

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00775

COUNSEL: NONE

HEARING DESIRED: NO

---

APPLICANT REQUESTS THAT:

The term "Violation of Article 93," in section 14, paragraph 2, of his AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB -TSgt)*, dated 17 April 2009 be completely eliminated.

---

APPLICANT CONTENDS THAT:

In the original document, violation of Article 93 was lined out by the administering commander. In the copy scanned into the Automated Records Management System it is not lined through and it appears that he was in violation of Article 93, UCMJ. The entire Article 93 violation to include the term "Violation of Article 93," was not eliminated by the legal office when scanned. It has been three years since the error occurred. He was deployed to Iraq when he noticed the error.

In support of his request, the applicant provides copies of page 2 from his original and scanned version of his AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru TSgt)*.

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

---

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the Regular Air Force in the grade of SSgt.

On 22 October 2010, the applicant was tried and sentenced with punishment under Article 15 UCMJ after an investigation revealed that he, a married man, engaged in a sexual relationship with his subordinate, a married female who was not his wife. The applicant was charged with one specification of dereliction of duty in violation of Article 92, one specification of maltreatment in the form of sexual harassment in violation of Article 93, and one specification of adultery in violation of Article 134. The applicant was briefed on his right to consult

the Area Defense Counsel (ADC). He consulted counsel, and waived his right to trial by court-martial and accepted the nonjudicial punishment proceedings. He elected to make a written presentation and a personal appearance before the commander.

On 17 April 2009, the commander determined the applicant committed the offenses of dereliction of duty and adultery but elected to withdraw the alleged offense of maltreatment in the form of sexual harassment in violation of Article 93. The applicant's imposed punishment was reduction to the rank of staff sergeant, a suspended forfeiture of \$1, 335.00 per month for two months, and a reprimand.

---

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states in accordance with Air Force Instruction (AFI) 51-202, *Nonjudicial Punishment*, dated 7 November 2003, the commander drew a line through the language of the specification for maltreatment in the form of sexual harassment, in violation of Article 93, UCMJ, indicating his intention to withdraw the specification, and both the commander and the applicant dated and initialed the lined out portion. No line was drawn through the words "Violation of Article 93," that appeared directly above the withdrawn specification. The commander then imposed the punishment for the two specifications. The applicant did not appeal the commander's decision. The Article 15 action was reviewed and determined to be legally sufficient.

In this case the applicant is not challenging the validity of the Article 15 itself, nor of the punishment imposed by the commander. The applicant requests, not a substantive correction of an error or clear injustice, but a clerical correction to the method by which the commander used to withdraw one of the alleged specifications. The commander's methodology, however, lawfully complied with the AFI and was deemed legally sufficient by an independent legal review, dated 1 May 2009. On the face of the document, it is clear that the specification was withdrawn and the applicant was not found in violation of Article 93, UCMJ. The punishment imposed and the administrative effect of the document is in no way altered or modified by the requested correction. In other words, the applicant's requested correction results in no discernable change to the impact or the outcome of the nonjudicial action. The Article 15 action was reviewed and determined to be legally sufficient.

The applicant does not make a compelling argument that the Board should alter or modify the form with which the commander used to withdraw the specification of maltreatment in violation of Article 93, UCMJ. There is no injustice even alleged, as the requested correction would have no effect on the ultimate

disposition of the applicant's case. The commander's decision on the Article 15 action is firmly based on the evidence of the case and the punishment decision was well within the limits of the commander's authority and discretion.

The complete AFLOA/JAJM evaluation is at Exhibit C.

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 25 April 2012, (exhibit D) for review and comment within 30 days. To date, this office has not received a response.

---

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 error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, the Board majority agrees with the opinion and recommendation of the Military Justice Division and adopts its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, the majority of the Board finds no basis to recommend granting the relief sought in this application.
- 

RECOMMENDATION OF THE BOARD:

A majority of the Board finds insufficient evidence of error or injustice and recommends the application be denied.

---

The following members of the Board considered this application BC-2012-00775 in Executive Session on 30 August 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

By a majority vote, the Board recommended denial of the application. XXXXXXXXXXXX voted to correct the record but does not wish to submit a Minority Report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 13 February 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 19 April 2012.
- Exhibit D. Letter, SAF/MRBR, dated 25 April 2012.

Panel Chair