



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00772

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The punishment imposed upon him under Article 15, Uniform Code of Military Justice (UCMJ), dated 17 January 2024, be removed from his records.

APPLICANT'S CONTENTIONS

Evidence used to determine punishment of the alleged crime was based on unsubstantiated information. There was no preponderance of evidence to warrant punishment under Article 15, and had there been, the allegations of misconduct do not meet the standard for "Conduct Unbecoming an Officer." Witness testimony provided to the Office of Special Investigation (OSI), refutes all allegations of misconduct. Furthermore, it is his belief that wing leadership did not review the information or character references contained in the rebuttal of the article due to the extremely short time period spanning from submittal of the documentation to adjudication.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force major (O-4).

On 17 January 2024, the applicant received nonjudicial punishment (NJP) under Article 15, UCMJ, for wrongfully harassing a senior airman (Work-Product) by slapping his buttocks and mocking his appearance, which acts constituted conduct unbecoming an officer, in violation of Article 133 (UCMJ). The applicant appealed the decision, and the commander denied the appeal. The applicant's punishment consisted of a reprimand.

A Report of Investigation summary, dated 27 December 2023, provided by the applicant, reflects the applicant slapped an airman on the buttocks. During the recorded interview the applicant invoked his right to legal counsel and the interview was terminated. Witness interviews disclosed no one witnessed the incident occurred [sic].

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

AIR FORCE EVALUATION

AFPC/JAI recommends denying the application. On 4 July 2023, while the applicant was on a temporary duty assignment to Australia, he attended a party to celebrate Ju

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Work...Product when he passed by the applicant, he slapped his buttocks with his hand and laughed. Later that evening, the applicant slapped Work...-Product's buttocks again and laughed. Multiple witness statements indicated the applicant was heavily intoxicated during the party. The applicant also made derogatory comments to Work...Product about his painted nails.

On 25 January 2024, the 27th SOW/CC administered NJP on the applicant pursuant to Article 15, UCMJ, for wrongfully harassing Work...Product by slapping his buttocks and mocking his appearance, which acts constituted conduct unbecoming an officer, in violation of Article 133, UCMJ. He was punished with a reprimand.

After careful review, no evidence was found to support the applicant's allegations of error or injustice. DAFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 3.4.4, provides "[t]he applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice." It is not within the scope of the AFBCMR to relitigate the underlying facts and circumstances of the NJP. Instead, AF/JAJI limits their review to whether, based on evidence provided by an applicant, there was an error or injustice to the detriment of the applicant. Furthermore, AF/JAJI applies an "unusually deferential" approach when analyzing a commander's action. *Roberts v. United States*, 408 U.S. App. D.C. 211, 217 (2014). Under these standards, they find the applicant has offered no evidence of error or injustice, and defer to the NJP authority's discretion and findings of fact.

The applicant argues "there was no preponderance of the evidence to warrant punishment," and further states, "it is my belief that wing leadership did not review the information or character references contained in the rebuttal." These contentions amount to no more than mere disagreement with the commander, and do not rise to the level of evidence that would undermine the commander's discretionary decisions. AF/JAJI finds the evidence gathered in the investigation could have supported the NJP authority's findings. Moreover, the applicant's own personal statement admitted to "inappropriately and misguidedly comment[ing] on Work... Work-Product appearance," and that fact would have been sufficient to support the commander's decision to impose NJP even if the applicant believes it was only "a poor attempt at light-hearted banter." Such a disagreement over perception does not undermine the commander's conclusions.

AF/JAJI finds the commander did not abuse his discretion in administering the NJP, finding the applicant committed the offense as alleged, or imposing punishment. The punishment imposed was within the permissible range for the offenses. After the advice provided by counsel, the applicant could have demanded court-martial in lieu of NJP and presented his case and any evidence before a jury of his peers, which he opted against. The applicant has not submitted any new evidence or information that casts doubt on the legal sufficiency of the NJP. Therefore, AF/JAJI find no basis to set aside the NJP.

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 6 May 2024 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 AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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

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-2024-00772 in Executive Session on 12 November 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 26 February 2024.

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

Exhibit C: Advisory Opinion, AF/JAJI, dated 19 April 2024.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 May 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.

3/28/2025

X MYG

MICHELLE Y. GRIFFIN

Board Operations Manager, AFBCMR

Signed by: GRIFFIN.MICHELLE.YVETTE.1047556798

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