

## PROMOTION PROPRIETY ACTION

### Anticipatory DOR Adjustment

This opinion discusses whether an anticipatory date of rank (DOR) adjustment is legally sufficient. Based on the opinion outlined below, we find that anticipating a date in the future as to when a member may be within standards is legally insufficient. In this particular case, command recommended termination of the respondent's promotion delay with a date of rank adjustment. The case file was legally sufficient to support the termination action, but not the command's recommended adjusted date of rank (DOR) of 10 Mar 14, since the commander signed the termination action on 4 Feb 14.

**Background:** Respondent was assigned to a Maintenance Squadron during the time of her misconduct and was originally scheduled to promote to First Lieutenant on 12 September 2013. In August 2013, a Command Directed Investigation (CDI) was conducted for an alleged unprofessional relationship between respondent and a SrA. The CDI concluded that respondent was guilty of having an unprofessional relationship with a SrA.

On 3 Sep 13, based on this misconduct, the Squadron Commander (CC), gave respondent a Letter of Reprimand (LOR) for engaging in an unprofessional relationship with a SrA. Also on this date, command notified respondent they were recommending her promotion be delayed. On 10 Sep 14, respondent provided a written response and apologized for any action which were viewed as unprofessional, but offered explanations as to why her interactions with said SrA were exaggerated and misrepresented. On 23 Sep 13, the Wing CC approved respondent's promotion delay until 10 Mar 14.

On 4 Feb 14, the Squadron CC notified respondent that he was recommending termination of the promotion delay with a recommended adjusted date of rank of 10 Mar 14. On 18 Feb 14, respondent provided a written response to the action through her civilian attorney. The premise of the response was that respondent received questionable and ineffective assistance of counsel from the Area Defense Counsel and should not be penalized for following said advice (not providing a statement to the investigator during the CDI). On 4 Mar 14, the Wing CC, after reviewing respondent's submission of matters, agreed with the Squadron CC and recommended termination of the promotion delay with an adjusted date of rank of 10 Mar 14.

**Case Analysis:** Air Force Instruction (AFI) 36-2501, *Officer Promotions and Selective Continuation*, paragraph 5.4.4 states that upon termination of a promotion delay, the Secretary (or his designee) may adjust an officer's date of rank to reflect the date on which that officer met the exemplary conduct standard and was ready for promotion.

While the fact that the unprofessional relationship was largely based on perceptions, these perceptions were sufficient to delay her promotion. The respondent is an officer in the Air Force and should have used a greater level of judgment (if not discretion) when, as she stated in her response, an enlisted member was pursuing her. During the delay period, command monitored her behavior and considered her performance before ultimately coming to the conclusion that respondent now demonstrated the ability to assume the higher grade of First Lieutenant. However, command's recommendation of an adjusted DOR of 10 Mar 14, a date in the future from when command signed the AF Form 4364 stating that respondent meets standards, is legally insufficient. We find that it is legally impermissible to project an adjusted date of rank in the future. It is legally permissible to use the date command signs the termination action or a previous date when command decided that respondent met standards. Therefore, in this case, since command signed the AF Form 4364 on 4 Feb 14, stating respondent is now within standards, we recommended this be the date utilized for the adjusted DOR.