



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01979

COUNSEL:

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Letter of Reprimand (LOR), dated 18 Feb 21, be expunged and removed from his Master Personnel Records Group (MPerRGp) and his Officer Selection Record (OSR).

APPLICANT'S CONTENTIONS

He is suffering from an injustice due to this unlawful LOR, as he cannot be promoted. He was issued an LOR when all of the facts could not come out. The full story was never told because he was essentially "gagged" on the advice of counsel. This likely led his commander to rely on a biased set of facts when substantiating the LOR. However, now that he is no longer under criminal investigation, he is able to speak out and tell his side of the story, which should be given equal weight, if not more, than his ex-wife. When these facts are viewed objectively and holistically, a preponderance of the evidence does not exist to sustain the allegation within the LOR.

A holistic and objective review of the evidence shows he did not commit domestic violence, he was merely defending himself from his then wife, now ex-wife, who had been diagnosed with a mental health issue and was known to act out in an erratic, violent manner. His wife attacked him and he merely attempted to defend himself as such this cannot be considered domestic violence. However, regrettably, as he was defending himself both he and his wife sustained injuries. And as the criminal investigation has been dropped, he is now able to present this new evidence that shows he was not the aggressor. Unfortunately, at the time he was issued the LOR, this information was not available because on the advice of counsel he was exercising his constitutional right to remain silent. Because he was exercising his constitutional right, the only voice heard at the time was that of his wife's who made all sorts of salacious allegations with impunity. His silence should not be considered an admission of guilt, and his silence should not be used against him. Because he could not make a statement, the LOR was biased against him. Additionally, the LOR makes no mention his case was dropped by the local assistant prosecutor because his wife refused to testify knowing she made false statements to the arresting officers. Had this case gone to trial, facts would have revealed she was the initial aggressor who deceived the officers and shifted all the blame on him.

The purpose of adverse administrative action is "to improve, correct and instruct subordinates who violate established Department of the Air Force (DAF) standards." As such, the LOR has served its intended purpose. After this incident he has successfully completed the Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program and has maintained alcohol abstinence. In addition, he also attended marriage counseling, and although sadly he and his wife subsequently divorced, he is now happily married.

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Controlled by: SAF/MRB

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

[REDACTED]

He has exhausted all administrative remedies of relief available . Maintenance of this LOR in his record is an injustice as even though he is fully qualified, he cannot be promoted to captain. He humbly requests the Board review his case and grant him the requested relief.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force first lieutenant (O-2).

On 28 Dec 20, according to the Air Force Office of Special Investigations (OSI), *Report of Investigation* (ROI), an investigation was conducted between 15 Oct 20 and 17 Dec 20 which investigated an incident of aggravated assault. The investigation revealed that on 10 Oct 20, local police officers responded to a call for assistance by [REDACTED] H [victim] and conducted field interviews of the applicant [subject] and [REDACTED] H. On that same date, the applicant was charged with Domestic Violence and transported to the county jail. Further, the investigation shows that on 16 Oct 20, OSI coordinated with [REDACTED] H for an interview, who did not want to participate in the investigation. On 20 Oct 20, OSI interviewed the applicant, who following his Article 31 rights advisement, invoked his right to legal counsel and the interview was terminated.

On 18 Feb 21, the applicant was issued an LOR by his commander as the result of an investigation which disclosed that on 10 Oct 20, he was arrested for assaulting his spouse and charged with a Domestic Violence Misdemeanor, a direct violation of Article 128b, United States Code of Military Justice (UCMJ), domestic violence.

On 23 Feb 21, the applicant provided a response to the LOR.

On 2 Mar 21, he was informed by his commander the LOR would be sustained and that it will be maintained in a UIF and forwarded to Col M for the OSR decision. On that same date, the applicant acknowledged receipt of the LOR final decision as well as the OSR recommendation.

On 3 Jun 21, according to AF Form 707, *Officer Performance Report* (OPR) (*Lt thru Col*), for the period of 3 Jun 20 – 2 Jun 21, Section IV, *Rater Overall Comments*, reflects the applicant received a referral OPR due to an LOR for domestic violence. Further, Section IX, *Performance Factors*, reflects he did not meet standards for Professional Qualities and Judgement and Decisions.

On 4 Jun 21, according to memorandum, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Status*, he completed residential treatment on 7 Dec 20 and successfully completed all required Aftercare requirements on 1 Mar 21 and has concluded cared in ADAPT.

On 8 Jun 21, the applicant provided a response to the referral OPR. On that same date, according to the memorandum from his legal counsel, the local Municipal Assistant Prosecutor stated they were going to decline the charges against the applicant; thus, he was never formally charged with any offense.

On 18 Jun 21, according to AF Form 707, his squadron commander, after reviewing the applicant's comments to the referral OPR, concurred with the rater's assessment. On 30 Jun 21, the applicant's wing commander, reviewed and concurred with the assessment.

[REDACTED]

On 27 Nov 23, according to AF/A1PP's memorandum, *CY23A USAF Quarterly Captain Selection Process—Nomination Hold <applicant>*, the applicant's wing commander (WG/CC) was advised that although the applicant was recommended for promotion to captain, based on adverse information in his record, the Principal Deputy Assistant Secretary of the Air Force (PDAS) for Manpower and Reserve Affairs withheld the applicant's name from the promotion list and directed the initiation of a Promotion Propriety Action (PPA).

On 19 Jan 24, the applicant provided a response to the PPA.

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

APPLICABLE AUTHORITY/GUIDANCE

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

1.2. Adverse Information for Total Force Officer Selection Boards Overview. All adverse information an officer receives will be filed in the OSR and will be considered by promotion selection, special selection, Federal recognition (ANG specific), and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information" per Department of Defense Instruction (DoDI) 1320.14, *DoD Commissioned Officer Promotion Program Procedures*). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. Adverse information includes, but is not limited to:

1.2.1.4. LORs.

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.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the request. Upon review of the documentation provided by the applicant and careful analysis of the facts, there is insufficient evidence to support the claim of an error or injustice. The issuance of the LOR by his commander aligns with the guidelines outlined in DAFI 36-2907, Chapter 3, and no deviations from procedural norms have been identified that would warrant exclusion from the applicant's record. The Special Programs section reviewed his MPerRGp and OSR and the documentation of the LOR along with the applicant's response has not been filed accordingly.

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 1 Aug 24 for comment (Exhibit D), and the applicant replied on 3 Sep 24. In his response, the applicant, through counsel, contended the advisory bases its recommendation purely on an Air Force regulation; however, the Board is not bound only by Air Force regulations since a violation of such is not necessary to show an injustice. Additionally, the advisory fails to consider or rebut evidence within the police report the applicant was defending himself. He has now provided additional evidence that he did not assault his wife, but rather, he was being assaulted and merely defended himself. Therefore, the Board should set aside the advisory recommendation as he has demonstrated an injustice continues to permeate his service record by maintaining a biased, unjust LOR. He is a good Airman deserving a second chance and should be granted relief by this Board.

The applicant's complete response is at Exhibit E.

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. After thoroughly reviewing this application, the Board concurs with the rationale and recommendation of the AFPC/DPMSSM and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends the preponderance of the evidence does not exist to sustain the allegations within the LOR and should be expunged, the Board disagrees. The Board notes the applicant acknowledged receipt of the LOR and provided a response in which he took full responsibility for his actions. His commander considered the applicant's response and based upon the preponderance of the evidence decided to sustain the LOR. As such, the Board finds the decision to issue the LOR was neither arbitrary nor capricious and well within the commander's authority and the evidence presented does not demonstrate an error or injustice warranting the removal of the LOR or show it was unjust or inaccurate as written. Further, the Board finds the applicant's circumstances are not unique compared to other similarly situated officers. 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-2024-01979 in Executive Session on 11 Mar 25:

[REDACTED], Panel Chair
[REDACTED], Panel Member
[REDACTED], Panel Member

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[REDACTED]

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 May 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 18 Jul 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Aug 24.
- Exhibit E: Applicant's Response, w/atchs, dated 3 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.

4/16/2025

X

Board Operations Manager, AFBCMR

Signed by: [REDACTED]

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Work-Product

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