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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02480

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT’S REQUEST

His military personnel records be updated to reflect the following:

1. Reinstatement of rank to colonel (O-6) with back pay.
2. Reimbursement of all fines due to his court-martial sentence.
3. Revocation of referral officer performance report (OPR) and submission of new final OPR.
4. Expungement of all derogatory information relating to the court-martial conviction and sentence.
5. Award of an end of assignment/retirement decoration **(Failed to Exhaust)**.

APPLICANT’S CONTENTIONS

Based on false accusations leading to a wrongful general court-martial conviction, he was retired at the rank of lieutenant colonel (O-5). Post court-martial, the “victim” recanted and substantiated his innocence. The Judge Advocate General (JAG) granted his Article 73 appeal for a new trial and set aside the conviction. The convening authority did not pursue a rehearing and dismissed the charge. Both entities ordered all rights, privileges and property be restored. As such, the officer grade determination (OGD), dated 5 Feb 20, should be reversed and his rank of O-6 be reinstated.

The applicant provided a letter of support from his then rater, dated 27 Jul 23, and indicated the applicant earned an exemplary final OPR and now that the conviction is set aside, he wishes to reverse the derogatory rating and replace it with an exceptional rating.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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The applicant is a retired Air Force lieutenant colonel (O-5).

On 2 Jul 19, according to General Court-Martial Order **Work-Product**, the applicant was found guilty of unlawfully grabbing his spouse's arm with his hands. He received forfeiture of pay of \$2,000.00 pay per month for six months, confinement for 35 days, and a reprimand.

On 8 Jul 19, the applicant was issued a referral AF Form 707, *Officer Performance Report (Lt thru Col)*, for the inclusive period 15 May 18 thru 14 May 19 for "does not meet standards" in block III. *Performance Factors*, and comment, "Committed domestic assault on former spouse, in violation of Article 128, Uniform Code of Military Justice—convicted at General Court-Martial" in block IV, *Rater Overall Assessment*, and block X *Remarks*.

On 11 Jul 19, the applicant submitted a rebuttal and response to the referral OPR and on 6 Aug 19, the additional rater considered the applicant's comments and concurred with the rater's overall assessment.

On 5 Feb 20, the Secretary of the Air Force determined the applicant did not serve satisfactorily in the grade of colonel (O-6) within the meaning of Section 1370(a)(1) of Title 10 but served satisfactorily in the grade of lieutenant colonel (O-5) and shall be retired in that grade.

On 30 Apr 20, the applicant was honorably discharged in the grade of O-6 and retired effective 1 May 20 in the grade of O-5 per Special Order **Work-Product** dated 10 Mar 20. His highest grade held on active duty is O-6.

On 28 Feb 23, according to General Court-Martial Order **Work-Product**, General Court-Martial Order **Work-Product** was set aside and dismissed. All rights, privileges, and property the applicant was deprived by virtue of the findings and guilty and sentence was also set aside.

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

AIR FORCE EVALUATION

AFPC/DP1SSP (Recognitions) reviewed the applicant's official military personnel record and was unable to verify award of a retirement/end of service decoration. The applicant needs to specify which retirement/end of service decoration he wishes to request. The applicant will need to submit a decorations package in accordance with Department of the Air Force Manual (DAFMAN) 36-2806, *Military Awards: Criteria and Procedures*, para 2.13.2 and Table 2.1.

The complete advisory opinion is at Exhibit C.

AFPC/DPMSSM (Special Programs) recommends granting the applicant's request to remove all derogatory information/adverse administrative actions associated with the original court-martial finding from the applicant's personnel records. Per Department of the Air Force Instruction

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(DAFI) 51-202, *Nonjudicial Punishment*, paragraph 5.7, “Set aside occurs when the punishment, or any part or amount thereof, whether executed or unexecuted, is removed from the record and any rights, privileges, pay, or property affected by the relevant portion of the punishment are restored.”

The complete advisory opinion is at Exhibit D.

AFPC/DP3SP (Evaluations) recommends granting the applicant’s request to revoke his 15 May 18 thru 14 May 19 referral OPR. The applicant provided as evidence the 28 Feb 23 order to set aside his 2 Jul 19 court-martial conviction. Based on the petition for a new trial, it was stated “newly discovered evidence, which could not have been discovered prior to the trial through the exercise of due diligence; and the evidence, if considered by the court-martial, in the light of all other pertinent evidence would probably produce a substantially more favorable result for the petitioner.” Therefore, the referral comment on the applicant’s 14 May 19 referral OPR is no longer valid and as a result, the OPR should be removed in accordance with all applicable Air Force policies and procedures.

Addressing the applicant’s request to have a new OPR submitted, the applicant must provide a re-accomplished corrected evaluation signed by the original rating chain in accordance with DAFI 36-2406, *Officer and Enlisted Evaluation Systems*, Chapter 10, Attachment 2, para A2.2. In addition, since the change the applicant is requesting is not for minor correction to the existing OPR on file, the original evaluators will need to provide memorandums of support which details the error and the need for correction to the contested OPR. The memorandum will need to address any content change between reports and the reason for the change(s).

The complete advisory opinion is at Exhibit E.

AF/JAJI did not provide a recommendation for the applicant’s request for reinstatement of rank to colonel (O-6), backpay and allowances based on rank reinstatement, revocation of his OPR, expungement of reference to his court-martial in his personal records and retirement/end of service decoration. After careful review, AF/JAJI advised the Board the applicant’s requests are not within their purview as they do not regard the correction of a military justice action and offer no analysis or recommendation. However, the following procedural history can be confirmed. On 10 Mar 19, a general court-martial found the applicant guilty of unlawfully grabbing his wife’s arm, with his hands, in violation of Article 128, Uniform Code of Military Justice (UCMJ). On 1 Feb 23, the JAG of the Air Force granted the applicant’s request for a new trial pursuant to Article 73, UCMJ. On 28 Feb 23, pursuant to Rules for Court-Martial 1107(e), Headquarters North American Aerospace Defense Command dismissed the charge and specification of which the applicant was previously found guilty. All rights, privileges, and property of which the applicant was deprived by virtue of the guilty finding and sentence were ordered restored.

The complete advisory opinion is at Exhibit F.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

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The Board sent a copy of the advisory opinions to the applicant on 11 Mar 24 for comment (Exhibit G) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

SAFPC (Personnel Council) recommends granting the applicant's request for his records to be corrected to reflect his service in the grade of O-6 was satisfactory under the provisions of 10 U.S.C., 1370. The material facts underlying and necessitating the mandatory OGD changed after the conviction. The conviction no longer stands as the findings and sentence of the court were set aside and there was a decision to forgo any further action. All rights, privileges, and property of which the applicant was deprived by virtue of the guilty finding and sentence were ordered fully restored. The applicant was retired in the grade of O-5 pursuant to the court-martial conviction and the ensuing OGD. Therefore, the underlying premise for the OGD has now been removed. There is no underlying basis for the applicant to undergo an OGD. The correct remedy in this case is restoration of the applicant's grade of colonel so the applicant may be retired as an O-6, the highest grade satisfactorily served.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 May 25 for comment (Exhibit I) 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 the victim of an error or injustice. The Board concurs with the rationale and recommendations of AFPC/DPMSSM, AFPC/DP3SP, and SAFPC and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant's request to reinstate his rank to colonel with back pay, his request to be reimbursed all fines due to his court-martial sentence, his request to revoke referral OPR rendered for the period of 15 May 18 thru 14 May 19, and his request to expunge all derogatory information relating to the court-martial conviction and sentence. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

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

1. Reinstatement of rank to colonel (O-6) with back pay.
2. Reimbursement of all fines due to his court-martial sentence.
3. OPR rendered for the period of 15 May 2018 – 14 May 2019 be void and replaced with a DAF Form 77, *Letter of Evaluation*.
4. Expungement of all derogatory information relating to the court-martial conviction and sentence.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2023-02480 in Executive Session on 30 May 24 and 30 May 25:

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

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DP1SSP, dated 21 Dec 23.
- Exhibit D: Advisory opinion, AFPC/DPMSSM, dated 26 Dec 23.
- Exhibit E: Advisory opinion, AFPC/DP3SP, dated 8 Mar 24.
- Exhibit F: Advisory opinion, AF/JAJI, dated 8 Mar 24.
- Exhibit G: Notification of advisories, SAF/MRBC to Applicant, dated 5 Dec 24.
- Exhibit H: Advisory opinion, SAF/PC, dated 5 Dec 24.
- Exhibit I: Notification of advisory, SAF/MRBC to Applicant, dated 7 May 25.

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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.

7/14/2025
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Board Operations Manager, AFBCMR
Signed by: USAF

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