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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02788

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

The Letter of Reprimand (LOR) and Unfavorable Information File (UIF) received on 4 Oct 22 be removed from his record.

The AF Form 709, *Promotion Recommendation*, rendered for the (P0422E) Major Central Selection Board, be removed from his records.

He be considered for promotion to the grade of major by a Special Selection Board (SSB).

### APPLICANT'S CONTENTIONS

He was given an LOR for an alleged Article 120 offense. A Board of Inquiry (BOI) found he did not commit the alleged offenses and there was no basis for his discharge. He was also recommended for retention. It is unjust to have the LOR, UIF, and any other documents stating he committed the offense in his records for an offense he did not commit. Because of the LOR, his record was not fairly considered for promotion to the grade of major. In support of his request, the applicant provides the documentation in the statement of facts below.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a currently serving captain (O-3).

On 4 Oct 22, the applicant received a LOR for sexually assaulting a fellow officer on 15 Aug 21.

On 17 Oct 22, the applicant's AF Form 709, *Promotion Recommendation*, reflects he was the subject of a credible allegation of penetrative sexual assault against a fellow officer with an overall recommendation of "DO NOT PROMOTE."

On 9 Feb 23, a Notification of Show Cause action was initiated against the applicant under DAFI 36-3211, *Military Separation*, Chapter 18, paragraph 18.7.12, *Sexual Assault*, which required the

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applicant to show cause for his retention on active duty. On 2 Mar 23, the applicant acknowledged receipt.

On 5 May 23, a BOI determined a preponderance of the evidence did not show a sexual assault had been committed by the applicant. The BOI also determined he should be retained in the Air Force

On 11 May 23, the applicant requested to rescind the LOR and UIF pursuant to the BOI findings.

On 5 Jul 23, the operations group commander provided a memorandum stating he supported removing the LOR/UIF dated 4 Oct 22, from the applicant's records.

On 5 Jul 23, the wing staff judge advocate provided a memorandum stating he supported removing the LOR/UIF dated 4 Oct 22, and all mention of the allegations at issue, from the applicant's records.

In an undated memorandum the commander informed the applicant that he was unable to grant his request to remove the LOR because he did not have the authority to do so.

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

## **AIR FORCE EVALUATION**

AFPC/DPMSSM recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. DPMSSM concurs with the assessment provided by the staff judge advocate's and operations group commander's support memorandums. The BOI essentially exonerated the applicant of the alleged offense which was the basis for the administrative action. As the allegation is no longer founded, DPMSSM recommends all documentation and references to LOR and UIF be removed from all pertinent records.

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 23 Oct 23 for comment (Exhibit D). On 30 Oct 23, the applicant responded stating he agreed with the advisory opinion; however, noted the advisory opinion did not mention his request to be considered for promotion to the grade of major by an SSB. The applicant contends an SSB is warranted and is consistent with the relief recommended by the advisory opinion (Exhibit E).

## 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 AFPC/DPMSSM and finds a preponderance of the evidence substantiates the applicant's contentions. 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:

- a. The LOR dated 4 Oct 22 and UIF be declared void, and removed from his records.
- b. All references to the allegations be removed from pertinent records.
- c. The AF Form 709, *Promotion Recommendation*, rendered for the (P0422E) Major Central Selection Board, be declared void, and removed from his records.
- d. It is further recommended he be considered for promotion to the grade of major by a Special Selection Board (SSB) for the Calendar Year 2022 (P0422E) Major Central Selection 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-2023-02788 in Executive Session on 11 Jun 24:

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 25 Aug 23.
- Exhibit B: Office of Special Investigations Report dated 12 Jul 22 (removed).
- Exhibit C: Advisory opinion, AFPC/DPMSSM, dated 6 Oct 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 23 Oct 23.
- Exhibit E: Letter, Applicant Rebuttal, dated 30 Oct 23.

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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