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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-02539

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her Letter of Admonishment (LOA), dated 28 Feb 23, be removed from her record, to include her Officer Selection Record (OSR) and her Master Personnel Record Group (MPerRGp).

APPLICANT'S CONTENTIONS

She understands her mistake and has learned the importance of professionalism. The LOA should be removed from her record for the following:

a. Provide relief from an injustice due to a corrective action of disproportionate severity for the infraction/behavior. The wing commander (WG/CC) could have simply pulled her aside that evening, or called her into the office to verbally counsel her, which would have been sufficient to correct the issue. Instead, the WG/CC conducted a formal inquiry into her squadron which found no other wrongdoing, but the WG/CC still chose to issue her an LOA.

b. Remove the only negative item from her record in order to provide the opportunity to be promoted to colonel (O-6). The LOA is the only negative mark in her otherwise impeccable 20-year service record and is impeding her ability to be promoted to the next grade.

c. Remove an incorrect LOA from her record as it does not include her response as per paragraph 4 of the LOA which states, "All submitted documents will become part of this record." As such, since her record is missing her response, the LOA is incorrect and should be removed.

She will continue to lead from the front and humbly submits to the decision of the Board with the hope the Board will find she is exactly the type of common sense, people-first leader the Air Force needs.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force lieutenant colonel (O-5). Her developmental category is Line of the Air Force – Information Warfare (LAF-I).

On 16 Dec 22, the *Work-...* Training Wing Commander (TRW/CC) appointed an investigation officer to conduct an informal inquiry into the health of the climate and culture of the *Work-P...* Training Squadron, with a particular focus on instructor misconduct.

**AFBCMR Docket Number BC-2023-02539
CUI//SP-MIL/SP-PRVCY**

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CUI//SP-MIL/SP-PRVCY

On 20 Jan 23, the *Report of Inquiry (ROI)*, provided the following:

1. Question A: Does the Command Team maintain a healthy command climate? Finding: **YES.**
2. Question B: Does the Commander have sufficient processes in place to maintain good order and discipline within the squadron? Finding: **NO.** While processes are in place, the unit leader may have lost the credibility to enforce them.
3. Question C: Does the Command Team provide sufficient training and oversight to prevent instructor misconduct? Finding: Training: **YES.** Finding: Oversight: **YES.**
4. Question D: Does the Command Team have an effective process to investigate, report, and resolve allegations of instructor/cadre misconduct? Finding: **YES.**

On 28 Feb 23, according to the *LOA*, the applicant was admonished for demonstrating exceptionally poor judgment when she conceived and participated in a skit during the squadron's 2022 holiday party. In the skit, the applicant and two Military Training Instructors (MTIs), acted out a scene intended to parody a trainee reporting at the Dining Facility that was well beyond the bounds of acceptable activity. Furthermore, the ROI found the applicant originated the idea and used her position as a commander to co-opt the two MTIs to participate in this unprofessional parody. The skit was not scripted, was so blatantly unprofessional and egregious, the senior leadership at the party stepped in to stop the skit.

On 7 Mar 23, according to the *LOA Response (Substantiated ROI findings)*, the applicant acknowledged and apologized for her decision to enact a comedic parody about a commonly known training event within Basic Military Training Dining Facilities. Further, she states the Area Defense Counsel has explained to her if the LOA is upheld, it will be filed in her OSR. Additionally, she requested reconsideration of the LOA and to document the incident instead with a verbal counseling.

On 13 Jun 23, according to the memorandum for record, *ROI – Decision*, the [REDACTED] TRW/CC, in order to capture their decision rendered in Feb 23, stated they have reviewed the ROI, dated 20 Jan 23, and approved it as written.

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

CUI//SP-MIL/SP-PRVCY

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. Letters of Admonishment.

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 an error or injustice.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends granting the request. Based on the documentation provided by the applicant and analysis of the facts there is evidence of an error or injustice. The applicant’s commander issued the LOA based on the preponderance of the evidence. Department of Defense Instruction (DAFI) 36-2907, *Adverse Administrative Actions*, dated 14 Oct 22, paragraph 2.2, *Standard of Proof*, states the Standard of Proof for administrative actions is a “preponderance of the evidence,” it further states a preponderance of the evidence merely means that it is more likely than not that a fact exists and is not determined solely by the volume of witnesses or documentary evidence supporting or refuting an allegation. Rather, it is based on the totality of the circumstances, the inherent probability or improbability of the evidence and a determination as to the weight and significance of the evidence. However, paragraph 2.4.2 states, document a counseling, admonishment, or reprimand in writing. Ensure each document includes: 2.4.2.5, the member’s written response will become part of the record.

While the LOA met the standard of proof requirement; however, the applicant’s written response was not part of the record. Therefore, the adverse action did not meet the requirement in accordance with DAFI 36-2907.

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 6 Nov 23 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFPC/JA recommends denying the request. The applicant does not deny she engaged in unprofessional behavior, nor does she claim her due process rights were violated. She simply disagrees with the level of action her commander took against her. Her commander determined

AFBCMR Docket Number BC-2023-02539

CUI//SP-MIL/SP-PRVCY

CUI//SP-MIL//SP-PRVCY

the behavior, exhibited by a seasoned officer in her command capacity and in front of her subordinates, warranted something more than a simple counseling, as well within the commander's authority and a LOA, which is a middle-of-the-road action designed as an administrative censure, is not an excessive response. However, the applicant challenges the LOA as erroneous and unjust based on the following arguments:

1. "To provide relief from an injustice from a corrective action of disproportionate severity for the infraction/behavior" and "she <wing commander>could have simply pulled me aside that very evening at the party or called me into her office to verbally counsel me about the incident."

Response: By regulation commanders and supervisors are charged with the responsibility to administratively censure inappropriate or improper behavior in appropriate circumstances. As stated in DAFI 36-2907, 1.1., "Adverse administrative actions are intended to improve, correct and instruct subordinates who violate established Department of the Air Force (DAF) standards whether on or off duty." According to paragraph 2.3.4, Letter of Admonishment (LOA), administrative censure for violation of standards which is more severe than a Record of Individual Counseling (RIC), and Letter of Counseling (LOC). It could be used to document a first offense or address behaviors not corrected through counseling. Do not use when a reprimand is more appropriate."

2. "To remove the only negative item from my service record in order to provide me the opportunity to promote to O-6."

Response: Although it is true the LOA is the only negative mark in the applicant's record, this is not a basis for removal.

3. "To remove an incorrect LOA from my record that does not have my response included, which is supposed to be part of the record per paragraph 4 of the LOA,"

Response: This error has been corrected. Upon review of the applicant's case, AFPC/JA directed the applicant's response to the LOA be added to her record. However, although the LOA was part of her record without her response attached, this administrative error does not justify the removal of the LOA. According to DAFI 36-2907, paragraph 1.2.9., "Officers are responsible for ensuring the accuracy of their records prior to meeting any promotion board. Officers who have adverse information as part of their history should check the Personnel Records Display Applicant (PRDA) to ensure a full record of the adverse information is in their record, to include the full response, if applicable." Furthermore, the LOA itself was legally sufficient.

Therefore, her request should be denied as the applicant has failed to prove any material error or injustice warranting relief.

The complete advisory opinion is at Exhibit E.

AFPC/DPMSSM provided a corrected advisory recommending the request be denied. The applicant's commander administered the LOA and filed it in the applicant's OSR in accordance with DAFI 36-2907, 2.4, which states for officers, adverse information must be placed in the OSR in accordance with paragraph 1.2 and attachment 8. The Special Programs section has reviewed the applicant's MPerRGp and the LOA, along with the applicant's response is now in her record.

According to DAFI 36-2907, 1.2, *Adverse Information for Total Force Officer Selection Boards Overview*, all adverse information an officer receives will be filed in the OSR and will be considered by promotion selection, special selection, federal recognition (ANG specific), and

CUI//SP-MIL/SP-PRVCY

selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have “extraordinary adverse information” per Department of Defense Instruction (DoDI) 1320.14, *DoD Commissioned Officer Promotion Program Procedures*). Further, according to 1.2.1, “Adverse information is any substantiated finding or conclusion from an official investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. Adverse information includes, but is not limited to: Any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation or inquiry, regardless of whether command action was taken as a result; and LOAs.

Therefore, based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The complete advisory opinion is at Exhibit F.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Jan 24 for comment (Exhibit G), and the applicant replied on 19 Jan 24. In her response, the applicant provides the following in the hopes it strengthens and clarifies her justification for removal of the LOA.

a. AFPC/JA quotes the regulation that charges commanders and supervisors with administrative responsibility to censure inappropriate or improper behavior in appropriate circumstances. This is the crux of the issue at hand. Given the circumstances of the holiday party, where people were singing, dancing, eating, drinking and enjoying time together off-duty, it was an appropriate place to perform a parody or skit, therefore she demonstrated good judgement. It was clearly not meant to be a professional presentation as it was at a holiday party, not a professional work-related environment. AFI 1-2, *Commander’s Responsibilities*, dated 8 May 14, states, “Accordingly, commanders must be above reproach, both morally and ethically, and exemplify Air Force Core Values and standards in their professional and personal lives.” She has done this for 21 years. The skit did not display any immoral, unethical, or negative behavior that warrants the severe consequences enacted by the LOA. This is the very definition of injustice when a punishment is inappropriate or disproportional to the offense.

b. She completed a thorough records check and her LOA was not in her record prior to the 21 Mar 23 date of the P0623B promotion board. The LOA showed up in her records once the results of the P0623B were released and posted. At the time, she noticed the LOA posted in the P0623B folder in PRDA did not include her response, and due to that error, the promotion board did not have the full LOA with her inputs to consider.

c. In paragraph 5 of the LOA, it states, “Any comments or documents that you wish to be considered must be submitted at that time, and will become part of the record, consistent with DAFI 36-2907, *Adverse Administrative Actions*, paragraph 2.4.2.5.” While AFPC/JA states that this issue has been resolved by the inclusion of her response to the LOA in her record, it unfortunately does not correct the injustice already incurred by that error of omission.

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. While the Board notes the conflicting advisory opinions prepared in this case; however, after thoroughly reviewing this application, the Board concurs with the rationale and recommendation of both the AFPC/JA and AFPC/DPSSM advisory opinion dated, 28 Dec 23 and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends the Letter of Admonishment (LOA) is of disproportionate severity for the infraction/behavior; is the only negative mark in an otherwise impeccable career; and should be expunged, the Board disagrees. The Board notes the applicant used her position as a Commander to encourage and convince two subordinate squadron members to participate with her in a holiday party skit deemed so egregious her senior leadership present had to step in and stop the skit. The Board notes the applicant's actions displayed poor judgement, lost a level of credibility to lead Airman, and failed to epitomize the culture, care, and respect expected of commanders entrusted to lead Airmen. Thus, the Board unanimously agreed the LOA was the correct level of corrective action and finds it was well within the commander's authority and the evidence presented does not demonstrate an error or injustice warranting removal of the LOA or that it was unjust or inaccurate as written. Although the applicant's response to the LOA was not part of her record, the Board notes this administrative error has been corrected and her response has been placed in her official record. As such, the Board finds the applicant's LOA meets the requirements, in accordance with AFI 2907, *Adverse Administrative Actions*, of adverse information that requires mandatory filing in her Officer Selection Record and Master Personnel Record Group. Furthermore, the applicant's circumstances are not unique compared to other similarly situated officers as the Congressional-mandate requires the military to furnish adverse information to selection boards considering active duty officers for promotion to O-4 and above. 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-2023-02539 in Executive Session on 9 Apr 24:

- Work-Product** [redacted] Panel Chair
- Work-Product** [redacted] Panel Member
- Work-Product** [redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 31 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.

CUI//SP-MIL/SP-PRVCY

- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 29 Aug 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Nov 23
- Exhibit E: Advisory Opinion, AFPC/JA, dated 11 Dec 23
- Exhibit F: Corrected Advisory Opinion, AFPC/DPMSSM, dated 28 Dec 23.
- Exhibit G: Notification of Advisory Opinions, dated 9 Jan 24.
- Exhibit H: Applicant's Response, w/atchs, dated 19 Jan 24.

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.

4/24/2024

X **Work-Product**

Work-Product

Board Operations Manager, AFBCMR

Signed by: **Work-Product**