



In support of his appeal, the applicant provides a 5-page statement from counsel, a 5-page personal statement, e-mails, the contested OPR and other supporting documentation.

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

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STATEMENT OF FACTS:

The applicant is currently on active duty serving in the grade of major (O-4). On 4 June 2007, pursuant to a CDI, the Investigating Officer substantiated the allegations of adultery, paying for sex with a prostitute, making a false official statement, and as a result, conduct unbecoming of an officer and a gentleman. According to the applicant, he was issued an LOR with a UIF.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate office of the Air Force which are at Exhibits C through E.

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AIR FORCE EVALUATION:

AFPC/DPSID recommends denial. The applicant filed an appeal through the Evaluation Reports Appeals Board (ERAB); however, the ERAB was not convinced the report was inaccurate or unjust.

The applicant received a referral OPR when a Commander Directed Investigation disclosed that he engaged in conduct unbecoming of an officer and a gentleman. AFI 36-2406, *Officer and Enlisted Evaluation Reports*, states that evaluators are strongly encouraged to comment in performance reports on misconduct that reflects a disregard of the law, whether it is civil law or the Uniform Code of Military Justice; if a member is convicted by a court-martial; or when adverse actions, such as Article 15s, Letters of Reprimand, Admonishment or Counseling or placement on the Control Roster has been taken.

The applicant received a letter of reprimand and an Unfavorable Information File for the substantiated misconduct. The rating chain chose to comment on the underlying conduct, which caused the report to be referred to the applicant for comments and consideration by the next evaluator.

AFPC/DPSIM provided an advisory in the case and states the applicant did not provide a copy of the LOR or UIF to review with the case. No evidence was provided to show the referral comments in the OPR were inaccurate. Nor has the applicant provided any documentation to refute the findings of the CDI. As such, the inclusion of the comments were appropriate and

within the evaluators authority to document. Accordingly, the presumption is the LOR and the associated UIF are valid for mention in the contested OPR.

It appears the OPR was accomplished in accordance with applicable Air Force regulations. It is the responsibility of the rater to document performance during the reporting period and they determine what is documented. It appears the rater determined that these incidents warranted documenting in the OPR. The applicant was provided an opportunity to rebut the rater's comments and this was included with the referral OPR for filing in his permanent evaluation record.

An evaluation report is considered to represent the rating chain's best judgment at the time that it is rendered. Once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The applicant has not provided evidence to show the report is unjust or inaccurate.

The complete DPSID evaluation is at Exhibit C.

AFPC/DPSOO recommends denial. The applicant has one non-selection to Lieutenant Colonel. Based on AFPC/DPSID's recommendation to deny the applicant's request to void the OPR, it is also recommended his request for a special selection board be denied.

The complete DPSOO evaluation is at Exhibit D.

AFPC/DPSIMC recommends denial. The use of LOR's by commanders and supervisors is an exercise of supervisory authority and responsibility directed by AFI 36-2907, *Unfavorable Information File Program*.

The complete DPSIMC evaluation is at Exhibit E.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Through counsel, the applicant reiterates there is no evidence of actual substantiated misconduct, just the mere boasting of such. To properly conclude that an officer committed acts that are unbecoming, the elements of proof of that charge must be assessed. The commander did not have to prove the allegations for an LOR, he just had to sign the letter based on his personal beliefs, thereby denying the applicant an opportunity to prove that what he did was not a criminal act.

The advisory regarding the OPR did not discuss or refute the argument and theory raised by this application. It basically contains the typical boilerplate response that the OPR is in compliance with instructions. There is no effort to defend the

wording of the OPR that was challenged. There being no cogent reason expressed for why this wording is acceptable, the OPR should be removed from his record for containing erroneous inflammatory information.

The applicant's complete response, with attachment, is at Exhibit G.

EXAMINER'S NOTE: The applicant was granted an SSB by the CY12A Promotion Board, to include his OPR from 4 December 2010 through 12 November 2011 and to reflect on his Officer Selection Brief his deployed commander duty entry.

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THE BOARD CONCLUDES THAT:

1. The applicant has 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. After careful consideration of the applicant's request, the evidence of record and counsel's response, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions expressed in the advisory opinions appear to be based on the evidence of record and have not been adequately rebutted by the applicant or his counsel. Additionally, counsel argues, the applicant was denied due process. We disagree. Letters of Reprimand are a quality force management tool designed to improve, correct and instruct those who depart from standards of performance, conduct, bearing and integrity and whose actions degrade the unit's mission. In this instance, the extreme boasting and braggadocio, as counsel states, had a direct impact on several members of the unit. Ultimately, the commander has the discretion to decide which disciplinary measure to use after considering the available evidence. There is nothing in the evidence provided, other than the applicant and counsel's assertions, which would lead the Board to believe that the actions by the imposing commander were inappropriate or that he did not have access to all of the information necessary on which to base his decision. The applicant has not provided any evidence showing that the imposing commander abused his discretionary authority, or that the applicant's substantial rights were violated. As such, we accept the recommendations made by the Air Force offices of primary responsibility and adopt the rationale expressed in the advisory opinions as the primary basis for our determination the applicant has not been the victim of error or injustice. Absent persuasive evidence the applicant was denied rights to which he was entitled, appropriate regulations were not followed, or appropriate

standards were not applied, we find no basis to disturb the existing record.

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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that 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 BCMR Docket Number BC-2011-04982 in Executive Session on 20 September 2012, under the provisions of AFI 36-2603:

, Panel Chair  
, Member  
, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 Jul 11, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSID, dated 14 May 12.
- Exhibit D. Letter, AFPC/DPSOO, dated 11 Jun 12.
- Exhibit E. Letter, AFPC/DPSIMC, dated 13 Mar 12.
- Exhibit F. Letter, SAF/MRBR, dated 25 Jun 12.
- Exhibit G. Letter, Applicant's Response, dated 24/25 Jul 12.

Panel Chair