



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00702

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His Letters of Reprimand (LORs), dated 13 Sep 22 and 1 Nov 23, be removed from his record.
2. His Referral Officer Performance Report (OPR) for the period of 2 May 22 – 12 Sep 22 be removed from his record.

APPLICANT'S CONTENTIONS

At the end of 2021 he was diagnosed with Post-Traumatic Stress Disorder (PTSD) and was engaged in treatment. In Feb 22, he was suffering his second intense wave of hallucinations; seeing dead bodies. He was trying to determine reality from the hallucinations in which a stranger offered a hug which helped relieve the distress. In this effort, he hugged every person in the clinic not thinking about anything more than figuring out what was and was not real. As a result, he was given an LOR for unwanted touching, subject of an Equal Opportunity (EO) investigation for sexual harassment, being charged with assault, his OPR was degraded when the investigation started and finally, he received a Referral OPR for an unrelated period. In addition, he received a second LOR based solely on third party hearsay from a party who was not even present and parts of her statements were proven false and were due to rumors about him being spread by the person that accused him of inappropriate touching back in 2022.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force Nurse Corps captain (O-3).

On 21 Jan 22, according to memorandum for record, *Verbal Counseling*, provided by applicant, he was counseled for showing up late for work and for unsolicited hugging and touching coworkers at his place of duty. He was instructed to notify leadership if he will be delayed and to discontinue inappropriate contact with coworkers, peers, and or patients.

On 16 Feb 22, according to the <redacted> Security Forces Squadron *Report of Investigation* (ROI), dated 28 Mar 22, provided by applicant, Ms. <redacted> provided a written statement stating she was the victim of unwanted touching at her work center. Specifically, on 14 Feb 22, <applicant> approached her from behind while she was sitting at her desk and hugged her without her consent.

On 13 Sep 22, according to memorandum, *Letter of Reprimand*, provided by applicant, he received an LOR from the Operational Medical Readiness Squadron Commander (OMRS/CC) as the result

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Limited Dissemination Control: N/A

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of a SFS ROI which disclosed that between on or about 1 Oct 21 and on or about 1 Feb 22, he engaged in unwanted touching of two of his coworkers. First, on at least five occasions, he touched a particular female coworker's hair and rubbed her arms without her consent. On or about 19 Jan 22, Maj <redacted> and Capt <redacted> verbally counseled him about his interactions with his coworker and informed him this behavior was inappropriate. Maj <redacted> and Capt <redacted> also ordered him not to touch coworkers without their consent. On or about 14 Feb 22, he wrapped his arms around this same coworker and a second female coworker, again without the consent of either individual. Before he touched either coworker, he acknowledged the first female coworker had not consented to being touched; the second female coworker told him "not to hug [her]." Thus, he ignored both the order of his superior commissioned officer and the expressed lack of consent from his coworkers. On 16 Sep 22, he acknowledged receipt and he had three (3) duty days to provide a response for consideration.

On 26 Sep 22, he provided his response.

On 18 Jul 23, the applicant provided a response to the referral OPR.

On 2 Oct 23, AF Form 707, *Officer Performance Report*, for the report period of 2 May 22 - 13 Sep 22, was signed. Section XI, *Referral Report*, reflects the following comment: "<Applicant> received a Letter of Reprimand on 13 Sep 22 for unwanted physical contact (hugging) with two coworkers." Section III, *Performance Factors*, reflects: "Does Not Meet Standards." Section IV, *Rater Overall Assessment*, contains a single comment: "Mbr engaged in unwanted contact of two coworkers on two separate occasions—received LOR 13 Sep 22." Section V, *Additional Rater Overall Assessment*, contains single comment: "I have carefully considered <applicant> comments to the referral document on 26 Sep 22." The applicant acknowledged receipt of the referral OPR on 16 Nov 23.

On 1 Nov 23, according to a memorandum, *Letter of Reprimand*, provided by applicant, he received an LOR from the OMRS/CC due to witness statements that disclosed several instances of his inappropriate behavior in the workplace. Specifically, he was witnessed rating women in the clinic based on their perceived level of attractiveness; he made a clinic member uncomfortable when he told her that he should just cheat on his wife because she always thinks he is cheating anyway. Lastly, paragraph 2 states, Lt Col <redacted> has personally witnessed his consistent tardiness, inability to get to work on-time, and lack of meeting participation.

On 9 Nov 23, the applicant provided his response.

On 20 Nov 23, the commander after considering the applicant's response decided to sustain the LOR with the exception of paragraph 2. On that same date, the applicant acknowledged receipt of the final decision and according to a memorandum, *No Contact Order*, provided by applicant, the OMRS/CC ordered the applicant to have no contact with Ms. <redacted>.

On 10 Jan 24, according to memorandum, *Informal complaint pursuant to Article 138, Uniform Code of Military Justice*, provided by applicant, he requested relief from the OMRS/CC. Specifically, he requested the LOR, dated 1 Nov 23, be removed from his record.

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

APPLICABLE AUTHORITY/GUIDANCE

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

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 the “preponderance of evidence.” This standard will be used when evaluating the evidence and every element of the alleged offenses. 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 facts such as a witness’ behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationships being considered. Consider whether such proof is available before initiating the administrative action. If such proof is lacking, administrative action may be determined legally insufficient and, as a result, could be set aside. There is no requirement to prove any allegation beyond a reasonable doubt.

2.3.5. Letter of Reprimand. Administrative censure for violation of standards which is more severe than a Record of Individual Counseling (RIC), Letter of Counseling (LOC), Letter of Admonishment (LOA) and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior.

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 was issued an LOR on 13 Sep 22 for engaging in unwanted touching of two coworkers; substantiated by an investigation dated 23 Feb 22. Additionally, he was issued an LOR on 1 Nov 23 for inappropriate behavior in the workplace. In both cases, he acknowledged receipt and provided a response. The commander administered the LORs in accordance with DAFI 36-2907, Chapter 3, however, a review of the applicant’s Master Personnel Record Group reveals the documentation for either LOR has not been filed.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant’s request. This Psychological Advisor having considered the entire record, including the applicant’s submissions, contentions, and all pertinent materials, and finds there is insufficient evidence to support removal of the two LORs or Referral OPR from his record. While the applicant is diagnosed with PTSD and alcohol dependence, there is insufficient evidence to suggest his mental health conditions led to his misconduct which resulted in two LORs and a Referral OPR. Sexual harassment/unwanted touching (contact)/inappropriate behavior in the workplace is not part of the sequelae of symptoms associated with PTSD or alcohol dependence; therefore, there is no nexus between the applicant’s misconduct and his mental health diagnoses.

He appears to contend his misconduct was the result of a dissociative episode or hallucination and reported in his application that: “In Feb 22, I was experiencing my second intense wave of hallucinations seeing dead bodies. I was trying to determine reality from the hallucinations in

which a stranger offered a hug. This helped relieve the distress. In this effort, I hugged every person in the clinic not thinking about anything more than figuring out what is real.” Additionally, in his response to the allegations from 14 Feb 22, he noted: “I had been diagnosed with PTSD and having numerous flashbacks that morning that caused severe distress. I came into the clinic area and a person from the family health clinic that I did not know noticed I looked “off.” That lady offered me a hug and I accepted. I felt a little improvement and support afterward. So I went around the entire warrior clinic and asked each person that I worked with for a hug in support of my distress.”

Regardless of whether he had been having dissociative episodes or hallucinations, his misconduct does not appear to be the result of these symptoms. He appears to have methodically gone to each person to ask for a hug. Additionally, he repeated his misconduct of unwanted contact on several occasions. His misconduct appears to be conscious, willful acts, perpetrated over time with no nexus with his mental health conditions or symptoms. His LORs also document inappropriate comments made on several different occasions that also are not part of the sequelae of symptoms associated with his mental health diagnoses. Therefore, the Psychological Advisor concludes the misconduct that led to his LORs and Referral OPR is not excused or mitigated by his mental health conditions. Liberal consideration was applied due to his contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant was diagnosed with PTSD and alcohol dependence.

2. Did the condition exist or experience occur during military service?

The applicant was diagnosed with PTSD and alcohol dependence.

3. Does the condition or experience excuse or mitigate the discharge?

While the applicant is diagnosed with PTSD and alcohol dependence, there is insufficient evidence to suggest his mental health conditions led to his misconduct which resulted in two LORs and a Referral OPR. Sexual harassment/unwanted physical touching (contact) behaviors are not part of the sequelae of symptoms associated with PTSD or alcohol dependence; therefore, there is no nexus between the applicant’s misconduct and his mental health diagnoses. The LORs contain inappropriate comments made by the applicant in the workplace on several different occasions that also are not part of the sequelae of symptoms associated with his mental health diagnoses. Therefore, this Psychological Advisor concludes the misconduct that led to his LORs and Referral OPR are not excused or mitigated by his mental health conditions.

4. Does the condition or experience outweigh discharge?

Since the applicant’s mental health condition does not excuse or mitigate his misconduct, the applicant’s condition also does not outweigh reprimands (two LORs and a Referral OPR).

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 29 Apr 24 for comment (Exhibit E), and the applicant replied on 24 May 24. In his response, the applicant noted the AFPC/DPMSSM statement that the 13 Sep 22 LOR for engaging in unwanted touching by two coworkers, that was substantiated by an investigation dated 23 Feb 22, is not possible as the police report initially filed was for **assault** [emphasis added] and that per SFS personnel was **not founded** [emphasis added]. This information was provided to him on 27 Nov 23 by SFS investigators who

assured him the 2022 accusation was **unfounded** [emphasis added] and how to have his fingerprints removed from the system. Further, **there was no way possible the investigation could have substantiated** [the allegations] **before the investigation concluded** [emphasis added]. Additionally, in the event the investigation was the result of an internal investigation issued by the commander, then it was done illegally and outside the AFI for Commander Directed Investigations (CDI). The discrepancies in the Psychological Advisor's response show **bias and inconsistency** [emphasis added]. The Psychological Advisor noted "you acknowledged the first coworker had not consented to be touched and the second female told you not to hug her." At no time in his response did he acknowledge these statements and the take away is inconsistent with his own statement "she said for the first time "I am not a fan of being touched." I responded with oh hugs just help it would mean a lot. She replied, "oh, ok, sure." This acknowledgement is his understanding of her agreeing to the hug to assist in his dilemma. Further, in regard to the verbal counseling by the superior officer, he was never informed the conversation was of a counseling nature in any way. If it was, it should have been presented as such with him being offered to sign and acknowledge the counseling. As it is, he was not made aware of its existence until he received the LOR.

His 1 Nov 23, LOR is based on witness statements made by Lt Col <redacted>, who was not present for any of these said statements, which he denies making. There is no memorandum for record (MFR) or any other record of who supposedly witnessed these behaviors. Further, as he proved that Lt Col <redacted> was lying about his work attendance, half the accusations contained within the LOR were retracted. Therefore, it would only be rational to conclude that with no supporting documents or first-hand witness statements, it means there is no evidence and the LOR is based on mostly lies or misrepresentations.

The Psychological Advisor noted he received his PTSD diagnosis, as well as his first hallucination/flashback, in November; however, there is a gap about his mental health treatment for the month of February. If this gap was considered, it would be relevant in deciding his mental health and the Psychological Advisor would have noted he saw his Intense outpatient provider the day of the incident and that they talked about the entire occurrence.

In conclusion, he finds the information presented by the Psychological Advisor to be selected, and excludes important information to include why he, the applicant, finds the adverse actions unjust and unfair. The accusations on the 13 Sep 22 LOR are not true, he did not commit them, and the Referral OPR is based on these untrue accusations. The 1 Nov 23 LOR is based on lies generated by Lt Col <redacted>.

The applicant's complete response is at Exhibit F.

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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and/or the recommendation of AFPC/DPMSSM and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not support the applicant's contentions. The applicant contends his LOR and referral OPR for unwanted touching is due to his conduct being misinterpreted as he was suffering from an intense wave of hallucinations and was just trying to relieve his distress. He also contends the subsequent investigation was conducted illegally and

failed to adhere to DAFMAN 1-101, *Commander-Directed Investigations*. Further, he contends his subsequent LOR for inappropriate behavior was based on false statements, rumors and lies spread by his original accuser. Regardless of whether he had been having dissociative episodes or hallucinations, the investigation shows his misconduct does not appear to be the result of these symptoms as he appears to have methodically gone to each person to ask for a hug. Further, he repeated his misconduct of unwanted conduct on several occasions and the misconduct appears to be conscious, willful acts, perpetrated over time with no nexus to his mental health conditions or symptoms. As such, the Board determines his LORs, dated 13 Sep 22 and 1 Nov 23, and Referral OPR to accurately reflect the applicant’s misconduct and performance. The Board finds the actions taken by his commander to be neither arbitrary or capricious and were well within the bounds of his command authority. Further, the Board finds the applicant was provided due process and in accordance with DAFI 36-2907, the adverse information should remain a part of his record. The Board notes the investigation is a Security Forces investigation and is not governed by DAFMAN 1-101. Finally, Liberal Consideration was applied due to his contention of a mental health condition and while the applicant is diagnosed with PTSD and alcohol dependence, having considered the entire record, including the applicant’s submissions, contentions, and all pertinent materials, the Board finds there is insufficient evidence to support removal of the two LORs or Referral OPR from his record. Therefore, the Board recommends against correcting the applicant’s record.

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-2024-00702 in Executive Session on 10 Dec 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 21 Feb 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 18 Apr 24.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 29 Apr 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Apr 24.
- Exhibit F: Applicant’s Response, dated 24 May 24.

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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.

3/26/2025

X *Work-Product*

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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