



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-00848

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Letter of Admonishment (LOA), dated 23 Jun 21, be removed from his Officer Selection Record (OSR) and expunged from his Master Personnel Records Group (MPerRGp).

APPLICANT'S CONTENTIONS

His current Squadron Commander has reviewed the documentation associated with his LOA and supports removal from his Personnel Information File (PIF) and OSR.

In support of his appeal, the applicant provides the Area Defense Council's response to the LOA, character reference letters and memoranda for record from his current Squadron Commander and Flight Commander indicating that the incident that occurred is a misrepresentation of the applicant's character and supports his request for removal.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force first lieutenant (O-2).

On 23 Jun 21, the applicant received a LOA from his squadron commander (SQ/CC). The specific reason for the LOA states that "on or about 29 May 21, at or near [Work-Product], Montana, assaulted [Work-Pro...], who was then known by you to be a commissioned officer of the United States Air Force, by forcefully pulling her towards you three separate times."

On 23 Jun 21, the applicant acknowledged receipt of the LOA and on 28 Jun 21 submitted a response. In his response, the applicant indicated that the incident stated in the LOA were not of his character and requested that the LOA be downgraded to a Letter of Counseling (LOC).

On 28 Jun 21, the applicant's Area Defense Counsel submitted a memorandum to the applicant's commander and requested that the LOA be withdrawn and an LOC be administered for conduct unbecoming of an officer. ADC argued that the applicant's behavior did not rise to the level of assault as the applicant received consent from [Work-Prod...] to touch her around the shoulder and arm area.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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

On 30 Jun 21, the SQ/CC considered the applicant's response and decided the LOA will remain in effect. Additionally, on the same date, the applicant acknowledged he was advised of the SQ/CC's final decision and that the LOA would be filed in his OSR.

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

APPLICABLE AUTHORITY/GUIDANCE

On 26 February 2021, the Secretary of the Air Force ordered a policy change via a Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03 on Adverse Information for Total Force Officer Selection Boards to comply with Section 502 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020, signed on 20 December 2019, as codified in title 10 United States Code, section 615(a)(3).

The new law, DoD policy, and subsequent Air Force policy require all adverse information to be filed in the officer's master personnel records group and Officer's Selection Record for consideration by both regular and reserve promotion selection, special selection, federal recognition, and selective continuation boards to the grade of O-4 and above, to include promotion processes to the grade of O-3 that involve adverse information that received significant media attention or is of interest to the Senate Armed Services Committee. These changes came into effect for all promotion boards convening on or after 1 Mar 2020 and include historic adverse information previously issued on or after 1 Jan 12 and Article 15s and approved court martial findings dated prior to 1 Jan 12. It further removed the authority for Wing commanders, delta commanders, or issuing authorities to direct removal of derogatory data from the OSR as previously permissible in AFI 36-2907, Adverse Administrative Actions, paragraph 3.4.3.1, and AFI 36-2608, Military Personnel Records, paragraphs 7.10 through 7.12 (and their subparagraphs), 8.3.8, and 8.3.15 (and its subparagraphs). Adverse information that requires mandatory filing in the Officer Selection Record (OSR) and the Master Personnel Records Group (MPerRGp) includes, but is not limited to:

1. Any substantiated adverse findings or conclusions from an officially documented investigation or inquiry, regardless of whether command action was taken as a result.
2. Approved court-martial findings of guilt (Court-martial Orders).
3. Non-judicial punishment pursuant to Article 15, Uniform Code of Military Justice.
4. Letters of Reprimand.
- 5. Letters of Admonishment.**
6. Notices of Relief of Command (for cause).
7. Letters of Counseling related to a substantiated adverse finding or conclusion from an officially documented investigation or inquiry.

LOCs unrelated to a substantiated finding or conclusion from an officially documented investigation or inquiry will not be considered adverse information. This preserves commanders' ability to administratively document and rehabilitate minor instances of substandard behavior or misconduct without making it a part of the permanent record (also referred to as "standalone" LOCs).

Moreover, the DAFPM states that "waivers to this policy are not permitted" and all adverse information as defined by the policy will be permanently placed in the MPerRGp. Except for the set aside of a court-martial or nonjudicial punishment action, removal of adverse information from

the MPerRGp may only be directed pursuant to an Air Force Board for Correction of Military Records (AFBCMR) recommendation.

As such the AFBCMR is now the sole removal authority for adverse actions. This is not a different type of review for the AFBCMR. Rather, it falls under the Board's existing review authority for corrections resulting from error or injustice.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the request. The applicant's LOA meets the requirements of adverse information. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. His commander issued a LOA, and the applicant provided a response through counsel. His commander considered his response and based on the preponderance of the evidence, decided that the LOA will remain in effect and that it would be filed in the applicant's OSR.

In accordance with (IAW) Air Force Instruction (AFI) 36-2907, *Adverse Administrative Actions*, 7 Sep 18, paragraph 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, any LOAs not filed in the UIF, must be filed in the officer's PIF.

Finally, IAW the National Defense Authorization Act, Title 10 United States Code Section 615, *Information furnished to selection boards*, paragraph (3)(a), In the case of an eligible officer considered for promotion to a grade specified in subparagraph (B), any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph 1. (3)(b) A grade specified in this subparagraph is as follows: In the case of a regular officer, a grade above captain, in the case of the Navy, lieutenant, or in the case of the Space Force, the equivalent grade.

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 4 May 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 not 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 does not substantiate the applicant's contentions. In accordance with AFI 36-2907, *Unfavorable Information File*, "[c]ommanders, supervisors, and other persons in authority can issue administrative counseling, admonitions, and reprimands...in an effort to improve, correct, and instruct subordinates who depart from standards of performance...or whose actions degrade the individual and unit's mission." It further states, that "commanders should utilize the 'preponderance of the evidence' standard when evaluating the evidence..." and that "there is no requirement to prove any allegation beyond a reasonable doubt." In this regard, the Board finds that the applicant has provided insufficient evidence to prove that the incident did not occur and notes that at the time he was issued the LOA, he was afforded the opportunity to respond, his commander considered the response, but chose to uphold the LOA. As such, the Board finds that the applicant was afforded due process, the issuing commander's actions were neither arbitrary or capricious and fell well within his authority. Furthermore, the LOA meets the criteria of adverse information in accordance with DAFPM 2021-36-03 and should remain a part of his record. Therefore, the Board recommends against correcting the applicant's records.

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-2023-00848 in Executive Session on 11 Jul 23:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atches, dated 17 Mar 23.

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

Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 14 Apr 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 May 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.

8/11/2025

X

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Signed by:

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