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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03548

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COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His letter of reprimand (LOR) dated 28 November 2022, be rescinded, and removed from all Air Force systems, to include the personnel records display application, officer selection record (OSR) and unfavorable information file (UIF).

APPLICANT'S CONTENTIONS

The LOR is legally, factually, and logically deficient. It should be rescinded pursuant to the Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*, based upon the preponderance of the evidence. The matter and circumstances under which his LOR was administered was documented in his Article 138, Uniform Code of Military Justice (UCMJ) complaint. His commander and general court-martial authority denied his complaint because it was presumed his commander acted lawfully. As a result, the legal sufficiency of the LOR was not investigated. In accordance with (IAW) DAFI 36-2907, his commander who issued the LOR has the burden of proof to provide all relevant evidence and failure to provide the evidence is a tacit admission there is no basis for his claim. His commander reached back to November 2020 to show his wrongdoing.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve captain (O-3).

On 1 April 2023, according to documentation submitted by the applicant, his commander notified him that he was in receipt of his Article 138, UCMJ informal complaint. Specifically, the applicant requested to have the LOR rescinded, reversing his downgrade to aircraft commander, and being allowed to transfer from his unit. The applicant contended his LOR was unwarranted and not supported by evidence.

On 17 April 2023, according to documentation submitted by the applicant, he filed an Article 138, UCMJ formal complaint to seek correction of wrongs committed by his commander. Specifically, his claim addresses the arbitrary and retaliatory nature of adverse actions taken against him and how his commander's decisions were personal and vindictive. His claims are evident by the legal and factual deficiencies of his LOR, commander-directed downgrade from instructor pilot to aircraft commander, and the failure to be given any guidance in restoring his qualifications as an instructor pilot.

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Controlled by: SAF/MRB

CUI Categories: Work-Product

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 6 August 2023, according to a memorandum submitted by the applicant, his Area Defense Counsel noted the lack of specific and usable evidence to support the allegations offered in the applicant's LOR. The LOR itself is incredibly vague and does not provide any specific examples or statements about the applicant's alleged misconduct. There is no evidence the applicant was ever counseled about his behavior, except for one memorandum regarding his civilian employment, dated 10 June 2022. In one instance it was expressed that it was not appropriate for the applicant to use the comments of the Defense Organizational Climate Survey (DEOCS) to get issues resolved in the squadron and he acknowledged this matter. There were different members of leadership that expressed dislike of the way the applicant was attempting to handle those issues, but there is nothing that shows it was ever communicated to him. There were several comments about the appreciation of the applicant's open communication and acknowledgement, as well as validation of the issues he was attempting to address with his leadership. The applicant continuously routed concerns and issues up his chain of command to solve problems and improve his squadron, but those were largely ignored. He was reprimanded for doing his duties. A lot of the alleged misconduct happened two years before the LOR was served, which creates a negative appearance in the way this matter was handled. A punishment of this level has a strong potential to be career-ending.

According to the applicant's officer quality force report, his unfavorable information file will expire on 9 December 2024.

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

AIR FORCE EVALUATION

HQ AFRC/JA recommends granting the application. Based on the documentation provided by the applicant and an analysis of the facts, there is evidence of an error or injustice. The contested LOR is found to be legally insufficient and should be rescinded and removed from the applicant's record. By a preponderance of the evidence there is no deliberate attempt by the applicant to undermine leadership, or that any of his actions threatened morale, good order or discipline, and there was not any evidence of the applicant's failure to obey any instructions regarding absences from duty. According to the DAFI 36-2907, for adverse information to be credible it must be supported by a preponderance of the evidence. Specifically, it is more likely than not that an event occurred as alleged based on the totality of the circumstances.

A thorough review of the contested LOR and supporting documentation raises some concerns. The allegations themselves as written are vague. While DAFI 36-2907 does not mandate an LOR cite a specific UMCJ offense or instruction violated, the LOR should cite specific incidents and dates. The timeframe for the allegations of misconduct ranges from 5 November 2020 through 9 September 2022, for various incidences. Moreover, there was documentation that referred to the applicant's conduct while he was in his civilian status as an Air Reserve Technician (ART), which should have been addressed by the civilian sector rather than the military. A military LOR is not the venue to address civilian misconduct. It is concerning that the applicant's commander denied him leave without pay (LWOP) while he was on military orders away from his ART civilian position. Although the applicant stated his LWOP was for military orders, it appears there may have been some confusion since the applicant's commander denied his LWOP when he started his job with the airlines. If the applicant's military orders were provided to the timecard keeper reflecting this timeframe, it would have helped resolve this issue.

The applicant's questioning of processes and his attempt to improve communication and effect change of those processes may have caused friction with his leadership. There was nothing found in any responses from the applicant's leadership, regarding his suggestions, to indicate any

negative concerns on their part. While there may have been a better way to address issues, the applicant's actions did not rise to the level of willful noncompliance or an attempt to undermine leadership, as alleged. The applicant's Officer Development Plan (ODP) from 22 January 2021 reflects all positive feedback. His Officer Performance Reports (OPR) closing out 17 February 2021 and 17 February 2022 reflects he met standards and were written with strong bullets. The timeframes of his OPRs overlap to a large degree with the timeframes of the allegations of misconduct and show no indication whatsoever that his conduct or judgment was in doubt.

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 29 January 2024 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 HQ AFRC/JA 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 the Letter of Reprimand, dated 28 November 2022, be removed from his officer selection record (OSR), unfavorable information file (UIF) and all other systems of record.

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-2023-03548 in Executive Session on 9 July 2024:

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 22 October 2023.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, HQ AFRC/JA, dated 24 January 2024.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 29 January 2024.

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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.

9/27/2024

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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