



Work-Product

## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00734

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

1. His Letter of Reprimand (LOR), dated 12 June 2023, be removed from his record.
2. His Referral Officer Performance Brief (OPB) (O-1 thru O-6), rendered for the period of 2 November 2022 through 31 August 2023, be removed from his Officer Selection Record (OSR) (**Non-Viable – Failure to Exhaust**).
3. His Unfavorable Information File (UIF), dated 17 October 2023, be removed from his records.
4. He receive reimbursement of \$1,500.00 in denied Military Tuition Assistance (MilTA).

### APPLICANT'S CONTENTIONS

The LOR received for assault and battery was unjustly issued to him. The alleged crime did not occur and on multiple occasions, he demonstrated his innocence. The issuing authorities have since removed the LOR and UIF at their level, but they are unable to remove these records from his OSR. There were no pictures, text messages or video suggesting he assaulted someone other than his own official statement, in which he indicated this was an act of self-defense to protect himself from physical harassment. Further, there were no witnesses or law enforcement involved in this incident. A UIF was established and the LOR was filed in the UIF. On 31 October, he appealed to the wing commander requesting the LOR and UIF be withdrawn from his records. On 15 December, he was informed by the squadron commander the UIF removal had been approved. The JA representing the wing confirmed on 18 December both the wing and deputy commander agreed to remove the LOR from the UIF at the six-month mark; but were unwilling at their level to write a letter of support to the Air Force Board for Correction of Military Records (AFBCMR) to rescind the LOR or remove it from his OSR. Due to the prolonged process of removing the LOR and UIF at the wing level, he was unable to apply for six semester hours' worth of MilTA. This cost him an additional \$1,500.00 for his master's degree, despite being eligible to have the cost reimbursed, hence a material error and injustice.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 12 June 2023, the applicant was administered an LOR for assaulting a fellow officer (Work-Prod...  
An inquiry disclosed in the early morning hours of 29 March 2023, the applicant was intoxicated while on a stop in Greece. After being instructed by a bar m

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establishment, [Work-Product] attempted to persuade him to return to lodging. After the applicant refused, [Work-Product] observed him for approximately 20 minutes and attempted to escort him back to the hotel; however, he was argumentative and struck [Work-Product] in the face. As a result, [Work-Prod...] subdued the applicant and physically escorted him to lodging.

The applicant acknowledged receipt and understanding on 12 June 2023, at which time he was advised he had three duty days from date of LOR to provide a response. The applicant provided a written response dated 20 June 2023. The issuing authority advised the applicant the response was considered; however, the issuing authority elected to sustain the LOR and subsequent UIF; the applicant acknowledged receipt on 27 June 2023.

On 17 October 2023, according to DAF Form 1058, *Unfavorable Information File Actions*, the applicant's commander established a UIF and filed the contested documents in the UIF.

On 19 January 2024, according to DAF Form 1058, the applicant's commander decided to remove the UIF early.

On 8 April 2024, AF Form 715, *Officer Performance Brief (O-1 thru O-6)*, provided by the applicant shows he acknowledged receipt of his performance report and that it was being referred by his commander for violating UCMJ Article 128, *Assault*, and for which he received the 12 June LOR.

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

## AIR FORCE EVALUATION

AFPC/DP3SP recommends denying the applicant's request to remove the referral report. HQ AFPC/DPMSPE, Evaluation Procedures and Appeals, reviewed the applicant's request and determined there was no action required. The applicant's OPR, with a close-out date of 31 August 2023, is not reflected in his record and was never made a matter of record. IAW AFI 36-2406, *Officer and Enlisted Evaluations Systems*, paragraph 1.4.3.1 - An evaluation is considered complete when all applicable signature elements are signed or completed. Completed evaluations become a matter of record once they are uploaded into the Automated Records Management System (ARMS) and Personnel Records Display Application (PRDA). Evaluations are considered "working copies" until they are made a matter of record.

Since, the OPR is not a matter of record there is no action required by AFPC/DP3SP. When the OPR is made a matter of record IAW AFI 36-2406, *Correcting Officer and Enlisted Evaluation Reports*, AFPC/DP3SP recommends the applicant submit a new AF Form 948, *Application for Correction/Removal of Evaluation Reports*, with all required supporting documentation, through the virtual Military Personnel Flight (vMPF)/Evaluation Appeals found under the Most Popular Applications.

The complete advisory opinion is at Exhibit C.

AFPC/DP3SA recommends denying the applicant's request for reimbursement of \$1,500.00. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant received an LOR dated 12 June 2023, from which an associated UIF was placed in the applicant's education record. A UIF prevents service members from applying for MilTA in the Air Force Virtual Education Center (AFVEC) per DAFI 36-2670, *Personnel - Total Force Development*, 25 June 2020, paragraph 6.5.2.8. All MilTA users must

complete and sign a Virtual Active-Duty MilTA Benefits Training, which the applicant completed on 14 July 2022. The training specifically states, “MilTA is denied for airmen with UIFs, failed PT, referral EPR/OPRs or Control Roster.”

Finally, there was no requirement for the applicant to continue taking courses while the UIF was in the applicant’s record, nor was there a requirement for the applicant to pay for such courses as post-secondary education is voluntary education.

IAW DAFI 36-2670, paragraph 6.5.2.8., airmen who have a UIF, are on a control roster, have failed or are overdue their most recent physical fitness test, and/or have a current referral Enlisted Performance Report/Officer Performance Report at the time of application for MilTA, are ineligible for MilTA. There are no waivers. Airmen who are denied MilTA and use other means to fund course(s) are not eligible for retroactive MilTA for those course(s) after the removal of the above barriers. All other eligibility requirements apply in order for the airman to resume receiving MilTA. (T-1).

The complete advisory opinion is at Exhibit D.

AFPC/JA recommends denying removal of the LOR from his records. Based on the foregoing, the applicant has failed to prove any material error or injustice warranting relief. The applicant’s LOR is legally sufficient and was well within the commander’s discretion to issue. Accordingly, the request to remove the LOR should be denied.

The applicant requests his LOR dated 12 June 2023, as well as the associated referral OPB be removed from his record. He also requests reimbursement of \$1,500 in denied tuition assistance. This advisory is limited to addressing the LOR. With respect to the other issues raised, AFPC/JA defers to the Offices of Primary Responsibility (OPRs).

By regulation, commanders and supervisors are charged with the responsibility to administratively censure inappropriate or improper behavior in appropriate circumstances. As stated in DAFI 36-2907, *Adverse Administrative Actions*, paragraph 1.1, “Adverse administrative actions are intended to improve, correct, and instruct subordinates who violate established Department of the Air Force (DAF) standards whether on or off duty.” LORs are discretionary in nature, must be supported by a preponderance of the evidence, and will not be disturbed unless the evidence is not sufficient and/or the action constituted an abuse of discretion.

Although there were no pictures, videos, or witnesses to the night in question, [Work-Product] provided an informal statement of the events. He indicated the applicant was severely intoxicated, and the bar manager kicked him out of the bar. While navigating the applicant back to their hotel, the applicant became aggressive and belligerent, and attempted to return to the bar. [Work-Product] used “joint manipulation” to subdue the applicant and was able to successfully escort him to the hotel. The applicant provided a formal statement of events (on an AF IMT 1168, *Statement of Suspect/Witness/Complaint*) about one week after the night in question. Within this statement, the applicant admits [Work-Product] attempted to escort him back to the hotel and, after a “brief scuffle,” he responded by striking [Work-Product] in the face. [Work-Product] then subdued him, the applicant apologized, and they returned to the hotel. The applicant indicates he apologized again via text and thanked [Work-Product] for ensuring he made it to the hotel safely. When he woke up, the applicant sent a text to the mission commander explaining what happened the previous evening. The applicant apologized to the mission commander and admitted responsibility. Later in the evening, the applicant again apologized to [Work-Product] and thanked him. Three months later, in response to the LOR, the applicant changed his story from one of accepting responsibility, to asserting a claim

of self-defense. He indicated [Work-Product] became aggressive, put him in a headlock to “choke him into submission,” and fearing for his safety, the applicant struck [Work-Product] in the face.

According to Rule 916 of the Rules for Courts-Martial, “It is a defense to any assault...that the accused: (A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused...” The test for this element is objective - would a reasonable, prudent person believe bodily harm was about to be inflicted wrongfully on him/her. There is no dispute the applicant had been drinking on the night in question. According to [Work-Product], the applicant was severely intoxicated, and [Work-Product] simply wanted to escort him safely back to the hotel. The applicant admits they argued about it and engaged in a “scuffle.” Consequently, it is more likely than not a reasonable person would not have believed [Work-Product] was about to wrongfully inflict bodily harm; rather, a reasonable person would have believed [Work-Product] was taking necessary steps to subdue him/her to aid in getting him/her to safety. This may have involved some amount of bodily harm; such was not wrongful. [Work-Product] was the officer in charge and thus, responsible for the safety of his teammates. Moreover, it was not until three months later - after receipt of adverse paperwork the applicant claimed self-defense. He made no mention of it in the statement he provided a week after the incident. In fact, he admitted responsibility and apologized numerous times for his actions.

With respect to the statement from [Work-Product]’s senior non-commissioned officer (SNCO) teammate, he did not actually witness the events in question; rather, he simply provided his opinion based on what he was told of the evening. Finally, with respect to the fact the applicant’s wing commander removed his UIF early, such has no bearing on the LOR itself. In fact, in his own statement to the board, the applicant acknowledged the wing commander was unwilling to support his application for rescission of the LOR.

The complete advisory opinion is at Exhibit E.

AFPC/DPMSSM recommends denying the applicant’s request to remove his LOR from his records. AFPC/DPMSSM can only speak to the procedural processing of the administrative action taken against the applicant, not to the content of the claims which serve as the basis for issuing the actions. The available documentation and analysis of the facts, reflect there is insufficient evidence of an error or injustice. The issuing authority granted early removal of the UIF. The applicant was issued the LOR in accordance with Department of the Air Force (DAFI) 36-2907, *Adverse Administrative Actions*, Chapters 1, 2, and 3. All adverse information as defined by this instruction will be permanently placed in the Master Personnel Record Group (MPerRGp). 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.

The complete advisory opinion is at Exhibit F.

## **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 8 October 2024 for comment (Exhibit G), 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 recommendations of AFPC/DP3SP, AFPC/DP3SA, AFPC/JA, and AFPC/DPMSSM, and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the underlying reason for the referral OPB rendered for the period 2 November 2022 through 31 August 2023 is the LOR/UIF and the events that occurred on 29 March 2023. Furthermore, the referral OPB is not found in the Automated Records Management System and has not yet become a matter of record. Therefore, until it becomes a matter of record, there is nothing for the Board to correct. When the OPB becomes a matter of record, the applicant can submit a request to the ERAB. The Board further notes MilTA is denied for airmen with UIFs, failed PT, referral EPR/OPRs or Control Roster action. 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-2024-00734 in Executive Session on 10 December 2024:

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 22 February 2024.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SP, dated 8 May 2024.
- Exhibit D: Advisory Opinion, AFPC/DP3SA, w/atch, dated 13 September 2024.
- Exhibit E: Advisory Opinion, AFPC/JA, dated 27 September 2024.
- Exhibit F: Advisory Opinion, AFPC/DPMSSM, dated 7 October 2024.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 8 October 2024.

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

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