



**CUI//SP-MIL/SP-PRVCY**  
**UNITED STATES AIR FORCE**  
**BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00606

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

1. Her nonjudicial punishment (NJP)/Article 15 be expunged/removed from her Officer Selection Record (OSR) and Master Personnel Records Group (MPerRGp) and her Unfavorable Information File (UIF) be removed from her record.
2. She be reimbursed in the amount of \$1500 pay per month for two months.
3. Her 2021 – 2022 Referral Officer Performance Report (OPR) be removed from her record.
4. Removal of a Promotion Propriety Action (PPA) and the reinstatement on the *Work-Product* lieutenant colonel (O-5) promotion list with the corresponding original projected date of promotion and with retroactive entitlement to all pay and benefits.

**APPLICANT'S CONTENTIONS**

In a seven page legal brief, to include a 27 page attachment containing supplemental materials, the applicant through counsel contends that the applicant was a victim of a miscarriage of justice that was rife with errors. It started when she was targeted by her squadron commander, who is responsible for sexist, inappropriate conduct for which they were relieved from command for their tyrannical behavior, who's hostility and lack of support for her advocacy for diversity, inclusion, and improvement of women's services through the Department of the Air Force (DAF) Women's Initiative Team caused her to seek an increase in her antidepressant medication, which led to the allegations in the NJP. The flight doctor changed her antidepressant medication from 30mg of Citalopram to 30mg of Escitalopram, which she later discovered was well above the maximum limits (20 mg of Escitalopram) on the approved Aerospace Medicine Waiver Guide and medication list. She was not informed that this different medication could have a significant and substantial impact on her cognitive functions and her ability to make good choices, nor was she warned about how her actions could be affected by consuming alcohol in any amount. Two weeks after being prescribed the wrong medication, the flight doctor notified her of the error but instructed her to stay with the change in medication as it was a "sister" drug. However, she later found out that these two are very different medications and have completely opposite effects of serotonin absorption. Citalopram boosts serotonin production while Escitalopram blocks serotonin absorption. Serotonin is what regulates behavioral mannerisms and thus, while on Escitalopram her brain was not receiving enough serotonin.

When a person consumes an intoxicant knowingly, they are rightly responsible for their actions. However, as in her case, when a person ingests an intoxicant unknowingly and without informed consent, they are not responsible for their actions which means she was not legally responsible for her actions as they were the result of involuntary intoxication. This is collaborated by an expert

**AFBCMR Docket Number BC-2023-00606**  
**CUI//SP-MIL/SP-PRVCY**

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**CUI//SP-MIL/SP-PRVCY**

medical opinion who states that her being under the influence of this medication means she was not legally responsible for her behavior.

She did not commit the allegations outlined in her NJP, which was based on an incomplete and farcical investigation as her conduct did not meet the elements for which she was deemed guilty, and her commander did not receive correct advice concerning the applicable standards nor was her commander fairly advised of the legal defense of involuntary intoxication that undermines the wrongfulness component of each allegation:

First, she did not sexually harass anyone as sexual harassment must be severe and persuasive. That means that it must occur on a repeated basis and all the allegations surround one event.

Second, the complaints lack credibility as the accounts by junior members are at best exaggerations and at worst fabrications made up during a “roll call” several months after the alleged incident.

Third, her conduct was not wrongful because of the defense of involuntary intoxication. In fact, at the time of the NJP action, she was still detoxing from the potent psychotropic medication which she was wrongly prescribed.

Lastly, the legal advice that she received at the time of her NJP fell below standards as her legal counsel did not understand the legal effect of her being prescribed the wrong psychoactive medication, therefore she lacked proper advice in either accepting the NJP action or demanding trial by court-martial. When she raised this issue as part of her NJP set-aside request, her commander did not consider the merits of her arguments, instead her commander decided to deny her request based solely on the timeliness of her request.

She continues to demonstrate excellence and leadership that the NJP and referral OPR misrepresent. In fact, since the NJP, the Air Force saw fit to keep her promotable status by only delaying her promotion to lieutenant colonel by six months.

The applicant’s complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is an Air Force major (O-4).

On 10 Dec 21, the applicant was notified of her wing commander’s intent to impose NJP on her pursuant to Article 15, Uniform Code of Military Justice (UCMJ) for the following violations:

a. Article 92, *Failure to obey order or regulation*. Specifically, violation of DAFI 36-2710, *Equal Opportunity Program*, 10 Jun 20, paragraph 2.4.1 whereas between on or about 27 Aug 21 and on or about 28 Aug 21, she negligently failed to refrain from sexually harassing a male captain by asking about his sex life and making inappropriate sexual comment to him, to wit: “You do butt stuff”, or words to that effect, and poking his buttocks with her finger.

b. Article 128, *Assault*. Specifically, between on or about 10 Aug 21 and on or about 27 Aug 21, unlawfully touch a staff sergeant on the back and buttocks with her hand.

**CUI//SP-MIL/SP-PRVCY**

c. Article 133, *Conduct unbecoming an officer*. Specifically, between on or about 27 Aug 21 and on or about 28 Aug 21, lift up the shirt of a female captain, thereby exposing her bra and breasts and placing her face on the captain's breasts.

d. Article 133, *Conduct unbecoming an officer*. Specifically, between or about 27 Aug 21 and on or about 29 Aug 21, comment on the breast size of a female senior airman and touched her breast with her hand.

On 23 Dec 21, the applicant indicated that she had consulted a lawyer, waived her right to court-martial and accepted nonjudicial proceedings, attached a written presentation, and did not request a personal appearance before the wing commander.

On 10 Jan 22, the wing commander upon considering the applicant's response, determined that she had committed one or more of the offenses alleged (Article 92 and two violations of Article 133) but did not commit the alleged Article 128 violation. For these violations the wing commander imposed the punishment of a reprimand and the forfeiture of \$1500 pay per month for two months.

On 19 Jan 22, the applicant appealed the NJP action which was subsequently denied by her wing commander and by the Appellate Authority, 5<sup>th</sup> Air Force Commander (5 AF/CC) and on 16 Feb 22 it was determined that the action would be filed in her OSR.

On 2 May 22, according to AF Form 707, *Officer Performance Report (Lt thru Col)*, for the reporting period of 2 Jan 21 – 1 Jan 22, she received a Referral Report. Section IX, *Performance Factors, Leadership Skills and Professional Qualities*, were marked as "Does Not Meet Standards". Additionally, Section XI, *Referral Report*, reflects the following "In August 2021, while on a night club dance floor, you unlawfully touched two squadron members on their breasts. On the same evening, you sexually harassed and touched another squadron member on his buttocks. On an additional occasion, you unlawfully touched a squadron member's collar and shoulders."

On 24 May 22, according to AF Form 4363, *Record of Promotion Proprietary Action*, document provided by the applicant, she was notified of her squadron commander's recommendation to have her named removed from the promotion list. On the same day, she acknowledged receipt and indicated that she had consulted a lawyer and has submitted a written statement.

On 22 Jun 22, according to the memorandum addressed to her wing commander, *Set Aside of Nonjudicial Punishment*, provided by the applicant, she requested that the entire nonjudicial punishment be set aside.

On 29 Aug 22, according to AF Form 4363, after a legal sufficiency review by the wing staff judge advocate, the wing commander approved a promotion delay until 1 Feb 23 which, on 22 Sep 22, was acknowledged by the applicant.

On 20 Jan 23, according to AF Form 4364, *Record of Promotion Delay Resolution*, the applicant was notified of her SQ/CC's recommendation that her pending promotion delay be resolved and her name be removed from the promotion list.

On 25 Oct 23, according to AF Form 4364, the Judge Advocate General's (AF/JA) legal review, followed by the General Counsel's legal review on 7 Nov 23, found the record legally sufficient.

**CUI//SP-MIL/SP-PRVCY**

On 18 Dec 23, according to AF Form 4364, the Secretary of the Air Force approved the applicant's removal from the promotion list.

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

**APPLICABLE AUTHORITY/GUIDANCE**

On 26 February 2021, the Secretary of the Air Force ordered a policy change via a Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03 on Adverse Information for Total Force Officer Selection Boards to comply with Section 502 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020, signed on 20 December 2019, as codified in title 10 United States Code, section 615(a)(3).

The new law, DoD policy, and subsequent Air Force policy require all adverse information to be filed in the officer's master personnel records group and Officer's Selection Record for consideration by both regular and reserve promotion selection, special selection, federal recognition, and selective continuation boards to the grade of O-4 and above, to include promotion processes to the grade of O-3 that involve adverse information that received significant media attention or is of interest to the Senate Armed Services Committee. These changes came into effect for all promotion boards convening on or after 1 Mar 2020 and include historic adverse information previously issued on or after 1 Jan 12 and Article 15s and approved court martial findings dated prior to 1 Jan 12. It further removed the authority for Wing commanders, delta commanders, or issuing authorities to direct removal of derogatory data from the OSR as previously permissible in AFI 36-2907, *Adverse Administrative Actions*, paragraph 3.4.3.1, and AFI 36-2608, *Military Personnel Records*, paragraphs 7.10 through 7.12 (and their subparagraphs), 8.3.8, and 8.3.15 (and its subparagraphs). Adverse information that requires mandatory filing in the Officer Selection Record (OSR) and the Master Personnel Records Group (MPerRGp) includes, but is not limited to:

1. Any substantiated adverse findings or conclusions from an officially documented investigation or inquiry, regardless of whether command action was taken as a result.
2. Approved court-martial findings of guilt (Court-martial Orders).
3. Non-judicial punishment pursuant to Article 15, Uniform Code of Military Justice.
4. Letters of Reprimand.
5. Letters of Admonishment.
6. Notices of Relief of Command (for cause).
7. Letters of Counseling related to a substantiated adverse finding or conclusion from an officially documented investigation or inquiry.

Moreover, the DAFPM states that "waivers to this policy are not permitted" and all adverse information as defined by the policy will be permanently placed in the MPerRGp. Except for the set aside of a court-martial or nonjudicial punishment action, removal of adverse information from the MPerRGp may only be directed pursuant to an Air Force Board for Correction of Military Records (AFBCMR) recommendation.

As such the AFBCMR is now the sole removal authority for adverse actions. This is not a different type of review for the AFBCMR. Rather, it falls under the Board's existing review authority for corrections resulting from error or injustice.

**AIR FORCE EVALUATION**

AF/JA recommends denying the applicant's request. After a thorough review of the applicant's submission, to include her request to set aside the NJP, her response to the Referral OPR, and her response to the Notification of Intent to Remove from the Promotion List, there is no evidence of an error or injustice in either the NJP or the OPR as both command actions, to include denial of her appeals, were based on a preponderance of the evidence and thus, were legally sufficient. Furthermore, she was afforded the right to counsel prior to the NJP, and voluntarily waived her right to refuse Article 15 proceedings and demand trial by court-martial.

She claims that she did not commit the misconduct and contends that the underlying Air Force Office of Special Investigations (AFOSI) investigation was incomplete, farcical, and that the witness statements lacked credibility. However, AF/JA finds these claims to be insufficient to overcome the NJP. After thoroughly reviewing all the facts presented, the wing commander concluded, based on the preponderance of the evidence, that there was proof a misconduct.

The applicant makes the following claims:

1. Claim of Factual Innocence. She is innocent because she did not make the statements or commit the acts of which she was accused.

AF/JA Response: Although the applicant contends that the AFOSI investigation was incomplete and farcical, they find these claims to be insufficient to overcome the NJP. The wing commander, after thoroughly reviewing all the facts, concluded by a preponderance of the evidence that there was proof of misconduct. Therefore, her claims of factual innocence are no more than a "mere disagreement" with the NJP authority of how to interpret evidence. Findings of fact can be evaluated for abuse of discretion. According to the United States Court of Appeals for the Armed Forces, "the abuse of discretion is a strict one calling for more than a mere difference of opinion." It occurs when findings of fact are "clearly erroneous" or if a decision is "influenced by an erroneous view of the law." Additionally, a finding of fact is considered clearly erroneous if "there is no evidence to support the finding." The NJP authority had ample evidence, in the form of witness testimony and AFOSI investigative findings to support his findings which were clearly not erroneous or abuse of discretion.

2. Claim of Targeting by her Unit Commander. She is innocent because she was targeted by her commander who caused her to seek an increase in her antidepression medication, which led to the allegations in the NJP.

AF/JA Response: Aside from her allegations, she has provided no evidence of her unit commander's targeting, sexism, or tyrannical behavior against her. Even if her unit commander had displayed such behavior—and they emphasize that there is no evidence—there is no evidence to show causation between the unit commander's alleged misconduct and her own misconduct, or between her unit commander's alleged misconduct and the wing commander's command action.

3. Claim of Inadequate Representation by Defense Counsel. She is innocent as she is the victim of "involuntary intoxication" resulting from her change in medication.

AF/JA Response: There is no evidence of inadequate representation. In order to substantiate an allegation of inadequate representation, there would need to be evidence that she presented a factual basis of medication-based altered behavior to her defense counsel who then failed to inform her of the defense of involuntary intoxication. Further, based upon over two decades of military

justice experience, the advisory writer advises that the defense of involuntary intoxication is common knowledge to military defense attorneys. As such, they find her claim to be improbable.

4. Claim of Involuntary Intoxication. She is innocent because even if she did make the statements or commit the underlying acts in the NJP, she was “involuntarily intoxicated” by the flight doctor who changed her medication and caused her to be manic and out of character.

AF/JA Response: She never alleged any prescription drug-based mania until months after the NJP. In her response to the NJP, she challenged the accuracy of the victims’ statements, recollections, and maintained that only she recalled the events accurately. Even after she started using the involuntary intoxication defense, she stated, “Even in my altered state, I know these junior members were not forthcoming with the events from that night.” Hence, she attempts to claim that her recollections of the events were clear enough to know that the victims were not forthcoming, yet she never recalled exhibiting manic behavior until months after the NJP. While she did provide an affidavit from Dr R and a memorandum from Dr H, they are insufficient to support her claim of involuntary intoxication and AF/JA concludes that neither are of evidentiary value as neither can state that the applicant was suffering from mania whether at the time of the misconduct or ever. While they do not challenge Dr R’s medical expertise, they note that he is not a treating medical provider, as he never examined the applicant, and is a privately hired expert consultant to review documents for the applicant’s defense.

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 28 Mar 23 for comment (Exhibit D), and the applicant replied on 15 May 23. In her response, to include attachments containing what she claims consist of both new and additional supplemental evidence, she refutes AF/JA’s advisory claim-by-claim:

1. Factual Innocence. States that there was no investigation and attached her FOIA request that she contends proves there was no formal, complete AFOSI investigation and no Report of Investigation (ROI).

2. Targeting. Contends that her requested increase in her antidepressant medication was due to the toxic and hostile work environment created by her unit commander as evidenced by the Command Directed Investigation (CDI) which she provides excerpts as evidence.

3. Inadequate Representation. Contends that she advised her counsel of her being prescribed the wrong medication during her NJP. However, her counsel did not comprehend innocent ingestion and in the NJP response discussed her original prescribed medication, and not medication, at three times the dosage, that she was incorrectly prescribed.

4. Involuntary Intoxication. Contends caused by the negligence of her flight doctor when he incorrectly changed her psychotropic medication to another medication at a dosage that was not authorized for her mood disorder waiver.

She concludes by stating that by the preponderance of the evidence, she has submitted proof that USAF regulations for medications were violated. She was suffering from a toxic work environment that targeted female leaders and had requested to be transferred from the unit; she had filed Equal Opportunity complaints; she had passive suicidal ideations while on Lexapro and reached out to Military One Source multiple times to resolve; she had been grounded due to her

**CUI//SP-MIL/SP-PRVCY**

manic behavioral changes; and finally, she suffered from over-medication of psychotropic drugs at the hands of a USAF medical team which has led to treatment for mania and emotional lability. She was impaired, and has suffered greatly due to the medication error and hostile environment and requests that the Board apply the Wilkie Memo and grant her request for relief and remove this error and injustice from her record.

The applicant's complete response is at Exhibit E.

**ADDITIONAL AIR FORCE EVALUATION**

SAF/MRBD Psychiatric Consultant finds insufficient evidence to warrant the desired change of the record. According to the applicant's service treatment record, in May 18 she was cleared by mental health (MH) and did not have a MH diagnosis. However, sometime in 2018 she had a baby and the record noted that during the pregnancy she had a depressed mood that was controlled with Celexa. Although it is not clear when she was first prescribed Celexa, the record shows that on 8 Oct 19, she received a diagnosis of "Mood Disorder Due to Known Physiological Condition with Depressive Features (depressed mood while pregnant controlled on Celexa)."

On 9 Mar 20, during a follow-up medical visit for related to right hip and left ankle pain, she was noted to be tearful and very emotional, and she reported that she did not feel that her Celexa, she was taking 10mg daily, had been working to control her mood since the previous Thanksgiving. The following day, it was noted that Family Health had reviewed all her medical records related to mental health and there was no history of MH or treatment. The reviewer, a Licensed Clinical Social Worker (LCSW), opined that the applicant had no disqualifying conditions and no apparent MH-related risks to safety or mission accomplishment. She again visited the flight medicine clinic on 20 Mar 20, where she reported her mood has been worsening for the past six months and the provider increased her Celexa prescription from 10mg daily to 20mg daily.

On 1 Apr 20, the applicant had an appointment with the LCSW who recorded the chief complaint of depressive symptoms, occupational stressors, and family stressors. The applicant reported that the depressive symptoms began with the birth of her child in 2016 and arriving at **Work-Product** AFB in 2017. She reported occupational stressors and said she was struggling with an overall toxic work environment and that her deployment tasking triggered her need to increase her medication. The report noted that although the criteria for "Major Depressive Disorder" was not met, she was diagnosed with "Other Specified Depressive Disorder, with Anxious Distress, Mild" and talk therapy was recommended.

On 7 Apr 20, at the therapy visit she voiced extreme marital dissatisfaction and ongoing struggles with parenting and declined medication management service through **Work-Pro...** AFB psychiatry.

On 22 Apr 20, the flight surgeon note recorded: "Patient currently endorses reaching her functional baseline, previous sx[symptoms] resolved since increase Celexa from 10mg to 20mg QD." The 6 May 20 note indicated that the applicant was still on no-deployment's and reported that "Things have improved significantly," a sign to her that her medication had taken effect. Additionally, the record showed that she had participated in five (5) talk therapy sessions between 7 Apr 20 and 31 Aug 20, at which time the LCSW opined that the condition was in remission and treatment was terminated and she was judged deployment capable.

Her medical record related to her mental health was "silent" until she had an appointment at the flight clinic on 12 Jul 21, with her chief complaint being of experiencing some increase in negative thoughts, but no suicidal or homicidal idealization. She was still taking 20mg Celexa daily. The flight surgeon diagnosed her with Adjustment Disorder with mild depressive symptoms related to

**CUI//SP-MIL/SP-PRVCY**

workplace and relationship challenges. While the recorded note states that she was still on a 20mg daily dosage of Celexa, the physician note shows that her dosage had increased from 20mg to 30mg. Additionally, at this visit the flight surgeon prescribed Ecitalopram (Lexapro) 20mg tablets with instructions to take one and one-half tablet daily.

On 2 Aug 21, approximately three weeks later after starting Lexapro, during a follow-up visit she stated that she had no side effects from the medication and was feeling in her usual state of good health and that she was more motivated, was working out more, and beginning to bond better with her daughter. Additionally, Screening Questionnaires (PHQ-9 and GAD 7) indicated resolution of her depressive and anxious symptoms since starting Lexapro. She was again seen by the flight surgeon, on 1 Sep 21, four days after the alleged incident and her mood and affect were recorded as normal as there was no mention of a disturbance in mood, or any incident that she thought of as unusual or troubling. The medical provider discontinued the medication order for Celexa 20mg tablets, thus it is not clear if the applicant had continued to use the Celexa after starting Lexapro. Regardless, there was no report to indicate that there had been an adverse reaction to medications. Approximately six weeks later, on 19 Oct 21, she returned again to the flight clinic in order to complete a Flight Physical Health Assessment (PHA) and stated that she had no additional concerns beyond completing the PHA. While she reported work environment stressors, denied impairment in her ability to complete her duties and stated that she was seeking personal counseling services she denied having any MH concerns and was cleared for duty.

On 27 Oct 21, she was again seen at the flight clinic which recorded a report of mild depressive and moderated anxious symptoms. The worsening of the anxious symptoms was interpreted as feeling increased anger in the context of marital discord but that she did not feel it was interfering with her ability to conduct her air crew duties. The flight surgeon indicated the plan to switch her back to Celexa 30 mg, and discontinue the Lexapro, “which she feels is worse on: member cleared, told to stop Lexapro while taking Celexa”. However, there was no mention of negative physiologic reaction to the Lexapro that would suggest possible toxicity nor was there any mention of inappropriate behaviors or symptoms suggestive of mania and it must be noted that this visit to the flight surgeon’s office occurred one day after the alleged incident in Japan.

On 10 Nov 21, treatment notes reported that she was doing well after the change from Lexapro back to Celexa and had started therapy sessions with Military One Source. The provider opined that her adjustment disorder was in remission. The following month, she was seen for a post-operative follow-up related to a skin-tag excision and discussed multiple interpersonal or leadership concerns in the workplace. She also stated that she felt she was being persecuted by her commander and stated that she had recently been informed that an Article 15 action was in progress and was feeling stressed about this. There was no mention that her medication was the reason for the Article 15.

There was no mention of medication toxicity, overdose, or medication induced mood change/mania or hypomania at any time during her treatment prior to the nonjudicial punishment. The record demonstrated the absence of report or complaint of manic-like symptoms and absence of clinical observation of manic-like behavior. The record shows that Lexapro was discontinued at the end of Oct 21 after she reported worsening of depressive and anxious symptoms while taking Lexapro. The worsening of anxious symptoms was interpreted as feeling increased anger in the context of marital discord and frustration because she felt that marriage counseling would not be productive for her situation. There was no mention of mood swings or changes in behavior.

The typical response to manic-like symptoms or behavior, is to seek help by contacting a medical provider. There is no evidence in the records that the applicant sought assistance via the emergency room or with her medical provider at any time proximate to either of the alleged



**CUI//SP-MIL/SP-PRVCY**

incidents. Clearly, there was opportunity to seek assistance as she had visited the flight surgeon, the prescriber, four days after the first incident and the day following the second incident.

Based on the above, there is no objective evidence to support the applicant's claim that she experienced manic-like behavior as a consequence of the Lexapro medication. Of note, antidepressant induced mania in patients with depressive symptoms is rare, and in the cases where such occurred, a Bipolar Depression was diagnosed. In this case, manic symptoms were not documented in the treatment records, nor did the applicant describe any additional behaviors or mood changes in her claim that would qualify as a manic or even hypomanic episode. Without a psychiatric evaluation at the time of the alleged episode, there is no clinical evidence that the applicant suffered medication induced mania or any adverse effects. Lexapro intoxication, when it occurs, is in the context of Serotonin Syndrome as the result either the medication is taken in an intentional overdose or in combination with other anti-depressants, such as MAO inhibitors, causing acute intoxication. Lexapro toxicity is a physiological response, not behavioral. It is a medical emergency. There was no evidence to support that medication induced negative behaviors caused manic-like symptoms or had a negative impact on functioning, regardless of the dosage.

Unless additional clinical information, including documentation from her military medical treatment provider, of a history of manic-like symptoms or reported symptoms documented by a MH provider that represents a change in mood that occurred proximate to the time of the incidents, the psychiatric advisor does not support the applicant's claim that she is a victim of either an error or injustice.

The complete advisory is at Exhibit F.

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

The Board sent a copy of the advisory opinion to the applicant on 19 Jul 23 for comment (Exhibit G), and the applicant replied on 16 Aug 23. In her response, she contended the medical review failed to state the irrefutable fact that the Air Force flight surgeon incorrectly prescribed an excessive amount of the wrong medication; three times more potent than the former prescribed dosage and the prescribed amount was not waivable IAW the Aerospace Medicine Waiver Guide. This incorrect dosage is the prima facie cause of her innocent ingestion. To be clear, the medication error - the incorrect prescribed dosage – is not up for debate. Additionally, the medical review relies solely on selective portions of her medical record rather than the whole case, as required by the Wilkie Memo. The review contains fundamental errors in citing her medical record and shows an outright bias in its phraseology towards her case and it blatantly ignored key facts to include the wrong dosage of the prescribed psychotropic drug and its subsequent adverse effects. The refusal to address the impact of the incorrect psychotropic medication, along with leadership's disregard of the law by refusing to investigate her case IAW DAFI 36-2710 and 10 U.S.C. § 1561, compounds the injustice that she is enduring.

She expresses sincere remorse for her conduct while on the incorrect medication and wishes that she had recognized the issue earlier. She was attempting to do her best in an extremely challenging circumstance that was further exacerbated by the medication's adverse effects. She stresses that there is no element of wrongdoing, as her actions were a consequence of innocent ingestion. She urges the Board to apply the parameters of the Wilkie Memo and she seeks complete relief to have this error and injustice removed from her record.

The applicant's complete response is at Exhibit H.

## **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 rationales and recommendations of AF/JA and SAF/MRBD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Although the applicant contends that the AFOSI investigation was incomplete and farcical, the Board finds this claim to be insufficient to overcome the NJP action. Instead, the wing commander, after reviewing all the facts, had ample evidence to support their findings that there was proof of misconduct which was clearly not erroneous or an abuse of discretion on their part. As such, the Board determines that there is no evidence of an error or injustice in either the NJP or the OPR, as both actions were based on the preponderance of the evidence and legally sufficient. Furthermore, she was afforded the right to counsel prior to the NJP, and voluntarily waived her right to refuse Article 15 proceedings and demand trial by court-martial. While the applicant further contends a toxic work environment created by her unit commander was the causation for the increase in the antidepressant medication, these appear to be primarily allegations made by the applicant and fail to show that she did not commit the misconduct found by the NJP authority. The applicant further contends she received inadequate representation by defense counsel during the NJP action as her counsel failed to comprehend that due to being overprescribed medication, she was a victim of innocent ingestions. However, the Board disagrees. The defense of involuntary intoxication is common knowledge to military defense counsels and there is no evidence that the applicant provided a factual basis of medication altered behavior to her counsel who then failed to inform her of the defense of involuntary intoxication. Thus, the Board finds that there is no evidence that the applicant's defense counsel provided inadequate legal representation. Finally, the applicant concedes that even if she did make the statements and committed the underlying acts in the NJP, her out of character, manic behavior was due to involuntary intoxication as the direct result of being overmedicated. In this regard, the Board notes that there was no mention of medication toxicity, overdose or medication induced mood/change mania prior to the NJP action and her medical record is absent any report or complaint of manic-like symptoms and clinical observation of manic-like behavior. As such, the Board finds the evidence insufficient to support her claim that her medication, regardless of the prescribed dosage, induced negative behaviors, caused manic-like symptoms or had a negative impact on functioning. Finally, while the applicant requests that the Board apply the parameters of the Wilkie Memo and grant her relief, the Board determines that the Wilkie Memo does not apply in this case. The Board notes that the scope of the Wilkie Memo is to ensure fundamental fairness; however, in the applicant's case, the Board does not find that the applicant was mistreated or that the punishment for her actions was unduly harsh or excessive. Furthermore, the Board finds that the NJP action was within the wing commander's authority and notes that on 18 Dec 23 the Secretary of the Air Force validated the decision by approving the removal of the applicant from the lieutenant colonel promotion list. 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-2023-00606 in Executive Session on 20 Dec 23 and 7 Feb 24:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 28 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JA, dated 25 Mar 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Mar 23.
- Exhibit E: Applicant’s Response, w/atchs, dated 15 May 23.
- Exhibit F: Additional Advisory Opinion, SAF/MRBD, 18 Jul 23.
- Exhibit G: Additional Notification of Advisory, dated 19 Jul 23.
- Exhibit H: Applicant’s Response, w/atchs, dated 16 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.

5/10/2024

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*Work-Product*  
 Board Operations Manager, AFBCMR  
 Signed by: USAF