RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-01893

XXXXXXX COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

1.  His Referral Officer Performance Report (OPR), closing 1 Jun 09, be removed from his records.

2.  His Promotion Recommendation Form (PRF), prepared for consideration by the Calendar Year (CY) 09D Colonel Central Selection Board (CSB), be replaced.

3.  His PRF, prepared for consideration by the CY10C Colonel CSB, be replaced.

4.  His Air Force Commendation Medal (AFCM), for the period Jun 08 through Jun 09, be removed and replaced with a Meritorious Service Medal (MSM) reflective of his service during his tour in Kuwait.

5.  His corrected record be considered by Special Selection Boards (SSB) for the CY09D and CY10C Colonel CSBs.

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APPLICANT CONTENDS THAT:

The referral OPR was the result of a Letter of Counseling (LOC) and Letter of Admonishment (LOA) he received in Jan 09 and May 09, respectively. The LOC and LOA were issued absent proper cause due to mistakes and misunderstandings, both on his part and that of his chain of command. The LOC suggests his actions disregarded his wing commander’s order and showed poor judgment; however, he believes all the facts were not fully present when the LOC was issued and he took appropriate measures to comply with his commander’s orders. The LOA indicates he ignored command policy concerning investigations for senior non-commissioned officers; however, he does not believe the policy was pertinent to his actions or that he violated its provisions. Without the LOC and LOA, the referral OPR and reduction of his Permanent Change of Station (PCS) decoration are unjustifiable. He led his unit to multiple positive and truly exceptional achievements throughout his assignment.

In support of his appeal, the applicant provides an expanded statement and copies of four supporting statements, his LOC, LOA, referral OPR, and rebuttals thereto.

The applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant is currently serving on active duty in the grade of lieutenant colonel (O-5), effective and with a date of rank of 1 Oct 06.

On 21 Jan 09, the applicant’s wing commander issued him the contested LOC. The reason for the action was his attendance at a Diwaniya, a Kuwaiti social gathering, where they had good reason to believe Kuwaiti law was being violated through the consumption of alcohol. The LOC indicates that, subsequent to his specific guidance, the applicant circumvented the wing commander’s clear disapproval by garnering his group commander’s permission to attend the event.

On 27 Apr 09, the applicant’s wing commander issued him the contested LOA. The reason for the action was his failure to obtain 9th AETF/USAFCENT/JA and 9th AETF/CC review and approval prior to allowing an officer in his organization to issue an LOR to a senior NCO, in violation of established command policy.

On 1 Jun 09, the contested OPR was referred to the applicant for comments relative to the LOC and LOA.

On 20 Jul 09, the applicant was awarded the AFCM for meritorious service for the period 5 Jun 08 through 20 Jun 09.

The applicant’s record indicates that he was nonselected for promotion to the grade of colonel (O-6) by the CY09D CSB. The overall recommendation on his PRF was “Promote.”

The applicant’s OPR profile since 2000 follows:

PERIOD ENDING EVALUATION OF POTENTIAL

18 May 01 Meets Standards

18 May 02 Meets Standards

8 Apr 03 Meets Standards

8 Apr 04 Meets Standards

23 Sep 05 Training Report

23 Sep 06 Meets Standards

1 Jun 07 Meets Standards

1 Jun 08 Meets Standards

**\*#** 1 Jun 09 Meets Standards

10 Jun 10 Training Report

**\*** Contested Report

**#** Top Report at the time he was considered and nonselected for promotion to the grade of colonel by the CY09D Colonel CSB.

On 13 Sep 10, AFPC/DPSIDR notified the applicant that he had failed to exhaust all administrative remedies regarding his request for removal of his AFCM in favor of an MSM.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibits C and D.

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AIR FORCE EVALUATION:

AFPC/DPSID recommends denial of the applicant’s request to remove the contested OPR, indicating there is no evidence to indicate the report is unjust or inaccurate. Since the member did in fact receive an LOC and LOA during the reporting period, the report is accurate as written. Although the applicant may feel the evaluators have over stressed the isolated incident or a short period of substandard performance or conduct, they are obliged to consider such incidents, their significance, and the frequency with which they occurred in assessing performance and potential. Only they know how much the incident influenced the report; therefore, the opinions of individuals outside the rating chain are not relevant.

A complete copy of the AFPC/DPSID evaluation is at Exhibit C.

AFPC/DPSOO recommends denial of the applicant’s request for SSB consideration, relying on the AFPC/DPSID recommendation to deny the applicant’s request to void the contested OPR.

A complete copy of the AFPC/DPSOO evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant provides an expanded statement indicating the AFPC evaluations only speak to the administrative competence of the actions taken against him. Their premise relies on the assumptions that compliance with Air Force instructions equates to justice; and a wing commander’s decision, if administratively competent, is infallible. However, injustice accomplished through administrative competence is an injustice nonetheless. His wing commander was wrong. However, using AFPC’s logic, short of an administrative error, there is no basis to contradict his incorrect decision. His command’s actions to encourage his attendance at the National War College, coupled with their recommendations for group command and promotion, in both the contested OPR and subsequent PRF, are inconsistent with the referral comments and undermine the legitimacy of the contested OPR.

A complete copy of the applicant’s response is at Exhibit F.

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THE BOARD CONCLUDES THAT:

1.  The applicant has not exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends his referral OPR and downgraded decoration were unjustifiable as they were based on an LOC and LOA rendered absent proper cause. However, after a thorough review of the applicant’s complete submission, including his response to the Air Force evaluations, we are not convinced he has been the victim of an error or injustice. While he contends the LOC and LOA stem from incomplete information and a series of misunderstandings, we do not find the evidence presented sufficient to persuade us that either action was improper, disproportionate to the circumstances, or constituted an abuse of his commander’s discretionary authority. We note the supporting statement provided by the applicant’s former First Sergeant indicating he believes the 9th AETF/CC policy, which was the subject of the LOA, did not apply to administrative actions such as the LOR rendered to a member of the applicant’s unit, but applied to more serious disciplinary actions. However, we do not find this statement sufficient to convince us the LOA constitutes an error or injustice. In this respect, we note the subject policy pertains to all officer and senior NCO misconduct in the USCENTCOM AOR. Having no reason to question the underlying basis of the LOC and LOA, we believe they formed the legitimate basis of the referral OPR. With respect to his decoration, we note the applicant has not exhausted all remedies provided by existing law or regulations. Therefore, it would be premature for this Board to act on this request. Therefore, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD RECOMMENDS THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered AFBCMR Docket Number BC-2010-01893 in Executive Session on 16 Dec 10, under the provisions of AFI 36-2603:

Mrs. XXXXXXXXXX, Panel Chair

Mr. XXXXXXXXXXX, Member

Ms. XXXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 4 May 10, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSID, dated 30 Aug 10.

Exhibit D. Letter, AFPC/DPSOO, dated 27 Sep 10.

Exhibit E. Letter, SAF/MRBR, dated 8 Oct 10.

Exhibit F. Letter, Applicant, undated.

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Panel Chair