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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03705

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His letter of reprimand (LOR), issued on 7 Mar 23, be rescinded and removed from both his Officer Selection Record (OSR) and Unfavorable Information File (UIF).

APPLICANT'S CONTENTIONS

He is a victim of an injustice as he should not have received an LOR for being sick. There was no way for him to report to his temporary duty (TDY) location on time as he was suffering from Influenza A and was running a fever of 101.8 degrees at the time of his planned departure. This prevented him from flying, as he was also suffering from other symptoms common to COVID-19 or driving the 500 plus miles to the TDY location.

The purpose of an LOR is to be a corrective tool. However, in this case there is nothing for him to correct; he was too sick to report on time and once he recovered he reported to his TDY location as soon as possible and he is shocked that he was reprimanded for being sick. An officer's career should not be jeopardized for getting the flu.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force major (O-4).

On 7 Mar 23, the applicant received an LOR from his group commander as the result of an investigation that revealed on or about 21 Nov 22, he failed to go to his appointed place of duty at the time, for a manning assignment.

On 10 Mar 23, the applicant acknowledged the allegations contained within the LOR and submitted a response.

On 13 Mar 23, the group commander, considering the applicant's response, decided to sustain the LOR.

On 23 Mar 23, the applicant acknowledged receipt of the commander's final LOR decision.

On 7 Jun 23, the applicant filed an Informal Complaint under the Uniform Code of Military Justice (UCMJ), Article 138, *Request for Redress*, requesting the LOR be rescinded and removed from both his OSR and UIF.

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On 15 Jun 23, the applicant's group commander denied his request for relief.

On 10 Jul 23, the applicant filed a Formal Complaint under Article 138, UCMJ, with the General Court-Martial Convening Authority, the 16th Air Force Commander (16AF/CC).

On 3 Oct 23, the 16AF/CC, upon review dismissed the applicant's complaint without a decision on the merits.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*, 14 Oct 22:

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 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*). 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 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: 1.2.1.4. LORs

1.2.3. All adverse information as defined by this instruction will be permanently placed in the MPerRGp. **(T-0)** Except for the set aside of a court-martial or nonjudicial punishment, removal of adverse information from the MPerRGp may only be directed pursuant to an Air Force Board for Correction of Military Records (AFBCMR) recommendation.

2.2. The standard of proof for adverse administrative actions is the "preponderance of the evidence." This standard will be used when evaluating the evidence and every element of the alleged offenses. Additionally, IAW paragraph 2.2.1 a preponderance of the evidence exists when it is more likely than not that events have occurred as alleged. Preponderance of the evidence is not determined by the number of witnesses or exhibits, but by all the evidence and evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationship to the matter being considered. IAW paragraph 2.4.5.1, adverse actions must be placed in the OSR; LORs must be filed in the UIF and any LORs not filed in the UIF, must be filed in the officer's PIF.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is insufficient evidence of an error or injustice. The applicant's commander administered an LOR on 7 Mar 23 for failing to go to his appointed place of duty, a TDY location. The applicant acknowledge receipt and provided a response to include his medical documentation supporting his contention he was ill and on quarters. The commander considered the applicant's response; however, he decided to sustain the LOR. The applicant then filed an informal complaint under Article 138, UCMJ, with his commander who denied the request

and stated the circumstances of the applicant's case did not meet the criteria to rescind the LOR nor to remove it from either the applicant's OSR or UIF. While a review of the applicant's Military Personnel Data System (MilPDS) record reflects the applicant's LOR was placed in a UIF, a review of his Master Personnel Records reveals the LOR was not filed in his records.

According to DAFI 36-2907, paragraph 2.3.5.1, "Only supervisors and members of the officer's current administrative or operational chain of command may issue a LOR to an officer."

Therefore, there is no indication that the LOR was not issued in accordance with the governing directive, DAFI 36-2907, as the LOR issuing officer in this case has the authority to administer adverse action.

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 27 Dec 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. While the Board notes the rationale and recommendation of AFPC/DPMSSM against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board notes the applicant was unable to complete travel arrangements as he was not provided a line of accounting in a timely manner and was unable to travel due to illness. The Board notes the temporary duty was confirmed on Wednesday to be in place the following Monday. Given the short notice of the temporary duty and the fact a line of accounting failed to be provided until Monday, the Board determines the applicant exercised his due diligence in preparing for the temporary duty as the evidence provided reflects his staff cleared his schedule in preparation and due to no fault of the applicant he fell ill and was ordered to quarters. While the Board recognizes the issuance of an LOR is within a commander's authority, the evidence presented demonstrates an error and injustice warranting the removal of the LOR. The Board finds to reprimand the applicant, who had a confirmed illness and was placed on quarters, for not proceeding on travel when under doctor's orders and acting in accordance with the Center for Disease Control's COVID-19 guidance not to travel while ill, is unjust. Given all the facts, the Board finds the applicant's circumstance unique compared to other similarly situated officers which warrants the removal of the LOR from his records. Therefore, the Board recommends correcting the applicant's records as follows.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show his Letter of Reprimand dated 7 March 2023, and associated Unfavorable Information File be declared void and removed from his Officer Selection Record and Master Personnel Record Group.

CERTIFICATION

AFBCMR Docket Number BC-2023-03705

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-2023-03705 in Executive Session on 14 May 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 31 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 22 Dec 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Dec 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.

11/13/2024

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Board Operations Manager, AFBCMR

Signed by: Work-Product