge advocate. The applicant has submitted strong character statements attesting to her work ethic and leadership and her record reflects a stellar career until the events that led to her removal command, the referral OPR details the specific reasons as a basis for the actions. The applicant alleges the stated reasons are false. Her interpretation of the facts and circumstances differ from commander's interpretation. Barring the applicant establishing misstatement of a significant hard fact, gross material error of fact or an action contrary to all evidence, AF/JAJI defers to the discretionary judgments and evaluations of the rater, additional rater and reviewer. Under the deferential standard, the applicant's claims are no more than a disagreement with her commander's decisions. Far from being arbitrary or capricious, the commander's conclusions were based on his direct supervision. Further, the referral OPR was reviewed and unchanged by the applicant's additional rater and reviewer. Had either of them disagreed, they had the option to intervene and make their disagreement known. Apparently, they did not.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Aug 23 for comment (Exhibit H). Her complaint was never investigated. She previously stated she did not receive official feedback and her OPR is false. She includes a statement from the GP/CC's secretary validating her statement. Her GP/CC removed her for not enforcing faulty technical orders and maintenance procedures, which shows he twisted the incident against her. They knew with more inspections there would be more failures but the ratio of failures to inspections would remain the same, which they did. However, the data was misconstrued in her OPR and the CDI ROI. All of the actions occurred due to her GP/CC's discriminatory nature and comments.

The applicant provides a statement from the GP/CC's secretary stating she was not allowed to schedule meetings without the GP/CC approval and never scheduled a feedback session of any type for him while he was the GP/CC. After the applicant provided her response to the OPR, the GP/CC asked to find the official feedback form. However, there was no feedback form because it was never conducted.

The applicant's complete response is at Exhibit I.

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. While the Board notes the recommendations of AFPC/DPMSSM and AF/JAJI against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, the Board finds the applicant's rebuttal response to the referral OPR dated 5 May 21, her rebuttal response to the LOA dated 26 May 21 and the letters of support and character statements in her behalf sufficient to warrant removal of the referral OPR for the period ending 29 Mar 21 and the LOA dated 24 May 21. The Board finds that while the allegations the GP/CC discriminated against the applicant were not substantiated, the Board finds sufficient evidence to conclude the applicant was treated unfairly. Therefore, the Board recommends correcting the applicant's records as indicated below.
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.



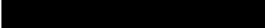
RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. Her AF Form 707, *Officer Performance Report (Lt thru Col)*, for the period of 16 Apr 20 thru 29 Mar 21 be void and removed from her records and replaced with an AF Form 77, *Letter of Evaluation* which states "Not rated for the above period. Evaluation was removed by Order of the SecAF."
- b. Her LOA dated 24 May 21 be removed from her 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-2023-00543 in Executive Session on 3 Oct 23:

 , Panel Chair
 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 6 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: SAF/IGQ provided, CDI ROI, dated 3 May 21 (WITHDRAWN).
- Exhibit D: Advisory Opinion, AFPC/DPMSSM, dated 20 Mar 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Mar 23.
- Exhibit F: Applicant's Response, w/atchs, dated 18 Apr 23.
- Exhibit G: Advisory Opinion, AF/JAJI, dated 14 Jul 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Aug 23.
- Exhibit I: Applicant's Response, w/atchs, dated 22 Aug 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.

9/30/2024

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