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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00634

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her letter of counseling (LOC) dated 9 May 18 be removed from her records.

APPLICANT'S CONTENTIONS

The LOC was not placed in her records until May 22. Further, at the time it was placed in her records she was no longer assigned to the major command (MAJCOM). She was never given any specifics of the investigation, was not afforded the opportunity to communicate with individuals making the allegations and was not advised she could refute the LOC. The LOC was also issued while her immediate supervisor was under investigation for a complaint for reprisal, which was ultimately substantiated. To her understanding, LOCs are only placed in records until a permanent change of station (PCS). However, in her case, the LOC was placed in her records four years after it was issued and intentionally placed prior to her Jun 22 promotion board.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

The applicant entered a period of active duty on 16 Jun 16.

On 9 May 18, the applicant received an LOC. The LOC states an informal inquiry completed on 13 Apr 18 substantiated allegations the applicant wrongfully created an appearance of favoritism with the named cadet, maltreated cadets and created a toxic work environment where cadets under her command did not feel comfortable reporting issues or concerns. Specifically, the applicant was more lenient with [redacted] and vented to her about other cadets' issues. In a response dated 15 May 18, the applicant contended she was not given any specific facts, examples or information by the investigating officer (IO) or within the LOC to properly refute the allegation. The applicant requested the majority of the LOC be rescinded and reduced to a verbal counseling. Upon review of her response, her commander on 22 May 18 determined the LOC would be retained in her personnel information file (PIF) but not filed in an unfavorable information file (UIF). There is no indication whether the LOC would be placed in the applicant's officer selection record (OSR).

The applicant's automated records management system (ARMS) record also includes the following additional adverse information: 1) Nonjudicial punishment (NJP) dated 9 Sep 21 for wrongfully possessing alcoholic beverages without authorization in violation of a lawful order on

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11 May 21 while deployed to Kuwait. 2) Relief of command for cause memorandum dated 14 Aug 21.

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

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) 2021-36-03, *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 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 granting the request. The LOC in the applicant's records should not have been uploaded after the expiration date of the disposition for the LOC. Therefore, it constitutes removal.

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 3 May 23 for comment (Exhibit D) but has received no response.

REVISED AIR FORCE EVALUATION

AFPC/DPMSSM in a revised advisory recommends denial. The LOC is adverse information that will remain in the applicant's records for 10 years. Upon review, the LOC was committed to the applicant's record on 16 May 22, which is four years after the date it was issued in accordance with the National Defense Authorization Act, 10 U.S.C. § 615(a)(3). The LOC meets the requirements of adverse information. The applicant does not state the LOC was not in accordance with AFI 36-2907.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF REVISED AIR FORCE EVALUATION

The Board sent a copy of the additional advisory opinion to the applicant on 10 Oct 23 for comment (Exhibit F) but has received no response.

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 the revised AFPC/DPMSSP advisory opinion dated 25 Apr 23 and finds a preponderance of the evidence does not substantiate the applicant's contentions. In this respect, the Board finds the LOC dated 9 May 18 meets the criteria of adverse information and is required to be retained in the applicant's records per 10 U.S.C. § 615(a)(3), DoDI 1320.14, DAFPM 2022-36-03, dated 14 Jan 21, DAFI 36-2907, and DAFI 36-2501. 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-2023-00634 in Executive Session on 7 Nov 23 and 13 Nov 23:

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Panel Chair
Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atches, dated 1 Mar 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 25 Apr 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 May 23.
- Exhibit E: Revised Advisory Opinion, AFPC/DPMSSP, dated 25 Apr 23.
- Exhibit F: Notification of Revised Advisory, SAF/MRB to Applicant, dated 10 Oct 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.

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