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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00632

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His letter of reprimand (LOR) dated 23 May 22 be removed from his records, to include his officer selection record (OSR).
2. His unfavorable information file (UIF) be removed from his records.
3. His referral officer performance report (OPR) for the reporting period ending 6 Jun 22 be removed from his records.

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends the LOR was issued based on a commander directed investigation (CDI) that improperly concluded he attempted to develop a personal relationship with a female enlisted student. The LOR failed to comport with the evidentiary standard in DAFI 36-2907, *Adverse Administrative Actions*. The LOR was also an abuse of discretion set forth in AFI 1-1, *Air Force Standards*, and AFI 1-2, *Commanders Responsibilities*. The discovery of new exonerating information further highlights the injustice. The allegations never took place. However, the LOR was upheld even after the complaining witness denied the allegation.

On 19 Nov 21, he attended a unit work gathering where the entire unit was present, to include students and co-workers. One of his students drank too much and he requested another airman walk her home. He then texted them to ensure she made it home safely. Later, [redacted] claimed to have seen him put his arm around a female enlisted student and attempted to follow her to her dorm. The LOR stated he tried to develop a personal relationship with a student, which was reported to the commander by a staff sergeant (E-5). This is false. It was also reported he walked towards the dorm with [redacted] but at no point did he go to the dorms with her. His counsel reached out to [redacted], the alleged victim. On 24 Jun 22, she provided a written statement attesting she saw him as a mentor and the only type of relationship they had was that of an instructor and student, and that there was no inappropriate behavior between them. The CDI was initiated six months after the event and he was issued an LOR, which he provided a response to explain the situation once more.

Per DAFI 36-2907, in order to uphold the LOR, the evidence would need to be by a preponderance of the evidence standard. The evidentiary standard was not reached and he was not afforded due process. Countless individuals provided statements attesting to his professional behavior and how the incident was improperly handled. In light of the denial by the alleged victim and the lack of supporting evidence, the LOR and subsequent administrative actions should never occurred.

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The LOR and referral OPR led to a “Do Not Promote” Promotion Recommendation Form (PRF). Prior to these actions, he was well positioned for promotion. The year prior to the event, he was selected as the instructor of the year and received high praises from his previous commanders.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a captain (O-3) in the Air Force.

SAF/IG provides Report of Investigation (ROI) concerning the applicant’s inappropriate comments and conduct dated 15 Mar 22. An investigating officer (IO) was appointed on 30 Nov 21. The ROI includes the following allegations of violations of a lawful general regulation, AFI 36-2909_AETC SUP, *Air Force Professional Relationships and Conduct*:

Allegation 1. The applicant between 1 Sep 21 and 31 Oct 21, unlawfully touched staff sergeant [redacted], a student, on the leg. **(UNSUBSTANTIATED)**.

Allegation 2. The applicant between 1 Oct 21 and 23 Nov 21, attempted to develop a personal relationship with staff sergeant [redacted], a student. **(UNSUBSTANTIATED)**.

Allegation 3. The applicant between 1 Oct 21 and 23 Nov 21, on diverse occasions asked staff sergeant [redacted], a student, to exercise with him. **(UNSUBSTANTIATED)**.

Allegation 4. The applicant between 1 Oct 21 and 23 Nov 21, attempted to develop a personal relationship with airman first class [redacted], a student. **(SUBSTANTIATED)**. The preponderance of evidence showed the applicant attempted to develop a personal relationship with [redacted] and created the perception he and [redacted] had far more than a professional relationship. Additionally, he allowed his behavior to show a lack of respect to good order and discipline when he left the recognition night event with [redacted] and caused a noncommissioned officer (NCO) and a company grade officer (CGO) to step in to ensure they did not leave together.

Allegation 5. The applicant between 1 Oct 21 and 23 Nov 21 wrongfully fraternized with staff sergeant [redacted], a student. **(UNSUBSTANTIATED)**.

Allegation 6. The applicant between 1 Apr 21 and 30 Jun 21, knowingly fraternized with staff sergeant [redacted] an enlisted person, on terms of military equality, and that said conduct was prejudice to good order and discipline. The applicant invited her to his residence to consume alcohol. **(UNSUBSTANTIATED)**.

Allegation 7. The applicant between 1 Oct 21 and 23 Nov 21, knowingly fraternized with staff sergeant [redacted], an enlisted person when he asked her to exercise with him. **(UNSUBSTANTIATED)**.

On 23 May 22, the applicant received a LOR. The LOR stated a CDI dated 15 Mar 22, initiated on 30 Nov 21, concluded he attempted to develop a personal relationship with an enlisted student. Specifically, during a recognition night event in Nov 21, he put his arm around a female enlisted student, began walking her towards her dormitory when she attempted to leave the event and text messaged her after the night was over to ask if she was okay and if she made it back to her dormitory safely. His conduct was observed by others in attendance and got to a point where

another captain and the enlisted class leader felt they needed to step into in order to remove the student from the situation. Because he attempted to develop a personal relationship with a student, he violated Article 92, Uniform Code of Military Justice (UCMJ) as stated in DAFI 36-2909_AETCSUP.

In a response dated 25 May 22, he stated he did not commit the offense. During the event he spoke to many students about various topics. It appeared there may have been a perception he had too much attention focused on one female student. The perception is completely misplaced. He perhaps spent more time talking with her but it was not to form a personal relationship. At the time, he was unaware such negative perceptions were being formed by his actions. The allegation he texted her at the end of the night is misleading. He recalls asking the alleged victim to walk home another enlisted student back to the dorms who had too much to drink and had trouble walking. He never left the building with the alleged victim. The allegation should not have been substantiated. He understands perceptions have a significant impact even though perception is not proof he committed the offense.

The applicant received a referral OPR for the period ending 6 Jun 22. The OPR stated he attempted to engage in an unprofessional relationship with a student and received a LOR. The OPR was finalized on 14 Oct 22.

Counsel provides a victim statement dated 24 Jun 22. She states on 13 Jun 22, she was contacted by the applicant's area defense counsel (ADC). She was asked questions regarding the night of the allegation. The ADC provided an overview of the allegations and the potential the applicant could face involuntary separation proceedings based on the allegation in which her name appeared. While she did not agree with the applicant placing his arm on her shoulder, it did not traumatize her or have any lasting impact. She did not think he was trying to form any type of personal relationship with her by placing his arm on her shoulder. During the course, she felt comfortable with her instructors, especially the applicant who she saw as a mentor. She and the applicant never made it out of the door as [redacted] called her over to see if she felt uncomfortable. Upon arriving home, she received a single text from the applicant and did not respond. This was the only time the applicant attempted to contact her. She believes the applicant wanted to ensure she made it home safely since she did have alcohol at the event. She understood the allegation had been substantiated. She believed he should be retained in the Air Force. His actions had no negative impact on her and she considered him a good instructor and mentor. She stated she had not had any contact with the applicant since the night in question.

The military personnel data system (MilPDS) reflects the applicant has one promotion deferral for promotion to the rank of major (O-4).

The MilPDS shows the applicant no longer has a UIF.

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

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, 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 officer selection record (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.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denial. The applicant’s commander issued a LOR based on the preponderance of evidence per DAFI 36-2907. The LOR dated 23 May 22 met the criteria of adverse information per 10 U.S.C. § 615(a) and DAFI 36-2907.

The complete advisory opinion is at Exhibit D.

AF/JAJI recommends denial for removal of the LOR and any record of relief from command. There is insufficient evidence to demonstrate a legal or material error or injustice.

The advisory will only address the substantiated allegation leading to the applicant receiving an LOR. The CDI was intended to investigate events surrounding a recognition night in Nov 21, which the applicant put his arm around a female enlisted student and began walking with her towards her dormitory when she attempted to leave the event. It also alleged he sent her a text message after the night was over to ask if she had made it back to her dorm safely. After a thorough investigation, the IO concluded by a preponderance of the evidence, the applicant did attempt to develop a personal relationship with a student. According to the airman first class, he did put his arm around her and the action made her feel uncomfortable. This was witnessed by others and resulted in another airman stepping in. Furthermore, other witnesses revealed the applicant was seen waiting for her to leave the event and aborted his first departure because she stayed around as well. Several witnesses stepped in and expressed concern about the applicant’s behavior. On 23 May 22, he received a LOR.

The applicant alleges the CDI ROI improperly concluded he attempted to form a personal relationship with a student and the LOR did not comport with the evidentiary standards set forth in DAFI 36-2907. Further, he claims the LOR was an abuse of discretion. The facts do not support a finding of an abuse of discretion. Under the deferential standard, the applicant’s claims are no more than a disagreement with the interpretation of the evidence and his commander had ample evidence to support his actions. Far from being arbitrary or capricious, his commander’s conclusions were based on many witness statements. He concluded a preponderance of the evidence demonstrated the applicant committed the misconduct and the arguments are contrary to be compelling. There is no evidence to show an abuse of discretion in the decisions. The proper procedures were followed and there was no abuse of discretion.

The applicant in his AFBCMR application includes a new memorandum from the airman first class, in which she states she felt comfortable with the applicant and did not believe he was trying to form any type of personal relationship by texting her or putting his arm on her shoulders. The memorandum is somewhat contradictory to the statement she provided during the CDI.

DAFI 36-2603, *Air Force Board for Correction of Military Records*, states the applicant has the burden of providing evidence in support of their allegation. The applicant has offered no such evidence to indicate his commander's decision to maintain the LOR was arbitrary or capricious. The standard of proof is a "preponderance of evidence." Further, per DAFI 36-2907, when an officer is issued an LOR and it is upheld, a UIF is mandatory. Therefore, the LOR was within the commander's discretion and the mandatory UIF, OSR entry and the referral OPR were natural and appropriate consequences of the LOR.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 12 Jun 23 for comment (Exhibit F), and the applicant replied on 7 Jul 23. Counsel contends the basis of the LOR is illogical and uncorroborated. The alleged individual he was accused of attempting to have a personal relationship with denies the accusation.

All allegations except the allegation involving [redacted], a student were unsubstantiated. While the advisory opinion notes the contradictory statements of [redacted], AF/JAJI fails to articulate the LOR is directly attributed to [redacted]. The rescinding of the allegation must be taken into consideration. The applicant provided concrete and credible evidence the allegation did not happen. It is inappropriate for the commander to issue an LOR for an accusation that is based solely on speculation and is refuted by the alleged victim. It defies logic that the commander believed her first statement but not her second. His actions lacked any ill intent, as evidenced by his denial and [redacted's] own statement. Countless individuals provided statements about his professional behavior and how the incident was improperly handed. In light of the denial by [redacted], the alleged victim, and the lack of supporting evidence, the LOR and subsequent administrative actions should never been issued.

The applicant's complete response is at Exhibit G.

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 recommendations of AFPC/DPMSSM and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. With respect to the request for removal of the UIF, the Board notes the applicant no longer has a UIF. Therefore, there is no action for the Board for removal of the UIF. The applicant contends the substantiated allegation in the CDI ROI dated 15 Mar 22 for which he received a LOR dated 23 May 22 and referral OPR for the reporting period ending 6 Jun 22 did not happen. Therefore, there was no basis for the LOR and referral OPR and they should be removed from his

records. However, the Board finds the applicant has not sustained his burden of proof to warrant the requested relief. In this respect, the Board finds there is ample evidence in the CDI ROI to substantiate the allegation the applicant attempted to develop a personal relationship with a student, an airman first class. Moreover, the applicant contends the victim's statement dated 24 Jun 22 is further evidence the event did not occur. However, the Board disagrees. The statement confirms the applicant placed his arm on her shoulder, although she disagreed with his actions. She also states they were leaving the event together when she was stopped, which prevented her from leaving the building with the applicant, as corroborated by the CDI ROI. The victim also states the applicant sent her a single text message that night but that she did not respond, which is also documented in the ROI. While the victim states she did not believe the applicant was attempting to develop a personal relationship with her and she viewed him as a mentor, the Board finds the victim's statement supports the CDI ROI findings the applicant's behavior violated Air Force policy on professional relationships and conduct. In view of the above, the Board finds the LOR dated 23 May 22 meets the criteria of adverse information and should be retained in the applicant's records per 10 U.S.C. § 615(a) and DAFI 36-2907. Since the Board finds no reason to warrant removal of the LOR, the Board finds the referral OPR stating the applicant received an LOR for attempting to engage in an unprofessional relationship with a student is correct as reflected. 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-2023-00632 in Executive Session on 15 Aug 23:

Work-Product	, Panel Chair
Work-Product	Panel Member
Work-Product	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: SAF/IG CDI ROI, dated 15 Mar 22 (WITHDRAWN).
- Exhibit D: Advisory Opinion, AFPC/DPMSSM, dated 24 Mar 23.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 15 May 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jun 23.
- Exhibit G: Applicant's Response, w/atchs, dated 7 Jul 23.

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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.

6/15/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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