

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2025-00038

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel records be amended to:

- a. Rescind the Letter of Reprimand (LOR), dated 9 Apr 24, contained in his Unfavorable Information File (UIF).
- b. Remove the LOR from the Department of the Air Force records systems, to include his Officer Selection Record (OSR).

APPLICANT'S CONTENTIONS

The LOR failed to meet the standard of proof for administrative actions as outlined in Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*, paragraph 2.2. On 9 Apr 24, the applicant was served an LOR for violation of Articles 86, 112, and 133, Uniform Code of Military Justice (UCMJ). The only supporting evidence to this LOR was a police report provided by local law enforcement which presented incomplete information regarding the incident, omitted significant details, and was based solely on a presumption of guilt.

In accordance with DAFI 36-2907, the standard of proof for adverse administrative actions is a preponderance of the evidence. Preponderance of the evidence means that it is more likely than not that fact exists based on the totality of the circumstances. Preponderance of the evidence was never established for the accusations levied against the applicant, as they are factually untrue. Despite providing evidence from the applicant's recollection of the night, medical results that corroborate this account, and third-party witness statements which all indicate the applicant did not consume excessive amounts of alcohol as alleged, his leadership upheld the LOR on 15 Apr 24¹ absent evidence to substantiate the Articles against him. The applicant sought relief via an informal and formal Article 138 complaint, but his requests for relief were dismissed without consideration of the merits because only the Air Force Board for Correction of Military Records (AFBCMR) has the authority to rescind an LOR issued to an officer per DAFI 36-2907.

In support, the applicant provided a separate statement which reiterates the same contentions he made in his original response to the LOR, informal, and formal Article 138, UCMJ, complaints. Additionally, the applicant provided multiple character statements.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force lieutenant colonel (O-5).

¹ The applicant was notified the LOR was sustained by the commander on 19 Apr 24.

On 22 Mar 24, according to an XXXX Uniform Incident Report (Incident Number XXXX), provided by the applicant, the applicant was detained for disorderly conduct, transported to a medical facility, and issued a ticket for disorderly conduct for public intoxication.

On 22 Mar 24, according to a Misdemeanor Citation (Ticket Number XXXX), provided by the applicant, the applicant was cited for committing the following offenses: Disorderly Conduct; In public in an intoxicated state, and he was summoned to a personal appearance in XXXX Municipal Court on 1 Apr 24.

On 1 Apr 24, according to a Municipal Court of XXXX, XX Criminal/Traffic Division Judgment Entry (Case Number XXXX), provided by the applicant, the applicant appeared before the court and entered a plea of no contest to the charge of disorderly conduct. The court found the applicant guilty of the offense, and he was fined \$150.00

On 9 Apr 24, according to an FT/CC memorandum, Subject: Letter of Reprimand, the applicant was reprimanded for violations of local law as well as Articles 86, 112, and 133, UCMJ. The applicant provided a written response on 15 Apr 24, and on 19 Apr 24, the commander notified the applicant he sustained the LOR.

On 9 Apr 24, according to an XXXX/FT Commander memorandum, Subject: Notice of Relief of Command, the applicant was notified he was relieved of his command, for cause, effective 9 Apr 24, and this action would be filed in the applicant's OSR. The applicant provided a written response on 15 Apr 24.

According to AF Form 715, *Officer Performance Brief (O-1 thru O-6)*, the applicant received a referral report for the period 1 Jun 23 through 31 May 24.

On 25 Jun 24, according to an applicant memorandum, Subject: Informal Complaint Under Article 138, Uniform Code of Military Justice, provided by the applicant, he filed an informal complaint against his commander for issuing/sustaining the LOR on 19 Apr 24, and his subsequent relief from command. The applicant requested rescission of the LOR, recharacterization of his relief of command to a suspension of command, and documented reinstatement to his position of command through 26 Jun 24.

On 3 Jul 24, according to the respondent commander memorandum, Subject: Notice to Petitioner – Informal Complaint Under Article 138, UCMJ, provided by the applicant, the applicant's request for rescission of the LOR, dated 9 Apr 24, was dismissed as outside the scope of Article 138, UCMJ; the request for recharacterization of his relief from command was denied; and documented reinstatement to his position of command was dismissed as outside the scope of Article 138, UCMJ.

On 13 Aug 24, according to an applicant memorandum, Subject: Formal Article 138, Uniform Code of Military Justice, Complaint, provided by the applicant, he filed an informal complaint against his commander for issuing/sustaining the LOR on 19 Apr 24, and his subsequent relief from command. The applicant requested rescission of the LOR and removal from his Personnel Information File (PIF); removal of the AF Form 1058, *Unfavorable Information File*, from his record; recharacterization of his relief of command to a suspension of command, and documented reinstatement to his position of command through 26 Jun 24; the referral comments on his officer promotion brief² (OPB), with close-out of 31 May 24, be invalidated; and a decoration recommendation commensurate with duties performed during his tour at XXXX from 16 Jun 22 to 28 Jun 24 as Squadron Commander.

² Should read AF Form 715, *Officer Performance Brief (O-1 thru O-6)*, with close-out of 31 May 24.

On 31 Oct 24, according to an AFLCMC/CC memorandum, Subject: General Court-Martial Convening Authority's Amended Notice to Petitioner – Formal Complaint Under Article 138, UCMJ, provided by the applicant, the applicant's request to rescind the LOR, dated 9 Apr 24, was dismissed as ineligible for Article 138, UCMJ, review because redress may be sought through other forums; request for removal of the LOR from his PIF was dismissed as the LOR was never filed in the applicant's PIF; request to remove the LOR from his UIF was dismissed as ineligible for Article 138, UCMJ, review because filing the LOR in his UIF was a non-discretionary command action; request to recharacterize his relief from command to a suspension of command was denied, in whole, because the requested relief was not warranted on the merits; request to reinstate the applicant to his position of XXXX FTW/CC was denied, in whole, because the requested relief was not warranted on the merits; request to invalidate the referral comments on his OPB with close-out of 31 May 24, was dismissed as ineligible for Article 138, UCMJ, review because redress may be sought through other forums; and the applicant's request for decoration recommendation for duties performed at NASIC from 16 Jun 22 to 28 Jun 24, was dismissed as ineligible for Article 138, UCMJ, review because redress may be sought through other forums.

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

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2907, *Adverse Administrative Actions*, dated 14 Oct 22 (Incorporating Change 2, 18 Jul 25):

Chapter 1 – Overview, Roles, and Responsibilities

1.2.3. All adverse information as defined by this instruction will be permanently placed in the MPerRGp [Master Personnel Records Group]. 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.

Chapter 2 – Administrative Counseling, Admonishment, and Reprimand

2.2. *Standard of Proof.* The Standard of Proof for adverse administrative actions is a “preponderance of the evidence.” This standard will be used when evaluating the evidence and every element of the alleged offenses.

2.2.1. A preponderance of the evidence merely means that it is more likely than not that a fact exists. Preponderance of the evidence is not determined solely by the volume of witnesses or documentary evidence supporting or refuting an allegation. Rather, it is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses.

2.4. Administering Records of Individual Counseling, Letters of Counseling, Letters of Admonishment, or Letters of Reprimand.

2.4.2.4. USSF, RegAF, Active Guard and Reserve (AGR), ARC statutory tour members, and ANG members in Title 10 active duty status will be allocated 3 duty days (current date plus 3 duty days) to acknowledge the intended actions and provide pertinent information before the issuing authority makes the final decision on the administrative action.

2.4.3. The LOC, LOA, or LOR issuing authority, after considering any comments submitted by the individual, must inform the member within 3 duty days of their decision as to the final disposition of the action.

2.4.6.2. *RICs, LOCs, LOAs, or LORs contained in UIFs.*

2.4.6.2.2. For officers, the member's current wing/delta commander, or individuals listed in paragraph 2.1 and paragraph 4.4.1 through paragraph 4.4.6 in the current chain of command and equal or senior in grade to the initial imposing authority, may rescind RICs and standalone LOCs (see paragraph 1.2.2) contained in the officer's UIF. Only the AFBCMR may rescind LOAs and LORs contained in the officer's UIF.

2.4.6.4. RICs, LOCs, LOAs, or LORs no longer contained in a PIF or UIF. Records contained in other Department of the Air Force records systems, not a unit PIF or UIF (e.g., MPerRGp, OSR, SOUIF), may not be rescinded by a commander or civilian director. Members, who believe they have suffered an error or injustice, may apply to the AFBCMR to have their records of RICs, LOCs, LOAs, or LORs removed from other Department of the Air Force records systems.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is sufficient evidence of an error or injustice.

On 9 Apr 24, the applicant received a LOR for misconduct stemming from excessive alcohol consumption and conduct unbecoming of an officer. The applicant acknowledged receipt and understanding of the LOR on 9 Apr 24, at which time he was advised he had three duty days from the date of the LOR to provide a response. The applicant provided a written response on 15 Apr 24. On 19 Apr 24, the issuing authority considered the applicant's response and elected to maintain the LOR. The applicant acknowledged receipt of the issuing authority's final decision on 19 Apr 24. However, the issuing authority did not inform the applicant of the final disposition within three duty days after receiving the response, in accordance with DAFI 36-2907, paragraph 2.4.3. The issuing authority did not adhere to the procedures outlined in DAFI 36-2907, Chapters 1, 2, and 3. The Special Programs section reviewed the applicant's MPerRGp/OSR, and the adverse administrative action has been filed accordingly.

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 AFBCMR recommendation.

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 26 Mar 25 for comment (Exhibit D) but received no response.

AIR FORCE EVALUATION

AF/JAJI recommends denying the application finding insufficient evidence to recommend relief on the basis of legal error. The AFBCMR retains discretion to make corrections to the applicant's records if the AFBCMR perceives any injustice took place.

On 22 Mar 24, the applicant was issued a misdemeanor citation by law enforcement officers in XXXX, XX for disorderly conduct, public intoxication. A passerby called police at approximately 0600 and reported "a male lying face down in the grass." The police report says the male lying in the grass was later identified as the applicant. He was found to be intoxicated and passed out in the yard of the elementary school. The report continued, "Medics checked out [the applicant] and told [the reporting police officer] that there were no medical issues." The police ultimately transported the applicant to the local hospital anyway, where the "ER

nurse...was briefed on the situation and was told due to [the applicant's] intoxicated state being found in the 30-degree early morning hours alone passed out in a school yard, a medical evaluation was needed." The applicant subsequently entered a plea of no contest to the misdemeanor citation. As a result of his plea, the applicant was fined \$150.00 by the Municipal Court of XXXX, XX. The applicant received no jail time or any further penalty.

On 9 Apr 24, the applicant's then-commander issued him an LOR, which stated, in part: Investigation has disclosed that you drank an excessive amount of alcohol on the night of 21 Mar 24, causing you to pass out on the grounds of an elementary school and fail to report for duty on 22 Mar 24. Members of your squadron were sent to your residence to find you when you could not be reached. You were found by a civilian passerby, who called the police, and you were taken to the local hospital for evaluation due to your excessive intoxication and the below-freezing overnight temperatures. When released from the hospital mid-morning, you were still inebriated. You received a citation for disorderly conduct for being in public in an intoxicated state. Your actions violated local law as well as Article 86, 112, and 133 of the UCMJ. They will not be tolerated and are unbecoming of a Squadron Commander.

The applicant provided a lengthy response where he requested the LOR be rescinded. He discussed his whereabouts on the evening of 21 Mar 24 and the morning of 22 Mar 24, vehemently denying the overconsumption of alcohol, attacking the veracity of the police report, discussing his attempts to contact his unit, and explaining his decision to enter a plea of no contest due to the civilian legal considerations at issue. The applicant also submitted over 15 favorable character letters. After considering the applicant's response to the LOR, the commander sustained the LOR on 19 Apr 24.

The applicant subsequently filed an Article 138, UCMJ, complaint (and later, the present AFBCMR request) in an attempt to overturn the LOR. In his AFBCMR request, the applicant restates many of the arguments he first made in his response to the LOR. Principally, the applicant maintains he did not consume excessive amounts of alcohol on the night in question, claiming he lost consciousness for reasons unknown to him. The applicant argues that first responders made no efforts to measure or assess intoxication (breathalyzer, blood alcohol content, field sobriety test) or other potential medical issues, such as hypothermia or toxicology. The applicant further argues he tested favorably on the Alcohol and Drug Abuse Prevention and Treatment's "PEth test which measures the [physiological breakdown of ethanol in the body over approximately 3 to 4 weeks with a 99% accuracy rate," which the applicant claims "corroborate[s]...that I did not drink in excess on the evening in question."

Because "[t]he applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice," per DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, dated 4 Oct 22, paragraph 3.4.4, the AFBCMR 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 AFBCMR can reverse decisions it determines were erroneous or unjust. See *Roberts v. United States*, 741 F.3d 152, 158 (D.C. Cir. 2014) (reviewing decision of a military corrections board under an "unusually deferential application of the 'arbitrary or capricious' standard.")

A rational fact-finder could conclude it more likely than not the underlying alleged misconduct occurred under the preponderance of the evidence standard prescribed for LORs per DAFI 36-2907, dated 22 May 22³, Incorporating Change 2, paragraph 2.2. Despite the applicant's arguments to the contrary, reasonable inferences from the evidence support the decisions of the commander who resolved the questions of fact in this case.

³ DAFI 36-2907, dated 22 May 22, was superseded by DAFI 36-2907, dated 14 Oct 22, which later incorporated Change 2, dated 18 Jul 25.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Aug 25 for comment (Exhibit F), and the applicant replied on 22 Aug 25. In his response, the applicant acknowledged receipt of the AF/JAJI advisory opinion and believes there are facts that warrant further consideration by the AFBCMR to ensure a complete and accurate record.

The applicant contended while his initial rebuttal sought to clearly refute the allegations, his intent was to provide a factual account of the events and submit supporting evidence. The rebuttal was not a vehement denial but a methodical presentation of objective facts which directly challenge the accuracy of the original report. In accordance with established Air Force principles, an action of this magnitude, with its career-impacting consequences, warrants a thorough and fact-based inquiry and a commander's decision-making is expected to be grounded in a careful consideration of all available facts. In this case, the decision was made absent any objective metrics typically used to assess intoxication. A prudent and deliberate leader, when presented with a citation that lacks objective supporting evidence, would reasonably seek to corroborate the allegations before taking disciplinary action. The applicant further contended his appeal seeks to correct an injustice stemming from a process that lacked a fundamental commitment to due diligence.

In support, the applicant again reiterated his contentions as submitted in his LOR response and the statement which accompanied his AFBCMR application. In addition, the applicant provided a redacted copy of his medical assessment and treatment plan and a witness statement not previously submitted.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. While the Board notes the comments of AFPC/DPMSSM in favor of granting relief, the Board believes the one-day delay in notifying the applicant of the issuing authority's final decision regarding the LOR had no impact on the applicant's due process rights. Considering the adverse administrative actions and Article 138 processes, the applicant was afforded multiple levels of review. Further, 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. In the instant case, the Board finds the commander met the standard of proof when issuing the LOR, dated 9 Apr 24, in accordance with DAFI 36-2907. The evidence provided by the applicant in response was not sufficiently compelling for this Board to substitute its judgment for, or otherwise overturn, the issuing commander's decision. 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-2025-00038 in Executive Session on 26 Sep 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 2 Jan 25.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 20 Mar 25.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Mar 25.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 12 Aug 25.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Aug 25.
- Exhibit G: Applicant's Response, w/atchs, dated 22 Aug 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.

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Board Operations Manager, AFBCMR