

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01872

XXXXXXXXXX

**COUNSEL:** XXXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

1. Her Letter of Reprimand (LOR), issued on 6 Oct 15 be expunged from her military records.
2. Her referral Enlisted Performance Report (EPR), for the period of 1 Dec 14 – 30 Nov 15, be removed from her military records. **(Failure to Exhaust; applicant has not applied to the Evaluation Report Appeals Board (ERAB) for relief).**
3. Her promotion to the grade of Master Sergeant (MSgt) be backdated to 1 Oct 15.
4. She receive retroactive pay, benefits, and allowances she would have been entitled to based on a promotion date of 1 Oct 15.

### APPLICANT'S CONTENTIONS

Through counsel, the applicant contends the allegations contained within the LOR and referral EPR are patently false, do not accurately depict the circumstances surrounding the allegations, and run afoul of controlling regulations. She was subjected to a hostile work environment and had her pleas for assistance in stopping the abhorrent actions repeatedly ignored by her command. When she reached out for help, she became the victim of sexual harassment at the hands of her supervisor and was then retaliated against when she denied his sexual advances. The allegations she created a hostile work environment by showing offensive pictures to a subordinate is a gross mischaracterization of the circumstances which only further perpetrated the instances of harassment and retaliation she faced on a daily basis. As a result of these instances of harassment and reprisal, she had her promotion to MSgt unjustly delayed. But for the patently false LOR and referral EPR, and the clear inability of the Investigating Officer (IO) to remain impartial, she would have been promoted to MSgt on 1 Oct 15, several months before her actual promotion date. The decision to remove her from the promotion list was an arbitrary and capricious abuse of discretion. Both of her accusers had clear motives to fabricate the allegations against her and once again, the inability of the IO to remain impartial can easily be seen, to include numerous instances in which the IO went off-base to social events with one of her accusers.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air Force senior master sergeant (E-8).

On 2 Jul 15, according to Report of Investigation (ROI) FRNO XXXXXXXX, dated 13 Apr 18, the applicant received an LOR from her supervisor, MSgt A, for leaving the area without a leave authorization number. The applicant provided a response to the LOR on 10 Jul 15 and on 28 Jul 15, she was informed the LOR would be retained as written.

On 9 Nov 15, according to the RIO, dated 13 Apr 18, the applicant filed an AF Form 102, *Inspector General Personal and Fraud, Waste and Abuse Complaint Register*, with the XXXX Expeditionary Wing Inspector General (AEW/IG) for the following allegations:

- **Allegation 1:** It is alleged that on or about 2 Jul 15, MSgt A issued <applicant> a Letter of Reprimand in reprisal for making a protected communication (PC1), in violation of 10 USC 1034. FINDING: **NOT SUBSTANTIATED.**
- **Allegation 2:** It is alleged that on or about 2 Jul 15 SMSgt F, influenced MSgt A, convincing her to administer to <applicant> a Letter of Reprimand in reprisal for making a protected communication (PC1), in violation of 10 USC 1034. FINDING: **NOT SUBSTANTIATED.**

On 16 Feb 16, according to AF Form 910, *Enlisted Performance Report (AB thru TSgt)*, reflects the applicant received a referral EPR from her supervisor, MSgt A, for receiving multiple Letters of Counseling (LOC) and Letters of Reprimand (LOR). Section VI, *Overall Performance Assessment*, reflects “Met some but not all expectations.” Section IV, *Followership/Leadership*, Box 2, *Comments*, contains the following statement “Mbr received LOC/R’s f/failure to obtain leave authorization/failure to obtain POA prior to departing/disrespecting an SNCO multiple times/creating a hostile workplace by showing offensive pictures to a subordinate—Led to Red-line stripe.” On that same date, according to a memorandum, *Referral Enlisted Performance Report*, MSgt A, informed the applicant as to their rationale for making the evaluation a referral. Specifically, their rating of “met some but not all expectations,” their comments pertaining to the applicant’s failure to maintain appropriate standards of behavior, to include personal conduct, caused this report to be a referral as she received: an LOC for failure to obtain a POA to ensure proper care for her children prior to departing for pre-deployment training; an LOR for failure to obtain an approved leave authorization number prior to departing the country to transport her children to another country; and received an LOR while deployed for disrespecting a senior noncommissioned officer on multiple occasions during the performance of their duties and created a hostile work environment by showing a picture containing offensive material to a subordinate while in the workplace. Furthermore, she was informed the ratings or comments may result in a promotion recommendation of “Not Ready Now” or “Do Not Promote.”

On 22 Feb 16, the applicant provided a response to the referral EPR.

On 26 Feb 16, Section VII, *Additional Rater Comments*, reflects the applicant’s additional rater, SMSgt F, concurred with the rater’s assessment, signed, and provided the following comments, “I have carefully considered <applicant’s> comments to the referral document (16 Feb 16).”

On 16 Mar 16, Section IX, *Unit Commander/Military or Civilian Director/Other Authorized Reviewer’s Comments*, reflects the applicant’s squadron commander concurred, signed, and made the promotion recommendation of “Do Not Promote.”

On 1 Aug 18, according to the Military Personnel Data System (MilPDS), the applicant was promoted to master sergeant with a date of rank (DOR) and effective DOR of 1 Aug 18. For more information, see the excerpt of the applicant’s record at Exhibit B and the advisory at Exhibit C.

#### **APPLICABLE AUTHORITY/GUIDANCE**

Air Force Instruction (AFI) 36-2907, *Unfavorable Information File (UIF) Program*, dated 26 Nov 14:

2.2. UIF authorities to establish, destroy or remove for enlisted members. 2.2.1. Commanders on G-series orders at all levels for members assigned or attached to their units have authority to establish, remove, or destroy UIFs on enlisted members.

2.5. Removal of UIFs or their Documents. 2.5.1. Commanders maintain the UIF and all of its documents/contents until the final disposition date (**Table 2.2**) unless early removal of the document or UIF is clearly warranted.

**Table 2.2. UIF Establishment and PDS Update Procedures (Officer and Enlisted).**

Rule	Document	Update Code	Disposition Date	Mandatory Filing?	Received Documents From:
<b>Rule 5</b>	LOR	1	Enlisted: is 1 year from the date the commander signs section V of AF 1058 (final) (see note 6). Officer: is 2 years from the date the commander signs section V of AF 1058 (final) (see note 6)	Yes	The Commander
<b>Rule 6</b>	Anything the commanders refers for filing such as LOCs, LOAs, confirmed evidence of unlawful discrimination or sexual harassment or civilian convictions for an offense that carries a possible sentence of confinement for 1 year or less	1	See note 6.	Yes	The Commander

Note 6: If there are more than 14 days between the date the commander signed AF Form 1058 and the date of the LOR, annotate the discrepancy in a Memorandum for Record (MFR) and use the date of the LOR/LOC when determining the disposition date. File the MFR in the UIF with AF Form 1058.

4.1. Who Can Use Counseling, Admonitions, and Reprimands. Commanders, supervisors, and other persons in authority can issue administrative counseling, admonitions, and reprimands. These actions are intended to improve, correct, and instruct subordinates who depart from standards of performance, conduct, bearing, and integrity, on or off duty, and whose actions degrade the individual and unit's mission. This includes issuing administrative counseling, admonitions, and reprimands to reservists who commit an offense while in civilian status.

4.1.1. Raters must consider making comments on performance reports when the ratee receives any of these adverse actions.

4.1.3. Standard of Proof. While no specific standard of proof applies to administrative action proceedings, commanders should utilize the “preponderance of the evidence” standard when evaluating the evidence and every element of the offenses committed. A preponderance of the evidence means simply the greater weight of credible evidence. Whether such proof is available should be considered before initiating the administrative action. If such proof is lacking, administrative action is susceptible to being found to be legally unsupportable and, as a result, could be set aside. There is no requirement to prove any allegation beyond a reasonable doubt.

4.2. Records of Individual Counseling (RIC) and LOCs. Counseling helps people use good judgment, assume responsibility, and face and solve problems. Counselors assist subordinates in developing skills, attitudes, and behaviors that are consistent with maintaining the Air Force's readiness.

4.2.1. First line supervisors, first sergeants, and commanders routinely counsel individuals either verbally or in writing, giving advice and reassuring subordinates about specific situations.

4.4. LORs. A reprimand is more severe than a counseling or admonition and indicates a stronger degree of official censure. Commanders may elect to file a LOR in an UIF for enlisted personnel.

4.5. Administering RICs, LOCs, LOAs, or LORs.

4.5.1. Administer a counseling, admonition, or reprimand, verbally or in writing. If written, the letter states:

4.5.1.1. What the member did or failed to do, citing specific incidents and their dates.

4.5.1.2. What improvement is expected.

4.5.1.3. That further deviation may result in more severe action.

4.5.1.4. That the individual will be allocated 3 duty days to submit rebuttal documents for consideration by the initiator. For Non-EAD Reservists or ANG members: the individual has 45 calendar days from the date of receipt of the certified letter, to acknowledge the notification, intended actions, and provide pertinent information before the commander makes the final decision.

4.5.1.5. That all supporting documents received from the individual will become part of the record.

4.5.1.6. The person who initiates the LOC, LOA, or LOR has 3 duty days to advise the individual of their final decision regarding any comments submitted by the individual.

## **AIR FORCE EVALUATION**

AFPC/DPMSSM recommends denying the request. The Special Programs section cannot speak to the validity of the issuing authority's reason for issuing the LOR, only for the process of administering the LOR/UIF and filing. Upon review of the documentation provided by the applicant and careful analysis of the pertinent facts, there is insufficient evidence to support or refute claims of an error or injustice in relation to the administration of the LOR and UIF. They are unable to verify the applicant acknowledged receipt and understanding and timeframe issuance as this documentation was omitted from the application. A review of the applicant's Master Personnel Record Group (MPerRGp) reveals the applicant's adverse administrative actions, along with her response, had not been filed. However, it must be noted at the time of the

issuance of the LOR, the applicant was a technical sergeant (TSgt), and in accordance with the governing directive at the time, AFI 36-2907, Chapters 2 and 3, LORs and UIFs for TSgts were not required to be filed in the applicant's MPerRGp, but were, and still are, maintained at the base level. Finally, as the expiration for an UIF has passed, disposition of the files has passed and as such, pertinent documents were not available.

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 27 Aug 24 for comment (Exhibit D), and the applicant replied on 9 Sep 24. In her response, she contended through counsel, while the advisory states there has been insufficient evidence presented to demonstrate the existence of an error or injustice, she respectfully disagrees as it is clear the advisory failed to review the evidence in its entirety and reach a logical conclusion. Further, when the circumstances surrounding the issuance of the LORs are viewed objectively, it is clear the evidentiary burden needed to substantiate the allegations against her were not met. It is illogical to believe she would show such a private and highly embarrassing photo to another service member. Further, although she did use profanity when addressing MSgt S, her response was the result of pent up frustration towards MSgt S caused by ongoing daily harassment. The issuance of an LOR for this was grossly improper and the circumstances of this case unequivocally establish multiple errors that have resulted in a substantial injustice. For these reasons, she respectfully requests the Board disregard the advisory recommendation and grant the requested relief.

The applicant's complete response is at Exhibit E.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant did not exhaust 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. While the applicant contends the allegations contained within the LOR and referral EPR are patently false, do not accurately depict the circumstances surrounding the allegations, and run afoul of controlling regulations. However, the Board disagrees. The Board notes the applicant provided a response to the LOR, and the issuing authority considered her response and based on the preponderance of the evidence decided to sustain the LOR. While the applicant contends, she was the victim of harassment and retaliation, the Board thoroughly reviewed the Report of Investigation and concurs with the IG's findings that the allegations were not substantiated. Further, the Board finds the applicant has provided insufficient evidence she was sexually harassed and reprisal against for denying her superiors sexual advances. With respect to the applicant's request to remove her referral EPR for the period 1 Dec 14 – 30 Nov 15, the Board finds the applicant has not exhausted all avenues of relief, specifically, she has not provided any evidence or documentation that she submitted a request to the Evaluation Reports Appeal Board (ERAB) prior to coming to the Board. Therefore, the Board will consider this request once she has exhausted all administrative avenues of relief. Finally, the Board finds the applicant was afforded all her due process rights and the evidence does not warrant removal of the LOR, her promotion to the grade of MSgt be backdated, and entitlement to retroactive pay, benefits, and allowances. Therefore, the Board recommends against correcting the applicant's record.

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-2024-01872 in Executive Session on 11 Mar 25:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 4 Mar 22.

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

Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 26 Jul 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Aug 24.

Exhibit E: Applicant's Response, w/atchs, dated 9 Sep 24.

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.

X

---

Board Operations Manager, AFBCMR