

TOPIC

Concurring with command's recommendation to terminate Promotion Delay Action but not reinstating original date of promotion; instead, adjusting effective date of rank.

TEXT OF THE DECISION

This opinion is in response to command's recommendation to terminate a promotion delay. We concur with command to terminate the delay; however, we do not concur with command's recommendation to reinstate Respondent's original date of promotion. Instead, we recommend that SecAF adjust Respondent's effective date of rank to 1 July 2015, the date consistent with the date of the original promotion delay.

BACKGROUND

Respondent was originally projected to promote to major on 1 June 2015. His promotion was delayed until 1 July 2015.

On 1 January 2015, around 0655 hours, Respondent was found to be driving under the influence of alcohol. Respondent was stopped by local police for erratic driving and then failed a breathalyzer test.¹ As a result of Respondent's behavior, his conduct was adjudicated in local courts and on 4 February 2015 he received a Letter of Reprimand (LOR) from his commander and an Unfavorable Information File (UIF) was open. On 9 February 2015, Respondent provided a mandatory written response to the LOR wherein he provided some context for his actions. More specifically, Respondent claims he was driving around looking for a specific restaurant when he was confronted by three women who pleaded with him to stop his vehicle and help them. He claims these women informed him that they were assaulted by two men, and they asked Respondent to protect them until authorities arrived. Respondent noted that one of the women had blood on her chin, and he noticed a man across the street with blood on his forehead. Respondent claims that he "remained unbiased" and offered a napkin and water to the bleeding man until the local authorities arrived and took control of the scene.

Respondent stated in his LOR response that he went back to his car and continued driving to find a restaurant but his search was fruitless, so he set his GPS on course for home. Respondent further claimed that his GPS sent him wrongly down a one-way street, at which time he was directed by local authorities to pull over. The local authorities suspected alcohol, and Respondent failed both a breathalyzer and a field sobriety test, at which time Respondent was taken to a local police station. In his LOR response, Respondent did show some contrition for his actions and noted that he does not regularly drink alcohol. He promised his leadership that he would change his ways

¹ Respondent's field breath test yielded a United States Breath-Alcohol Content (BRAC) of 0.087 grams per 210 liters (g/210L) of breath at 0655 hours on 1 Jan 15. He was taken to the police station and given a formal test that yielded a United States result of 0.076 g/210L of breath at 0911 hours on 1 Jan 15. The second formal BRAC test equates to a local BRAC of .73 per mille or grams per liter (g/L) measurement. The BRAC limit for the country in question is .5 per mille which is lower than the 0.08% BRAC limit in the United States.

and similar behavior would not be repeated. On 9 February 2015, Respondent's Commander delayed Respondent's promotion until 1 July 2015 on AF Form 4363.

GUIDANCE

Pursuant to AFI 36-2501, *Officer Promotions and Selective Continuation*, 16 Jul 2004, incorporating through Change 3, 17 Aug 09, paragraph 5.3, “[a]n officer’s immediate commander normally initiates a promotion list removal or delay recommendation.” Paragraph 5.3.1 also notes that “[w]here actions are initiated by a wing commander or equivalent or higher commander, the initiating commander is also the reviewing commander.” Paragraph 5.4 states that a “commander takes action to delay a promotion if there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in Title 10, U.S.C. 8583 or is not mentally, physically, morally, or professionally qualified to perform the duties of the higher grade.”

Paragraph 5.4.1 governs initial delays and provides the reviewing commander authority to approve an initial delay up to 6 months from the officer’s original effective date of promotion. After indorsement, “the reviewing commander sends the memorandum electronically to AF/A1PPP ... for AF/JA and SAF/GC coordination and SecAF...action.”² Paragraph 5.4.3 governs resolving a promotion delay and states that “commanders may initiate action to end the delay at any time by using AF Form 4364 and following steps detailed in paragraphs 5.6 and 5.7.” It should be noted that under paragraph 5.4.3.1, “only SecAF...may end a promotion delay. Notwithstanding the commander’s recommendation, SecAF...may promote an officer on his or her original effective date; promote an officer with a date of rank adjustment; extend the officer’s promotion delay; or remove the officer from the promotion list.”

DISCUSSION

On Respondent’s AF Form 4364, wherein Respondent’s Commander recommended that SecAF terminate Respondent’s promotion delay with an original date of promotion reinstated, Respondent’s Commander noted in block 3: “In accounting for your ‘good Samaritan’ actions, which mitigate some circumstances surrounding your DUI, and your exemplary performance before and after, I am terminating [the] promotion delay.” Additional follow up with MAJCOM/JA revealed that the commander understood that the member’s LOR and his officer performance report effectively ended Respondent’s career. However, the commander was convinced that Respondent could effectively serve as a major. The commander wanted to maximize the probation period to fully assess Respondent’s promotability and to allow him to serve as a major as of the date he should have originally pinned-on. We disagree.

Respondent’s “good Samaritan” actions are only documented in his response to the LOR. There is no independent corroboration by any witness, police statement or other credible source. Therefore, these statements do not carry very much weight, even if Respondent’s Commander was convinced otherwise. Additionally, the command’s statement that Respondent’s career is “effectively ended,” is internally inconsistent with wanting to wait to fully assess Respondent’s “promotability.” Finally, while Respondent’s Commander cites Respondent’s “exemplary

² See also, 10 USC §624 (Promotions: how made) and DoDI 1320.14, *Commissioned Officer Promotion Program Procedures*

performance” before and after his DUI, he misunderstands the objective of a promotion. A “promotion is not a reward for past service; it is an advancement to a higher grade based on past performance and future potential.” AFI 36-2501, para. 2.1. A totality of the factual circumstances as they relate to the supporting documentation supports terminating Respondent’s promotion delay and allowing him to promote on 1 July 2015.

It is to be expected that Respondent would display exemplary performance after his DUI, because he knew his Air Force career was being scrutinized for an unknown period of time. Moreover, Respondent was DUI OCONUS while serving with international partners. His behavior (by driving under the influence) is not just a poor reflection on himself, but it is also a negative reflection upon the United States and the Air Force because the act was committed within a country that has a critical military alliance with United States. While Respondent successfully completed ADAPT program on 23 February 2015, there is no evidence in the case file that demonstrates any contrition other than Respondent’s reply to his LOR.

CONCLUSION

While we do not believe the Air Force should operate on a one-mistake mentality, we do not concur with command’s recommendation to promote Respondent as of his original promotion date. Respondent’s promotion was delayed until 1 July 2015 and the facts of this case support that date as an appropriate promotion date. Respondent’s decision to drive while drunk in a foreign country failed to be “a good example of virtue, honor, patriotism, and subordination.” 10 U.S.C. § 8583(1). Therefore, we recommend that SecAF terminate Respondent’s promotion delay and continue his service with an effective date of rank of 1 July 2015.

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