



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

### RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

Work-Product

**DOCKET NUMBER:** BC-2024-02234

**COUNSEL:** Work-Product

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

His AF Form 707, *Officer Performance Report* (OPR), rendered for the period of 7 Jun 19 through 6 Jun 20, be corrected in compliance with Air Force policies.

### **APPLICANT'S CONTENTIONS**

Through counsel, the applicant contends the OPR in question is not a referral. Specifically, he is appealing the rating of "Does Not Meet Standards" in the Performance Factors in blocks III and IX of his OPR, and the statement "Received 3 LOCs f/unprofessional behavior towards co-worker/failure to follow a direct order/unsatisfactory PT test" in blocks IV and XI. He would like the statement in blocks IV and XI removed from his OPR, that his rating in the Professional Qualities block be changed to "Meets Standards." The referral OPR is factually inaccurate, legally defective, and inequitably harsh given the circumstances that led to the evaluation and the verified toxic environment at the Mental Health Clinic during that time. He provided a thorough rebuttal to the referred OPR, but this was ultimately ignored. His command arbitrarily and capriciously ignored the greater weight of the evidence and acted in a manner clearly inconsistent with the purpose and intent of AFI 36-2406, *Officer and Enlisted Evaluation Systems*. The OPR should be corrected to remove the inaccurate and unjust negative portions.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

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

On 4 Jun 19, the applicant was issued a letter of counseling (LOC), provided by the applicant, from his flight commander for adjusting his template without approval and unprofessional conduct. The applicant acknowledged the LOC on 4 Jun 19.

On 11 Jun 19, the applicant submitted a rebuttal to the LOC, provided by the applicant, stating he doesn't know how to make changes to his template, and the LOC is legally insufficient due to his not being provided proper notice of the allegations of unprofessional conduct.

On 14 Jan 20, that applicant was issued a LOC, provided by the applicant, from his flight commander for failing to follow a lawful direct order to schedule training. The applicant acknowledged the LOC on 14 Jan 20.

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On 16 Jan 20, the applicant submitted his rebuttal to the LOC, provided by applicant, contending his failure to follow the direct order was not malicious, intentional, or a demonstrated pattern of behavior.

On 11 Feb 20, the applicant was issued a LOC, provided by the applicant, for failing to achieve a passing score on his Air Force Fitness Assessment. The applicant acknowledged the LOC on 11 Feb 20 and did not provide a rebuttal.

On 26 Jun 20, the applicant submitted his rebuttal, provided by the applicant, to his pending referral OPR. In his rebuttal, the applicant states that while he did receive three LOCs during the rating period, they do not accurately reflect his performance during the entire rating period.

On 31 Jul 20, the applicant acknowledged and signed his referral OPR, provided by the applicant, rendered for the period of 7 Jun 19 thru 6 Jun 20. Section XI, *Referral Report*, reflects that his rater is referring his OPR, and contains the following comments from his rater: "Specifically, the performance factors of Does Not Meet Standards, and my comment in section V of "Received three LOCs f/unprofessional behavior towards co-worker/failure to follow a direct order/unsatisfactory PT test".

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

## AIR FORCE EVALUATION

AFPC/DP3SP (Military Evaluations) recommends denying the application. The application was not submitted in a timely manner. The applicant did file an appeal through the Evaluation Report Appeals Board (ERAB) under the provisions of AFI 36-2406; however, the application was returned without action requesting statements from the rating chain. The applicant did not provide the statements and after 30 days the case was automatically closed.

Furthermore, in accordance with (IAW) AFI 36-2406, paragraph A2.4.4 Time Limit Waivers, the applicant can request a waiver of the three year time limit by citing unusual circumstances that prevented filing the appeal in a timely manner. However, ratees are responsible for reviewing their records at least annually for accuracy and the board should consider the due diligence of the applicant to apply for correction. Applications that do not include a waiver will be returned without action. Grounds for a waiver do not include failing to understand the appeal process; being discouraged from appealing by superiors, peers, or counselors; failing to understand how serious an impact an evaluation could have on your career in later years; not reviewing your records during the intervening years. The applicant has not provided a convincing circumstance that would have prevented him from submitting the application in a timely manner and although the AFBCMR is not governed by AFI 36-2406, we would recommend the denial based on timeliness alone and urge the AFBCMR to come to the same conclusion.

The applicant contends the referral comments in his OPR are inaccurate, legally insufficient and grossly inequitable. First, the applicant states the incidents for the first two LOCs he received were outside of the rating period; however, both LOCs were finalized within the contested report timeframe. Furthermore, AFI 36-2406 paragraph 1.12.3.3. states "Prior Events. Events that occurred in a previous reporting period that add significantly to the evaluation, were not known to and considered by the previous evaluators and were not already reflected in a previous evaluation

in the permanent record (this includes officer and enlisted evaluations, Letters of Evaluation (LOE), and Training Records (TRs)) can be included in a subsequent evaluation.” In regard to the third LOC for the applicant’s fitness failure, AFI 36-2406 paragraph 1.4.10.1 states it is at the commander’s discretion to document a failed assessment and/or body composition. The applicant failed to provide any documentation from the commander on why he decided to mention it in the applicant’s OPR. Furthermore, the applicant did not provide any comments to the LOC for his fitness failure.

The applicant further contends he experienced numerous personal and professional difficulties, and unfair treatment. The applicant must be able to prove there was a personality conflict IAW AFI 36-2406 paragraph A2.5.5 and unfair treatment paragraph A2.5.9. In worker-supervisor relationships, some disagreements are likely to occur since a worker must abide by a supervisor’s policies and decisions. Personnel who do not perform at expected standards or require close supervision may believe that an evaluator is personally biased; however, the conflict generated by this personal attention is usually professional rather than personal. Furthermore, the applicant failed to provide any evidence if he requested assistance from the Equal Opportunity or Inspector General Office for the numerous personal and professional difficulties and unfair treatment.

After reviewing the applicant’s supporting documentation, it appears the request does not adhere to the requirements in AFI 36-2406 paragraph A2.2., as the applicant has not provided clear evidence that the contested evaluation is unjust or wrong. Additionally, it is the applicant’s responsibility to document their appeal with information from sources that are credible, relevant, and believable. Unsubstantiated conjecture about the motives of your evaluators, or how or why your evaluation turned out as it did, do not contribute to your case. An applicant or member must provide factual, specific, and substantiated information that is from credible officials and based on firsthand observation or knowledge. Statements or memoranda for records (MFR) written by the ratee on the events which you believe lead to the contested evaluation are not creditable evidence unless supported by another credible official. Furthermore, AFI 36-2406 paragraph 10.2.1.3, states the “Evaluations that have become a matter of record are presumed to be accurate and objective.”

During a review of the applicant’s record, it was determined that his rebuttal from his 6 Jun 20 LOC was not filed with the evaluation; however, the applicant did provide a copy of the rebuttal and the attachments. Therefore, it is recommended the rebuttal and attachments be added to the applicant’s OPR and filed in his official record.

In summary, the applicant has not provided substantiating documentation or evidence to prove the final OPR was rendered unfairly or unjustly. Air Force policy is that an evaluation report represents the rating chain’s best judgment at the time it is rendered and is accurate as written when it becomes a matter of record. To effectively challenge an evaluation, it is necessary to hear from all members of the rating chain not only for support, but also for clarification/explanation. Statements from the evaluators during the contested period are conspicuously absent. The applicant has failed to provide the necessary information/support from any rating official on the contested OPR. Without the benefit of these statements, they can only conclude the OPR is accurate as written. Once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual’s record. The burden of proof is on the applicant. The applicant has not substantiated that the contested OPR was not rendered in good faith by all evaluators based on the knowledge available at the time.

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 29 Aug 24 for comment (Exhibit D) but has received no response.

### FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement.
2. The applicant exhausted all other available administrative remedies 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/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant has not provided compelling evidence to substantiate the contested OPR was unjust or inaccurate. The applicant also did not provide factual, specific, and concrete information from his rating chain officials who would have had direct firsthand observation and could have validated his claims. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice on the part of the Air Force. 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-2024-02234 in Executive Session on 23 Jan 25:

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 9 Apr 21.

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

Exhibit C: Advisory Opinion, AFPC/DP3SP, w/atchs, dated 28 Aug 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 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.

10/22/2025

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Associate Director, AFBCMR

Signed by: USAF

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