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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02632

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His letter of admonishment (LOA) dated 5 May 19 be removed from his records.

APPLICANT'S CONTENTIONS

His LOA for not being current on his fitness assessment (FA) should be removed from his records. The LOA issuing authority has provided an email that it was not intended to be a part of his official record. He also never received due process. The LOA issuing authority contacted his wing commander and they both agree the LOA should be removed. The LOA was placed in his records four years after it was issued. He was notified by ARPC, Chief of Policy and Procedures on 26 Jun 23 the LOA was in his records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a lieutenant colonel (O-5) in the Air Force Reserve.

On 5 May 19, the applicant received a LOA. The applicant's FA was due on 31 Dec 18. The FA due date was pushed to 31 Jan 19 because of an of unsupported unit training assembly (UTA) in Dec. However, as of 29 Apr 19, he was still showing as not current. The applicant skipped his FA on 9 Feb 19; yet took unauthorized individual physical training (PT) time on that afternoon and injured himself. This caused the need for a line of duty (LOD) determination and a profile.

On 5 May 19, the applicant acknowledged the LOA and indicated he understood he had 45 calendar days (19 Jun 19) to provide a response. The applicant's endorsement indicates he submitted documents in response; however, his response is not included in his records. On 29 Jun 19, the issuing authority indicated the applicant provided a response and she determined the LOA would be maintained as written. The LOA also does not include the applicant's final acknowledgment of the disposition decision.

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

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*

AFBCMR Docket Number BC-2023-02632

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Controlled by: SAF/MRB
CUI Categories: **Adverse**
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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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 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

ARPC/DPTS recommends approval for removal of the LOA. The review of the documentation demonstrates by a preponderance of the evidence the applicant has been the victim of an error or injustice. The applicant’s decision on how to respond to his LOA was more likely than not based upon the incorrect statement that the adverse action would not become a part of his records. Additionally, the issuing commander’s statement that she should not have issued the LOA indicate the applicant’s situation warranted a less severe adverse action.

The applicant provides an email from the LOA issuing authority dated 5 Jul 23, which states the National Defense Authorization Act (NDAA) now requires the adverse information to be furnished to selection boards for Reserve officers eligible for promotion to colonel. She did not lie in May 19 when she stated the LOA would be maintained in a personnel information file (PIF) in the desk drawer. However, she was made aware that the LOA was required to be provided to the inspector general (IG) per AFI 90-301, *Inspector General Complaints and Resolution*. In Jun 19, he was told the LOA would not be filed in his records. The applicant’s LOA was accomplished appropriately and he was given the required time period and opportunity to respond (which he did). Based on the documents, he was afforded full due process rights before the LOA was upheld. The LOA, however, contained one discrepancy which was the absence of the applicant’s acknowledgement of the final disposition as required by DAFI 36-2907, *Adverse Actions*, paragraph 5.1. However, his emails and application indicate he was aware his commander had upheld the LOA, although he was told it would not be placed in his records. Thus, the failure to obtain acknowledgement of the final disposition does not amount to a material error or injustice.

Per AFI 90-301, the commander was required to provide the LOA and the associated information to the IG for reporting. This requirement does not afford any additional notification or response. Likewise, DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 Jan 21, Section IV, requires any LOA issued to a field grade officer after 1 Jan 12 to be filed in their OSR. Inclusion of these historic adverse actions do not require notification or allow for a response prior to filing in the OSR. The commander was required to provide the LOA to the IG at the time of its issuance and its later inclusion in the applicant’s OSR became required under the DAFPM in 2021. All procedures were proper and in accordance with the regulations in place at time.

The applicant’s decision on how vigorously to respond to the LOA was his choice. Although his decision to provide a cursory response may have been inadvisable, his assertion that the erroneous statement markedly influenced his response strategy is supported by a preponderance of the

evidence. Likewise, statements from the issuing commander indicate she would have issued a less severe adverse action had she been aware of the IG reporting requirements and that she did not intend the LOA to be filed in his OSR. The issuing authority provides an email that it was not her intent to have the LOA placed in his OSR and she encourages the applicant to write a letter to the promotion board.

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 24 Oct 23 for comment (Exhibit D) 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 recommendation of ARPC/DPTS and finds a preponderance of the evidence substantiates the applicant's contentions. While the LOA was filed in the applicant's records in accordance with DAFPM 2021-36-03 and DAFI 36-2907, the Board finds the administrative errors, to include failure to obtain the applicant's acknowledgment of the final disposition and the absence of his rebuttal response resulted in an injustice to the applicant. Therefore, in the interest of justice, 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 his LOA dated 5 May 19 be removed from his records.

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-2023-02632 in Executive Session on 5 Dec 23:

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 9 Aug 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, ARPC/DPTS, dated 20 Oct 23..
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 24 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.

3/31/2025

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Board Operations Manager, AFBCMR

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AFBCMR Docket Number BC-2023-02632

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