



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03661

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Adverse Information Summary (AIS) he received be removed from his records.

APPLICANT'S CONTENTIONS

As stated in the AIS, the presiding **Work-Product** Commander, non-concurred with the investigators conclusion that he violated AFI 1-1, *Air Force Standards*. This investigation began under a previous wing commander; but that commander failed to conclude the process before he retired. Due to his lack of confidence in the finding and the manner in which the investigation was conducted, the presiding commander attempted to halt the AIS from being inserted into his record; but he was legally unable to do so at that point. It is worth noting this entire event derived from a photo he posted to a private group of friends, of himself in a Halloween costume, at a family friendly event. The AIS refers to the costume as "a satirization of a political figure," which is accurate. Although he regrets posting the photo, there are several laws and protections that apply to free speech when not in uniform, on duty or affiliated in any way with the military.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force Reserve (AFR) lieutenant colonel (O-5).

The AIS reflects the applicant posted a photo of himself in a Halloween costume on his private Facebook page on or about 31 October 2020. The costume with caption, depicted a satirization of a political figure. A person within the applicant's private Facebook friend group shared the photo with a third party, who in turn filed a complaint with the **Work-Pr...** **Wor...**. The findings reflect the applicant was not on military status at the time of the post and the post was made to his private audience of Facebook friends rather than to the public. It was the investigating officer's determination the applicant's actions violated AFI 1-1, paragraph 2.15.3 regarding conduct on social media.

The Substantiated Investigation Without Written Command Action memo, dated 8 June 2022, reflects the AIS was referred to the applicant for comment before it was filed in his Master Personnel Records Group (MPerRG) and Officer Selection Record (OSR) per Department of the Air Force Policy Memorandum (DAFPM) 2020-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 January 2021.

On 9 June 2022, the applicant waived his right to submit a response.

AFBCMR Docket Number BC-2023-03661

Work-Product

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

On 10 June 2022, the [Work-Product] /CC Memorandum for Record and the AIS was filed in his records.

The AFRC/JA Staff Judge Advocate (SJA) Determination – Ten-Year Retention Rule Exception memo, dated 22 June 2022 states the SJA reviewed the AIS, signed by the [Work-Product] on 10 June 2022, and the Substantiated Investigation Without Written Command Action memo, signed by the [Work-Product] on 8 June 2022. The applicant was found to have violated AFI 1-1, for which he received a verbal counseling. The applicant waived his right to respond to the memo. The adverse information did not involve a single act, which, if tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than one year. Accordingly, the exception to the retention rule was not met and the adverse information should be retained in the OSR for 10 years.

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

AIR FORCE EVALUATION

AFRC/JA recommends denying the application. On or about 31 October 2020, the applicant posted a photo of himself in a Halloween costume to Facebook. His costume depicted a visual satire of a political figure. An individual outside the private post was shown the photo and filed a complaint with the [Work-Product].

An investigation was ordered and conducted, wherein at least one allegation was substantiated, and the investigating officer's findings were approved by the appointing authority on or about 18 November 2020. On 5 December 2020, the applicant was verbally counseled about proper use of social media. This verbal counseling was memorialized in a Record of Individual Counseling.

A subsequent change of command resulted in the assuming commander reviewing the report in order to close out the action, which was not done prior to his predecessor retiring. The current [Work-Product], disagreed with the findings of the report and memorialized his rationale in the Adverse Information Summary (AIS) required to close out the action.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. A current commander disagreeing with a prior commander's findings and conclusions does not render those same findings and conclusions legally insufficient or, in of itself, show an error or injustice occurred. Reasonable minds may differ in these cases.

AFI 1-1, paragraph 2.1[sic] starts off with: Airmen are personally responsible for what they say and do, including through any electronic medium and on any social media or similar platform. Paragraph 2.20.3 states Airmen should strive to avoid offensive and/or inappropriate language or behavior on social media. Given we do not have access to the report, we find that, based on the facts presented by the applicant, it was not unreasonable for the prior commander to concur with a substantiated finding of a violation of AFI 1-1.

Additionally, regarding AFPC/DPMSSM's advisory of 22 January 2024 (see BC-2023-03661 (Cohn-Adverse Actions Advisory...)), the MAJCOM SJA OSR Memo is not a legal sufficiency review of the adverse information. It is simply an analysis of the UCMJ violation (or equivalent) maximum punishment, and based on that information, a determination on whether the adverse information should remain in the OSR for 10 years or permanently. This review is not meant to be a legal review of the action itself and should not be viewed as such.

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 7 February 2024 for comment (Exhibit D), and the applicant replied on 5 March 2024. In his response, the applicant states he provided a letter from his commander regarding information he was not aware of at the time he submitted his application. His letter states, the finding which generated the AIS was never accepted or signed by the presiding [Work-Product] Wing Commander, nor was it signed or accepted by the vice commander when he assumed command. Therefore, he believes this invalidates the AIS. The Deputy SJA was also not aware of this information. Please consider the email, dated 31 March 2022, written by the Area Defense Counsel, addressed to the Commander, [Work-Product] Wing. Further, he takes full ownership and responsibility for his actions that generated the informal inquiry. However, his actions did not negatively affect morale or good order and discipline; nor did he bring discredit upon the Air Force, [Work-Product] Wing or himself.

The applicant's complete response is at 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFRC/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends the investigative process was flawed and unjust; however, he has provided insufficient evidence to substantiate he did not violate AFI 1-1, *Air Force Standards* regarding conduct on social media. Based on the evidence, an investigation was ordered and conducted, wherein at least one allegation was substantiated, and the investigating officer's findings were approved by the appointing authority. However, his commander at the time did not complete the action to close out the report prior to his retirement. Subsequently, a change of command resulted in the current commander closing out the action, despite his disagreement with the prior commander's findings and conclusions. The applicant also contends the AIS was never signed or accepted by the presiding commander or the new commander upon his assumption of command, and therefore, invalidates the AIS. However, the Board disagrees. Specifically, the Board notes a current commander disagreeing with a prior commander's findings and conclusions does not render those same findings and conclusions legally insufficient or, in of itself, show an error or injustice occurred. 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-2023-03661 in Executive Session on 8 October 2024:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 8 November 2024.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRC/JA, dated 1 February 2024.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 February 2024.

Exhibit E: Applicant's Response, w/atchs, dated 5 March 2024.

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.

1/17/2025

X

Work-Pr...

Work-Product

Board Operations Manager, AFBCMR

Signed by: Work-Product