

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01262

COUNSEL: NONE

HEARING DESIRED: YES

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THE APPLICANT REQUESTS THAT:

His name be reinstated on the Calendar Year 2010A (CY10A) Lieutenant Colonel Central Selection Board (CSB) promotion list.

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THE APPLICANT CONTENDS THAT:

As a result of a unit climate assessment in which it was alleged that he had made inappropriate sexual comments, his commander ordered a Commander Directed Investigation (CDI), that subsequently led to his removal from the promotion list; a Letter of Reprimand; military protective order for another officer; grounded from flying; removal from a Special Access Program (SAP), and short notice permanent change of station (PCS).

There was never a formal complaint filed by the officer involved regarding the alleged statements.

Through 15 years of service, he had a pristine record to the point of his removal from the promotion list.

Military informal complaint procedures were not followed and a Military Equal Opportunity (MEO) officer was not consulted.

He was the only one at his unit that was punished as a result of the Commander Directed Investigation (CDI); however, the unit had multiple/considerable dysfunctions.

The reviewing authority may not have had the opportunity to read the character statements before making the decision for his removal action.

He was not given due process and was used as a scapegoat.

In support of his appeal, the applicant provides a personal statement; copies of his AF Form 4363, *Record of Promotion Propriety Action*, dated 22 Jun 11; officer performance report

and promotion recommendation form and other supporting documents.

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

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STATEMENT OF FACTS:

The applicant was selected for promotion by the CY10A Lieutenant Colonel (Lt Col) CSB which convened on 8 Mar 10. His projected promotion date was 1 Jul 11.

On 28 Jun 11, the applicant's commander recommended his name be removed from the promotion list. The specific reason for this action was on or about 15 Jun 11, a CDI disclosed that the applicant made deliberate and repeated sexually degrading comments to a female subordinate within his unit. The applicant made these comments in the presence of other squadron members. These comments created tension and hostility within the unit and had a detrimental effect upon morale. The applicant was issued a Letter of Reprimand (LOR), dated 22 Jun 11, for inappropriate sexual comments. The member acknowledged receipt on 22 Jun 11. The rebuttal was submitted on 27 Jun 11; however, the commander failed to properly complete the action. On 22 Aug 11, the Secretary of the Air Force (SECAF) approved his removal from the CY10A Lieutenant Colonel Promotion list.

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THE AIR FORCE EVALUATION:

AFPC/DPSIMC recommends his LOR be removed, stating, in part, the commander did not properly complete the LOR with the authority he had to place the member on an Unfavorable Information file (UIF). The LOR was not processed in accordance with AFI 36-2907, *Unfavorable Information File Program*.

The complete AFPC/DPSIMC evaluation is at Exhibit C.

AFPC/DPSOO recommends denial of his request to be reinstated on the CY10A promotion list. They note the governing policy states commanders question promotion when the preponderance of evidence shows the officer is not mentally, physically, morally, or professionally qualified to perform the duties of the higher grade. Also, early identification of the officer and proper documentation are essential in taking promotion propriety action. Lastly, Air Force policy states that formal rules of evidence do not apply to a promotion propriety action. The removal action was reviewed by base and Air Force legal offices and the action was found to be legally sufficient to warrant the action taken.

In addition, they opine that a promotion is not a reward for past service. It's advancement to a position of greater responsibility based on the requirements of the Air Force and the officer's future potential. If an officer is not mentally, physically, morally, or professionally qualified to perform the duties in the next higher grade, it is in the best interest of the Air Force for the proper authority to initiate action to delay promotion, to find an officer not qualified for promotion, or to remove the officer from a promotion list.

Based on a review of the propriety package provided to the SECAF for his review, the SECAF had the opportunity to review the statements provided by the applicant and his case was given due process.

The complete AFPC/DPSOO evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 19 Jun 12 for review and response. As of this date, no response has been received by this office (Exhibit E).

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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 error or injustice regarding the applicant's request to reinstate his name on the promotion list. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility, AFPC/DPSOO, and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. While the arguments set forth by the applicant are noted, it appears to us the applicant's commander had a sufficient basis to recommend the applicant's name be removed from the promotion list. Likewise, it appears the Secretary had full knowledge of the facts and circumstances of the applicant's case and his decision to remove the applicant's name from the list was not arbitrary or capricious. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

4. Notwithstanding the above, it appears proper administrative procedures were not followed in completing the letter of reprimand (LOR) issued to the applicant. While issuance of the LOR may have been appropriate, we agree with the recommendation of AFPC/DPSIMC that the LOR should be removed from the applicant's record due to the commander's failure to render a final decision after the applicant submitted his rebuttal. Therefore, we recommend the applicant's record be corrected to the extent indicated below.

5. 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 issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Letter of Reprimand, dated 22 June 2011, under the provisions of AFI 36-2907, *Unfavorable Information File Program*, be removed.

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The following members of the Board considered AFBCMR Docket Number BC-2012-01262 in Executive Session on 25 September 2012, under the provisions of AFI 36-2603:

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 6 Mar 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSIMC, dated 20 Apr 12.
- Exhibit D. Letter, AFPC/DPSOO, dated 17 May 12.
- Exhibit E. Letter, SAF/MRBR, dated 19 Jun 12.

Panel Chair