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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03924

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Letter of Reprimand (LOR) issued 21 Feb 23 and his Unfavorable Information File (UIF) be expunged from his Master Personnel Records Group (MPerRGp) and his Officer Selection Record (OSR).

APPLICANT'S CONTENTIONS

The LOR and UIF should be removed from his record as they are not reflective of the entirety of his military career; they simply represent a two-week lapse in judgement while he was trying to determine how to resolve a complex personnel issue that predated his tenure. Despite his response, his commander sustained the LOR, established an UIF, an involuntarily curtailed him from his position. During this time, the Air Force Reserve (AFR) colonel (O-6) promotion list was publicly released, and he was on the list and was confirmed; however, he had to invoke active duty sanctuary to get a Regular Air Force retirement and will be retiring in the grade of lieutenant colonel instead of colonel on 31 Jul 24.

The LOR has resulted in him not being promoted to colonel, an unplanned short-notice permanent change of station move, and his early retirement in the summer of 2024 in the rank of lieutenant colonel. He has paid both professionally and personally for a decision he finds drastic, especially given the fact the issues preceded his tenure. Having this derogatory information removed will allow him to potentially compete for promotion to colonel and continue to serve as a senior leader.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve lieutenant colonel (O-5).

On 21 Feb 23, the applicant received an LOR from the Air Reserve Personnel Center Commander (ARPC/CC) for displaying an intolerable lack of integrity by withholding from her critical information for 12 days she unquestionably needed in order to make fair and just decisions. His actions indicated he was willing to stand by and allow his senior enlisted leader (SEL) to face potential career repercussions, rather than inform the commander his SEL had done his duty of timely notifying him of serious allegations involving misconduct of a sexual nature by a civilian employee. Further, by his actions he placed the security of his career above the well-being of his SEL and the well-being of ARPC as a whole.

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On 28 Feb 23, the applicant in a rebuttal response to the LOR, acknowledged he handled the situation poorly and its negative impact on his SEL and ARPC and requested the LOR be downgraded to a Letter of Counseling or verbal counseling.

On 13 Mar 23, ARPC/CC considered his response and decided to sustain the LOR and place it into an UIF.

On 13 Mar 23, the applicant received an Involuntary AGR Tour Curtailment from the ARPC/CC due to her loss of faith and confidence in his integrity and ability to adequately serve as a director at HQ ARPC. The applicant in a rebuttal response, dated 24 Mar 23, acknowledged he handled the situation poorly and his communication was lacking. He further stated, his career has spanned 32 years, both as enlisted and as a commissioned officer and this is the first and only time he has received any disciplinary action and respectfully requested she reconsider the curtailment decision and the associated LOR so it will not have such a palpable and devastating impact on his career.

According to Special Order **Work-Product** dated 12 Jun 23, he was reassigned and continued on active duty (voluntary) in accordance with 10 USC 12310 with a new date of separation (DOS) of 31 Jul 24, unless sooner relieved.

On 18 Jun 24, a printout from the applicant's Military Personnel Database System (MilPDS) record reflects an UIF has been established.

Effective 31 Jul 24, according to Special Order Number **Work-Product** dated 26 Apr 24, the applicant will be relieved from active duty and retired effective 1 Aug 24 in the grade of lieutenant colonel. He will be credited with 20 years, 1 month, and 9 days of active service for retirement.

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: 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. Standard of Proof. The Standard of Proof for adverse administrative actions is a “preponderance of the evidence.” This standard will be used when evaluating the evidence and every element of the alleged offenses. A preponderance of the evidence merely means that it is more likely than not that a fact exists. Preponderance of the evidence is not determined solely by the volume of witnesses or documentary evidence supporting or refuting an allegation. Rather, it is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses.

2.4.5. Actions After Administering a RIC, LOC, LOA, or LOR. The RIC, LOC, LOA, LOR issuing authority must send the finalized record to the member's commander or superiors for information, action, or for their approval to file in the member's UIF and PIF. For officers, adverse information must be placed in the OSR in accordance with paragraph 1.2 and Attachment 8.

DAFI 36-3203, *Service Retirements*, 29 Jan 21 (Certified Current 13 Oct 23) 3.1.1.3. Sanctuary. Per 10 USC § 12686(a), *Reserves on Active Duty Within Two Years of Retirement Eligibility: Limitation on Release From Active Duty; Limitations*, and 10 USC § 12646(e), *Commissioned Officers: Retention of After Completing 18 or More, But Less Than 20, Years of Service*, traditional ANG or AFR members, including individual mobilization augmentees (IMAs), called to AD who have accumulated 18 years of TAFMS may be eligible to continue to 20 years on AD status unless the members waive sanctuary (Reference DAFI 36-2110, *Total Force Assignments*, for further guidance).

DAFI 36-2110, *Total Force Assignments*. 9.1.4. Active Duty Sanctuary. Active Duty sanctuary is a means to protect ARC members who attain 18 but less than 20 years of TAFMS while serving on active duty (other than for training). Unless they have waived the right, voluntarily separated, medically disqualified for continued service, administratively discharged, or either separated or discharged for cause, these members may invoke sanctuary and must be retained on active duty until 20 years TAFMS.

AIR FORCE EVALUATION

AFRC/JA recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. On 21 Feb 23, the applicant's commander issued him an LOR for withholding critical information needed in determining administrative actions and for failing to take ownership and come forward in a timely manner regarding the situation. Based on the applicant's actions outlined in the LOR, on 13 Mar 23, his commander involuntarily curtailed the applicant's Active Guard/Reserve tour. It is clear in the LOR as a result of his actions, his commander lost faith in the applicant's truthfulness and lost confidence in his ability to lead people effectively. The commander found the applicant delayed providing critical information to leadership regarding the report of a sexually inappropriate comment made by a civilian member. Due to this delay, the same civilian member made another inappropriate comment before action could be taken. When the commander asked for information on the situation, the applicant failed to take ownership and to immediately come forward regarding his delayed action, very nearly allowing a subordinate enlisted member to take the blame.

The administrative actions taken by ARPC/CC are separate and distinct and fall well within her authority and are supported both by the severity of his conduct and the preponderance of the evidence.

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 9 Feb 24 for comment (Exhibit D), and the applicant replied on 6 Mar 24. In his response, the applicant states the justification for the LOR and the actions taken by the ARPC/CC center around the argument he had concrete information of inappropriate comments made by a civilian employee that could have averted additional inappropriate comments made by the same civilian employee. The truth is neither he, nor his SEL had any knowledge of the comments until after the Jan 23 interaction. While they were made aware of the potential issue in Dec 22, they were still trying to get a witness statement. The civilian employee had a demonstrated pattern of behavior dating back to 2014, and since he did not take over his position until late Oct 22, the civilian employee's pattern of behavior predated his arrival by several years without resolution. This is evident by the civilian employee's continued behavior, after his curtailment, when the civilian employee made another inappropriate comment to a different female employee.

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. After thoroughly reviewing this application, the Board concurs with the rationale and recommendation of AFRC/JA and finds a preponderance of the evidence does not support the applicant's contentions. Although the applicant contends the decision to issue him a LOR and UIF is drastic given the circumstances predated his tenure, the Board disagrees. The Board notes the applicant placed his own well-being and career security above the well-being of a subordinate senior noncommissioned officer (SNCO) by allowing the perception the SCNO failed to perform their duty in notifying the chain of command of an allegation involving serious misconduct of a sexual nature. In this regard, the applicant's actions displayed poor judgement and failed to epitomize the culture, care, and respect expected of officers entrusted to lead Airmen. Thus, the Board unanimously agrees the actions taken by the commander were well within her authority and finds no evidence that would justify overturning her decision to issue the LOR and UIF. As such, the Board finds the applicant's LOR and UIF meets the requirements of adverse information that requires mandatory filing in Officer Selection Record and Master Personnel Record Group. Furthermore, the applicant's circumstances are not unique compared to other similarly situated officers as the Congressional-mandate requires the military to furnish adverse information to selection boards considering officers for promotion to O-4 and above. 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

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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-2023-03924 in Executive Session on 9 Jul 24:

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 29 Nov 23.

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

Exhibit C: Advisory Opinion, AFRC/JA, dated 9 Feb 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Feb 24.

Exhibit E: Applicant's Response, w/atchs, dated 6 Mar 24.

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.

12/13/2024

X

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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