



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03002

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He be promoted to the grade of captain (O-3) and his date of rank (DOR) be backdated to his original promotion date of 30 May 23.
2. He be provided all back pay and allowances.
3. His grade on his Officer Performance Reports (OPR) be changed to reflect his grade of O-3.
4. The Promotion Propriety Action (PPA) and all derogatory information be removed from his records.

APPLICANT'S CONTENTIONS

On 1 May 23, his commander initiated a PPA to stop his promotion to the grade of O-3 on 30 May 23. The reason for the PPA was he tested positive for cocaine at a level of 539 nanogram/milliliters (ng/mL). He was offered nonjudicial punishment (NJP) but demanded trial by court martial in lieu of the NJP. On 2 Aug 23, he was found not guilty of all charges in a general court martial. The military judge ruled he did not knowingly ingest cocaine and he was unknowingly environmentally exposed to cocaine.

Based on the facts, the reason the PPA was initiated is no longer valid. Additionally, his OPR ending 30 Nov 23 rated him as meeting standards.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a United States Space Force first lieutenant (O-2).

On 1 Mar 23, the Drug Testing Program Administrative Manager (DTPAM) informed the applicant's commander a drug urinalysis specimen was obtained on 7 Feb 23 from the applicant. A positive result for the presence of cocaine at a level of 539 ng/mL was returned. The cut off for a positive test is 100 ng/mL. The specimen also tested positive for tetrahydrocannabinol (THC), amphetamines (AMP), Ecstasy, Fentanyl, Heroin, Opiates, Oxycontin and Synthetic THC.

On 1 May 23, the applicant's squadron commander (SQ/CC) initiated a PPA to remove the applicant's name from the O-3 promotion list. The applicant was projected to be promoted to the grade of O-3 with DOR of 30 May 23. His commander stated the applicant in Feb 23 was randomly

selected to provide a urine sample for drug testing and the urinalysis report dated 1 Mar 23 resulted in a positive test of 539 ng/mL for cocaine. On 15 Mar 23, NJP action was initiated for wrongful use of cocaine and the applicant demanded trial by court martial.

On 15 May 23, the applicant's higher commander (Delta/CC) signed the PPA recommending the applicant be removed from the promotion list.

The Entry of Judgment of the applicant's general court martial dated 2 Aug 23 shows the applicant on 2 Aug 23 was acquitted of the charge and specification he wrongfully used cocaine, a Schedule II controlled substance, between 24 Jan 23 and 7 Feb 23.

On 11 Aug 23, the applicant's SQ/CC notified him of his intent to establish a Security Incident Report. The applicant's access to classified information and eligibility to access classified information was suspended for 90 days to allow the Department of Defense Consolidated Adjudication Service to review his case.

In a letter dated 15 Aug 23, his SQ/CC authorized the removal of the applicant's promotion withhold. The SQ/CC stated the PPA was annulled and the applicant could promote to the grade of O-3.

The applicant provides state issued marriage certificate showing he and RA (fiancé from Nepal) were married on 8 Mar 24.

The Air Force Office of Special Investigation (AFOSI) Report of Investigation (ROI) dated 27 Jun 24 states an investigation was initiated on 1 Mar 23 based on information received from the DTPAM. On 3 Mar 23, the applicant informed the AFOSI special agent (SA) he was with his fiancé on 2 Mar 23, the day prior to the urinalysis, due to her relapse of taking drugs and drinking. The applicant stated he had intercourse with his fiancé after she had done cocaine and the transfer must have occurred during intercourse. He admitted to googling if cocaine transferred via sexual intercourse and it had been a concern in the past. He also stated he had not showered prior to his urinalysis the next day. The applicant also relayed he would occasionally help clean up his fiancé's cocaine but that he had never used narcotics. The applicant declined to submit a written statement.

In a letter dated 9 Jan 24, the Delta/CC recommended the applicant be removed from the promotion list and he not be promoted to the next higher grade with the original DOR of 30 May 23. The specific reasons were: (1) The applicant admitted at his court martial he continued to physically interact with his ex-fiancé every couple of weeks despite her known cocaine use being his justification for accidentally testing positive for cocaine. (2) He told investigators he was engaged to a different woman from Nepal and attempted to obtain a K-1 fiancé visa so she could come the United States for the purpose of marrying. The applicant swore on the K-1 visa while engaged to two women at the same time. (3) His SQ/CC revoked his security clearance indefinitely. The Delta/CC did not believe the applicant met the requirement for exemplary conduct set forth in 10 U.S.C. § 8583 and was not morally and professionally qualified to perform the duties of the next higher grade and it was in the best interest of the Air Force he not be promoted.

On 17 May 24, the Secretary of the Air Force General Counsel (SAF/GC) found the PPA legally sufficient.

On 12 Jul 24, the Secretary of the Air Force (SecAF) approved the applicant's removal from the promotion list.

The military personnel data system (MilPDS) reflects the applicant's grade as first lieutenant (O-2) with DOR of 30 May 21 and he is not projected for promotion.

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph 5.1. If an officer has not met the requirement for exemplary conduct set forth in 10 U.S.C. § 9233 or is not mentally, physically, morally, or professionally qualified to perform the duties of the next higher grade, it is in the best interest of the Air Force for the proper authority to delay the promotion, to find the officer not qualified for promotion, or to remove the officer's name from the promotion list. Paragraph 5.8.7, the SecAF makes the final decision on delay, termination and removal recommendations.

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 Jan 21. DAFI 36-2907, *Adverse Administrative Actions* and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information"). 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 adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an BCMR recommendation.

AIR FORCE EVALUATION

AFPC/DPMSP (Officer Promotions) recommends denial based on the SecAF's approved PPA removing his name from the CY22B USAF Captain's Process.

The applicant was selected for promotion to the grade of O-3 during the CY22B USAF Captain's Process (P0322B) with a projected DOR of 30 May 23. In accordance with DAFI 36-2501, Chapter 5, a PPA was initiated by the SQ/CC for removal of the applicant's name from the promotion list. On 12 Jul 24, the SecAF approved the removal of the applicant's name from the promotion list. The applicant was added to the CY24D USSF Captain's Process, which closed out on 31 Dec 24.

The complete advisory opinion is at Exhibit D.

AF/JAJI finds insufficient evidence to recommend relief on the basis of any legal error. Moreover, it was within the SecAF's legal authority and discretion to approve the removal of the applicant from the promotion list.

The applicant did not present any significant new information which was unavailable at the time of the SecAF's initial PPA decision. The applicant's trial by court martial took place in early Aug 23. The court martial consisted of a military judge alone. The judge entered the findings of not guilty to the charge and specification. During the court martial, the applicant testified his inadvertent exposure to cocaine was due to his close relationship with a woman who was an abuser of both drugs and alcohol. The applicant testified he was aware of her alcohol abuse and drug use and that she was his fiancé.

The applicant's SQ/CC recommended he be promoted with his original DOR. The next commander in the chain disagreed and recommended he should not be promoted. The decision was based on reasons other than the alleged wrongful cocaine use. The new supporting evidence consisted of transcribed portions of the applicant's interview with a Security Forces Investigator and an AFOSI SA. A memorandum for record from trial counsel described statements the applicant made to United States Citizenship and Immigration Services (USCIS) officials and an audio recording of the applicant's court martial. The applicant testified he did not knowingly use cocaine but he was engaged to a woman who he knew used cocaine and that he believed it was his environmental exposure to her cocaine use that resulted in the positive drug test. After learning of the positive test, he broke off his engagement but admitted in court to remaining in contact with her, a known cocaine user, throughout the investigation and court martial. Second, he told investigators and testified at his court martial he was engaged to her while representing previously to USCIS officials on a visa application he intended to marry a different woman from Nepal. Third, the applicant's commander had initiated action to revoke his security clearance.

On 16 Jan 24, the applicant submitted a lengthy reply to the notification. The tenor of the response was he had done nothing wrong. He justified maintaining frequent contact with his ex-fiancé citing concern for her welfare. The statements were contrary to those he gave in an interview with the Security Forces Investigator and the AFOSI SA. He acknowledged he had proposed to a woman from Nepal in Sep 20 and asserted she was the only woman he was factually engaged to marry. He claimed his dating and sex life had nothing to do with whether he demonstrated exemplary behavior as an officer and a gentleman.

The applicant has the burden of providing evidence in support of an error or injustice. Per DAFI 36-2603, *Air Force Board for Correction of Military Records*, the BCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the BCMR can reverse an arbitrary or capricious decision. A rational factfinder could conclude the SecAF made a fully informed decision. Every reasonable inference from the evidence supports his decision. Evidence independent of the drug use allegation supports the PPA decision. Further, AFPC's advisory opinion found no error or injustice upon review the PPA. The SecAF made an informed decision based on the recommendations of commanders, evidence contained in the case file and the applicant's response to the PPA.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 19 Feb 25 for comment (Exhibit F), and the applicant replied on 19 Feb 25. He rejects AF/JAJI's assertion he did not present any new significant information. He provides additional evidence in support of his request. He is prior enlisted and a United States Air Force Academy (USAFA) graduate. He went through three basic military trainings to get to where he is now. He was surprised he tested positive on a urinalysis test and took the matter to court martial because he believed he had done nothing wrong. He was helping a woman who he was dating at the time. She was distraught because she had lost custody of her two children and he was helping her not to commit suicide. On 1 May 23, before he was promoted, he was presented with the PPA. He was directed by his legal counsel to sign the PPA and to not submit a response. He complied with the directions of his legal counsel.

After his acquittal, his SQ/CC recommended him for promotion with his original DOR. His SQ/CC who knows him well stated he was an officer in good standing, that he had done his job well and he promised to aid him in getting him promoted because in his opinion there was no good reason he should not be promoted. The trial prosecutor then sent a letter to his Delta/CC with his opinion and the Delta/CC disagreed with his SQ/CC. The prosecutor in his letter stated he lied to USCIS about his intentions of marrying his fiancé in 2021. It is also false to say his SQ/CC revoked his security clearance because he does not have the authority to remove his clearance as the authority to revoke his security clearance lies exclusively with the Defense Counterintelligence and Security Agency. To this day, he retains a Top Secret, Sensitive Compartmented Information (TS/SCI).

On 16 Jan 24, he submitted a rebuttal and refuted the Delta/CC. The reason he maintained contact with his ex-fiancé was she was still suicidal and he was following the DoD suicide prevention training. He also did not lie on the USCIS documents he sent in 2021 and she is now his wife. The reason he started dating his ex-fiancé was that he thought USCIS had lost the visa application since they had not heard anything for over a year. Consequently, she broke up with him.

AFPC stated his request should be disapproved as there is no evidence of an error or injustice. He disagrees. The facts are that there is evidence of an error or injustice because the reason for the PPA recommendation and the SecAF's approval are based on false, incomplete and mistaken statements by the prosecutor who did not have all the facts on why he remained in contact with his ex-fiancé, he complied with the USCIS documents by marrying his current wife and again, his commander does not have the power to indefinitely suspend his security clearance, which he currently retains.

A rational factfinder could conclude the SecAF did not make a fully informed decision. His OPR states he did his job well and met all standards, which contradicts and supersedes the PPA. He hopes his letter provides the Board with sufficient evidence to recommend relief on the basis of an administrative error. The facts are: (1) He was found not guilty in a general court martial, making him an innocent man and an officer in good standing. (2) False, incomplete and mistaken statements made by a losing prosecutor was used as a basis by the Delta/CC to not recommend him for promotion. (3) The Delta/CC did not know him. (4) His SQ/CC, who knew him well, desired the annulment of the PPA. (5) His OPR ending 30 Nov 23, signed by his chain of command to include the Delta/CC, state he did his job well and met all standards. On the day he signed his OPR, his commander called him into his office and told him the reason he was giving him a positive OPR was because they all agreed he did nothing wrong. He did his job well; he met all standards and the Delta/CC regretted submitting the supplemental recommendation because his

supervisor and SQ/CC knew him best. He will appeal the matter to the Secretary of Defense and then to the President of the United States if he is not promoted.

The applicant's complete response is at Exhibit G.

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/DPMSP and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant was acquitted of wrongfully using cocaine by a court martial. However, based on the totality of the evidence, the Board finds the applicant's PPA with removal from the CY22B USAF Captain's Promotion List was in accordance with 10 U.S.C. § 9233 and DAFI 36-2501. It was well within the authority and discretion for the SecAF to approve the PPA as recommended by his Delta/CC. The Board also notes the applicant's PPA underwent legal review by the AF/JA and SAF/GC who found the PPA legally sufficient. 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-2024-03002 in Executive Session on 10 Apr 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 21 Aug 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: AFOSI ROI, dated 27 Jun 24 (WITHDRAWN).
- Exhibit D: Advisory Opinion, AFPC/DPMSP, dated 5 Nov 24.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 21 Jan 25.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Feb 25.

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Exhibit G: Applicant's Response, w/atchs, dated 19 Feb 25.

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.

4/21/2025

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