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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03622

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

1. His Article 15, dated 7 Sep 22, be removed from his record.
2. His referral Officer Performance Report (OPR) for the reporting period 1 Jun 22 through 6 Oct 22 be removed from his record.
3. His Unfavorable Information File (UIF) be removed from his record. **(The applicant no longer has a UIF).**
4. He receive a retroactive promotion to the grade of major (O-4), with a waiver of all date of rank (DOR) requirements.

### APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends the promotion board made an error of discretion in failing to promote him because of a relatively minor misbehavior which led to the Article 15 and referral OPR. Per Department of the Air Force Instruction (DAFI) 36-2501, *Officer Promotions and Selective Continuation*, the promotion board must consider adverse information contained within an officer's record. The presence of adverse information is not a mandatory bar to promotion. Instead, the board must certify all officers whose record contains adverse information and who are recommended for promotion meet the requirement of exemplary conduct in 10 U.S.C. § 9233.

It is clear from his multiple written statements addressing the underlying inappropriate relationship that he has taken action to correct and learn from his mistake. He accepted full responsibility for the mistakes and his failure in judgment. His commander concurred his misconduct had no effect on the unit's morale or otherwise created a perception of favoritism or unprofessionalism in the workplace. His wing commander (WG/CC) also wrote a letter explaining why the applicant should be promoted to the grade of O-4.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is former Air Force captain (O-3).

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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On 7 Sep 22, the applicant received an Article 15. Between 18 Aug 21 and 26 Jul 22, the applicant was derelict in the performance of his duties in that he failed to maintain a professional relationship with [redacted], a female second lieutenant (O-2).

In a response dated 12 Sep 22, the applicant accepted full responsibility for his personal failure. He believed he could keep it separate from his professional life. For more than a year, his relationship with his wife was at a low point. He also never signed the AF Form 2096, *Classification/On the Job Training Action*, that he was [redacted] supervisor. He requested his Article 15 be downgraded as it would guarantee the end of his career, and he would be meeting his first promotion board for the grade of O-4. The commander who imposed the nonjudicial punishment (NJP) granted the applicant's appeal in part and mitigated the forfeiture of \$3,403 to a forfeiture of \$1,403. In an undated letter, the applicant's WG/CC informed the applicant his NJP was required to be filed in his officer selection record (OSR).

The applicant received a referral OPR for the reporting period 1 Jun 22 through 6 Oct 22 for failure to maintain a professional relationship with a subordinate. Because of his behavior, he was removed from his leadership position as the squadron operations officer.

The applicant provides a character statement from his WG/CC dated 20 Jun 24. It states he was the direct supervisor for the applicant for the past 12 months to include six months prior to the completion of his Promotion Recommendation Form (PRF) to the grade of O-4. He made the decision to rate him as "Do Not Promote" given his UIF history and limited time to demonstrate solid corrective continuity from his misstep. He now believes the applicant has transformed his character and he hoped to make him his senior wing executive officer in Aug 24. Unfortunately, the promotion board declined to let him continue his service. This is a mistake that was decided solely on his UIF record and not based on the character he witnessed over the past 12 months. His plan was to monitor him closely between now and his next PRF, and if he continued his current trajectory to give him a "Promote" for the next board. He fully supported the applicant continue as an O-3 for another year to prove he had overcome his past misstep.

On 31 Oct 24, the applicant was honorably discharged in the grade of O-3 with a narrative reason for separation of "Nonselection, Permanent Promotion." He was credited with 9 years, 10 months and 12 days of active duty service.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

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, 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 AFBCMR recommendation.

10 U.S.C. § 624(c), Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except appointments under this section in the grade of first lieutenant (O-2) or captain (O-3). Accordingly, the Board is without authority to grant the applicant a direct promotion to the grade of O-4 as requested.

## **AIR FORCE EVALUATION**

AF/JAJI finds insufficient evidence to recommend relief on the basis of a legal error. The applicant has been twice passed over for promotion to the grade of O-4, which is why he was recently discharged. Counsel contends the board made a material error of discretion in failing to promote the applicant because of relatively minor misbehavior citing 10 U.S.C. § 9233 and DAFI 36-2501. The AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision for an abuse of discretion.

A rational factfinder could conclude it more likely than not the alleged misconduct occurred under the applicable preponderance of the evidence standard. It states in DAFI 51-202, *Nonjudicial Punishment*, Every reasonable inference supports the decisions of the principals who resolved questions of fact and took the action at issue. The applicant himself does not contest the legality of the NJP proceedings. There is also no compelling information to support the argument the promotion board committed any violations pursuant to DAFI 36-2501 or 10 U.S.C. § 9233. These authorities are in harmony that the promotion board certify all officers whose records contain adverse information and who are recommended for promotion meet the requirement of exemplary conduct. Despite the lack of legal errors, the Board retains its discretion to make its decision based on overall equities at play.

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 9 Dec 24 for comment (Exhibit D). Counsel contends that the advisory opinion is correct that he did not argue the alleged misconduct did not occur or contest the legality of the NJP. He openly accepted responsibility for his mistake. However, the advisory opinion is incorrect, and the Board does have the ability to reverse an arbitrary or capricious decision for an abuse of discretion. His position is not that there were procedural errors during the Article 15 or with the referral OPR. Instead, his position is that the decision to not promote the applicant to the grade of O-4 was an abuse of discretion because based on the applicant's record, the underlying misconduct which led to the Article 15 should not cause the end of his career. Even if the Board does not believe there was an error in discretion, the Board should grant the applicant's request based upon the material injustice. He is asking for the same chance his WG/CC believes he deserves. He has committed his life and career to the Air Force and is deserving of a promotion to the grade of O-4.

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. 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. The applicant contends his O-4 promotion boards committed an abuse of discretion resulting in a material injustice when it did not select him for promotion to the grade of O-4. The applicant was considered for promotion to the grade of O-4 by two promotion boards and not selected for promotion. As a result of his second promotion deferral, he was required to separate. While the applicant contends the minor misconduct should not have ended his career, no evidence has been provided to sustain the promotion boards were convened contrary to 10 U.S.C. § 9233 or DAFI 36-2501. The Board notes the applicant's WG/CC provides a letter of support dated 20 Jun 24; however, the adverse actions (NJP and referral OPR) are required to be filed in the applicant's OSR and reviewed by promotion boards in accordance with 10 U.S.C. § 615(a)(3), DoDI 1320.14, DAFPM 2021-36-03, DAFI 36-2907, and DAFI 36-2501. The applicant also requests his UIF be removed; however, the applicant no longer has a UIF. With respect to the request for a retroactive promotion to the grade of O-4, this Board, which serves on behalf of the SecAF, in the correction of military records is without authority to promote an officer to the grade of O-4 per 10 U.S.C. § 624. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-03622 in Executive Session on 30 May 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 2 Oct 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 21 Nov 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Dec 24.
- Exhibit E: Applicant's Response, w/atchs, undated.

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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.

6/13/2025

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Board Operations Manager, AFBCMR  
Signed by: USAF

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