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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00303

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His date of rank (DOR) for second lieutenant (O-1) be corrected to reflect his original commissioning date of 25 May 22 versus 4 Aug 23.

APPLICANT'S CONTENTIONS

Due to a false allegation, his commissioning into the Regular Air Force (RegAF) from United States Air Force Academy (USAFA) was delayed. His original commissioning date was 25 May 22; however, following an investigation and Board of Inquiry (BOI), he was cleared of all wrongdoing and commissioned on 4 Aug 23.

In support of his appeal the applicant provides a copy of a Record of Proceedings from BCMR case BC-2018-01171, which he contends serves as a precedent for such date of rank adjustments. In this case, the Board approved correcting the DOR of another wrongfully accused cadet. In addition, the applicant provides the results from the BOI, along with the findings of his commander, who recommended "None" for any administrative actions.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a RegAF second lieutenant (O-1).

On 28 Jun 18, according to USAFA Form O-205, *Record of Acceptance, Obligation, Reimbursement, and Oath of Allegiance*, the applicant was appointed a cadet in USAFA.

On 17 Mar 22, according to an Office of Special Investigation (OSI) Report of Investigation (ROI), dated 14 Jun 22, the applicant was investigated after being accused of violating Uniform Code of Military Justice (UCMJ) Article 120, *Sexual Assault*, Article 128, *Assault*, and Article 98, *Failure to obey order or regulation*.

On 1 Nov 22, a memorandum from the USAFA commander indicates that the allegation of sexual assault against the applicant resulted in no action under the UCMJ based on the state of the

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evidence and nature of the offenses. However, in accordance with the recommendation of the Staff Judge Advocate and Commandant of Cadets, he intended to initiate show cause and convene a BOI.

On 5 Jan 23, a OSI Command Action memorandum indicates that no action was taken against the applicant for the offenses identified in the 14 Jun 22 OSI ROI.

According to an undated copy of a BOI findings provided by the applicant, a BOI convened and reviewed five allegations against the applicant that included physical and sexual assault, reckless driving, conduct unbecoming of an officer and a gentleman, and failure to obey a lawful order. The BOI concluded the applicant did not commit any of the allegations brought against him and recommended he be retained in the Air Force.

On 4 Aug 23, according to AF Form 133, *Oath of Office (Military Personnel)*, the applicant was appointed a second lieutenant in the RegAF.

The Board has ruled in favor in a similar case (BC-2018-01171). In this case the applicant requested his DORs from second lieutenant to captain be corrected to reflect the dates he would have otherwise received had it not been for the investigation, and for which he was cleared of all charges, that delayed his commissioning from USAFA.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2501, *Officer Promotions and Selective Continuation*

A2.1. Eligibility for Promotion to First Lieutenant. Second lieutenants on the ADL are eligible for promotion as soon as they have 24-months time-in-grade computed from their Current Grade Date of Rank (CGDOR) as a second lieutenant.

AIR FORCE EVALUATION

AFPC/DPMSP (Officer Promotions), recommends granting the applicant's request to back date his DOR for second lieutenant to 25 May 22. DPMSSP states the applicant was accused of sexual assault, physical assault and battery, and breach of a lawful order; however, a BOI convened and concluded the applicant did not commit the alleged transgressions.

The complete advisory opinion is at Exhibit C.

USAFA/JA recommends partially granting the application. They recommend denying the portion of the request to change his commissioning date to 25 May 22, because the Secretary of the Air Force does not have the authority to make the correction. However, they recommend granting the applicant's request to have his DOR changed to 25 May 22.

The applicant asserts he suffered an injustice because he was not allowed to graduate from USAFA on 25 May 22 due to a pending investigation and subsequent BOI, in which he claims he was falsely accused of all allegations, including sexual assault. While USAFA/JA notes there is no evidence suggesting the accusations made against the applicant were false, a legal standard of proof could not be established, and he was not charged or convicted of a crime. Therefore, they find that an injustice has occurred, and the applicant's DOR should be backdated to put him on an equal footing with his USAFA classmate peers [sic] for pay and promotions. However, regarding the applicant's request to correct his commissioning date, USAFA/JA does not find it within the authority of the AFBCMR to provide that relief and only the Secretary of Defense, as delegated by the President, has authority over the applicant's appointment.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 2 Aug 24 for comment (Exhibit E), 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 AFPC/DPMSP and USAFA/JA and finds a preponderance of the evidence substantiates the applicant's contentions to correct the applicant's DOR to second lieutenant to reflect 25 May 22. As such, the Board finds that a BOI cleared the applicant of all wrongdoing, but as a result of the investigation, the applicant's graduation from USAFA and subsequent promotion to second lieutenant were unjustly delayed. While USAFA/JA further recommends denying the applicant's request to correct the date of his commission and the date he would have been appointed in the Air Force, the Board did not identify that this was a request made by the applicant. Nevertheless, the Board recognizes the authority to change the date of appointment lies solely with the Secretary of Defense and correcting this date is outside of the Board's authority. However, pursuant to the board's statutory authority under 10 USC 1552 to correct errors and injustices, the Board does have the authority to change his DOR for second lieutenant even though it predates the date of his commission. Furthermore, the Board notes upon correcting the applicant's DOR to second lieutenant he will have the required Time in Grade for immediate promotion to first lieutenant. In this regard, the Board further finds it prudent to recommend that upon the applicant's promotion to first lieutenant, his DOR in that grade should also be adjusted to reflect 25 May 24, as this is the date he would have otherwise been promoted to first lieutenant if it weren't for the delay to his original appointment in the Air Force. Therefore, the Board recommends correcting the applicant's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

1. His date of rank to the grade of second lieutenant (O-1) be backdated to reflect 25 May 22.
2. Upon his promotion to first lieutenant (O-2), the applicant's DOR be backdated to reflect 25 May 24.
3. He receive retroactive pay and allowances based on the corrections to his dates of rank.

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-2024-00303 in Executive Session on 12 Nov 24:

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All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 Jan 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSP, dated 27 Feb 24.
- Exhibit D: Advisory opinion, USAFA/JA, dated 16 Jul 24.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 2 Aug 24.
- Exhibit F: AFBCMR Docket Number BC-2018-01171, Redacted.
- Exhibit G: OSI Report of Investigation – WITHDRAWN.

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.

1/3/2025

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