

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2015-04980

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for the following based on an allegation of reprisal pursuant to DODD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034 and racial disparity per the 2020 Inspector General Department of the Air Force (SAF/IG) Independent Racial Disparity Review (IRDR):

1. His referral officer performance report (OPR) for the reporting period ending 30 Jun 14 be removed from his record.
2. He be retroactively promoted to the rank of colonel (O-6), or in the alternative he be considered by a special selection board (SSB) for promotion to the rank of colonel.
3. He receive an appropriate medal, minimum award of the Meritorious Service Medal (MSM), for his permanent change of station (PCS) assignment.

RESUME OF THE CASE

The applicant is a retired Air Force lieutenant colonel (O-5).

On 10 Jun 14, the applicant received a letter of reprimand (LOR). A commander directed investigation (CDI) substantiated the applicant between Jun 12 and Jun 14 failed to maintain a healthy command climate. The LOR stated the staff reported low morale due to the applicant's actions. Evidence showed he contacted staff while they were off duty, canceled leave, changed schedules without providing proper notice and micromanaged his staff. The applicant was also derelict in the performance of his duties by failing to refrain from disclosing confidential information and claimed he was God's messenger on earth and if his subordinates defied him, they were essentially defying God. In a response dated 18 Jun 14, the applicant stated the CDI was rushed and incomplete. Individuals he supervised were not interviewed and there was no substantiation of the allegations he contacted staff after hours, canceled leave, changed schedules without proper notice, micromanaged his staff or violated confidentiality. The organization was unhealthy upon his arrival and the climate was exacerbated by wing leadership.

The applicant received a referral OPR for the reporting period ending 30 Jun 14 for the LOR, creating a hostile work environment and removal from his position.

On 29 Nov 14, SAF/IG dismissed the applicant's complaint of wrongdoing by his WG/CC. The applicant filed his IG complaint on 20 Jun 14 alleging unfair treatment, insensitivity to religious accommodation, toxic leadership, coercion to change subordinate stratifications, reprisal, fraudulent flight hours and discrimination.

On 6 Apr 17, the Board considered and denied his request for removal of his 30 Jun 14 OPR and that he be awarded an MSM for his PCS. The applicant contended he was the victim of reprisal in violation of 10 U.S.C. § 1034. The Board reviewed the applicant's complaint and the Complaint Analysis report provided by SAF/IG and found no evidence the applicant's allegations were improperly dismissed or that he was the victim of reprisal. The applicant contended his commander used a CDI to unfairly reprimand him and remove him from his duty. The Board reviewed the CDI and concluded there was no evidence the investigation was flawed or the CDI was procedurally incorrect. The Board found no evidence to support his allegations that the imposing commander abused his discretionary authority or that the applicant's substantial rights were violated.

On 12 and 15 May 20, the Board reconsidered the applicant's request and concluded there was insufficient evidence to warrant any corrective action. The Board found the applicant had not overcome the rationale expressed in the previous decision.

For an accounting of the applicant's earlier requests and the rationale of the earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit P.

On 5 Jan 21, the applicant applied for retirement effective 1 Sep 21.

On 5 Jan 21, the applicant was notified by his wing commander (WG/CC) an officer grade determination (OGD) was required due to the substantiated adverse finding in the CDI dated 7 Sep 18 for which he received a verbal counseling and the 2 Jun 14 CDI for which he received an LOR.

The OGD legal review dated 18 Mar 21, shows the WG/CC (Grand Forks AFB) in May 14 appointed an investigating officer (IO) to conduct a CDI into the organizational climate and morale in the chapel organization. The IO concluded the preponderance of the evidence showed the climate as hostile and the morale low. There was a general fear of retribution by the staff. On 10 Jun 14, the WG/CC issued the applicant an LOR. Further, on 10 Aug 18, the WG/CC (Altus AFB) initiated a CDI into allegations the applicant failed to comply with a contractor's scope of responsibilities, falsified attendance numbers for chapel programs and abused his authority. The CDI substantiated the applicant failed to comply with the contractor's performance work statement (PWS) by making her attend staff meetings, requesting she keep her door open and he asked her to teach Sunday school. The CDI found the other allegations were not substantiated. The IO found the applicant's leadership style fostered an organizational climate that lacked trust and communication as well as fear that he would take adverse action in response to questioning or filing grievances with outside agencies. The WG/CC verbally counseled the applicant. Between 21 Oct and 30 Oct 20, the command received two separate reports of a hostile work environment within the chapel. On 23 Nov 20, the applicant was issued an LOC for climate, it stated there was "an absence of respect for others, insensitive comments regarding race and religion and a lack of consideration for the well-being and development of chapel personnel."

On 26 Apr 21, the WG/CC referred the Adverse Information Summary (AIS), Substantiated Investigation without Written Command Action memorandum to the applicant for comment before it was filed in his master personnel records group (MPerGp) and officer selection record (OSR) per DAFPM 2020-36-03, *Adverse Information for Total Officer Selection Boards*, dated 26 Feb 21. The AIS stated that between 1 Jul 17 and 9 Jul 18, a CDI found the applicant wrongfully failed to comply with a contract employee's PWS by exceeding the scope of her responsibilities. Moreover, although not a framed allegation, it was apparent during the investigation the applicant's leadership style fostered an organizational climate that lacked trust and communication. The IG's finding was approved on 11 Oct 18 and the applicant was verbally counseled on 21 Nov 18. The applicant was also informed the Secretary of the Air Force Personnel Counsel (SAFPC) would make the final determination on the OGD upon review of his record, to

include the substantiated adverse findings and conclusions in the CDI, which resulted in an LOR dated 10 Jun 14 and the LOC dated 23 Nov 20 he issued to the applicant.

The applicant's commanders recommended he be retired in the rank of lieutenant colonel and on 28 Jul 21, SAFPC determined the applicant served satisfactorily in the rank of lieutenant colonel within the meaning of 10 U.S.C. § 1370(a)(1).

On 30 Sep 21, the applicant was honorably discharged from active duty in the rank of lieutenant colonel for the purpose of retirement in the rank of lieutenant colonel effective 1 Oct 21. He was credited with 24 years, 7 months and 8 days of active service for retirement.

On 11 Jul 22, the applicant requested reconsideration of his request. He provides new evidence to include 23 statements validating he was the victim of racial disparity based on the findings from the 2020 Air Force Independent Racial Disparity Review (IRDR). His WG/CC ostracized him, treated him harshly and the punishment was disproportionate as attested by the evidence provided. There were 12 eyewitnesses who contradicted the assessment of low morale. As evidence of racial disparity, three of his white colleagues at the same base, during the same tenure and in the same position received no punishment for illegal activities and dereliction of duties. The Air Force investigated cheating scandals, which was a more serious infraction than his supposed low morale. Two general officers rated his records at the top one percent seen in 30 years. He would have been promoted to the rank of colonel and competed for general officer had the referral OPR not been in his records.

The IRDR concluded Black service members were far more likely to be investigated, apprehended, disciplined or discharged. Racial disparity included lessor disciplinary actions such as LORs, LOCs and LOAs. He provides statements of support validating racial disparity to include from the former AETC deputy commander, former chief of chaplains, Grand Forks AFB vice wing commander, Grand Forks AFB wing staff first sergeant and the equal opportunity (EO) director. He also provides, redacted IG interview statements, promotion recommendation forms (PRF) and news articles regarding cheating scandals on proficiency examinations pertaining to air traffic controllers at Grand Forks AFB and missile officers at Malmstrom AFB, MT.

The applicant's complete submission is at Exhibit Q.

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 1034 and AFI 90-301, *Inspector General Complaints Resolution*, reprisal against military members for making protected disclosures is prohibited.

The National Defense Authorization Act for Fiscal Year 2020, signed on 20 Dec 19 and codified in 10 U.S.C. § 615(a)(3) and per DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information"). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action,

removal of adverse information from the records may only be directed by an AFBCMR recommendation.

The Dec 20 Department of the Air Force Inspector General Report of Inquiry, Independent Racial Disparity Review confirmed racial disparity exists for Black service members in the areas of law enforcement, apprehensions, criminal investigations, military justice, administrative separations, placement into occupational career fields, certain promotion rates, professional military educational development and leadership opportunities.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided sufficient evidence to warrant removal of his 30 Jun 14 referral OPR and grant his request for SSB for the CY16C (P0616C) Chaplain CSB and any subsequent CSB that would have considered the referral OPR prior to his retirement. While the applicant's IG complaint on 20 Jun 14 that he was reprimed against in violation of 10 U.S.C. §1034 and AFI 90-301 was dismissed by SAF/IG on 29 Nov 14 and there is no evidence he was the victim of reprisal, the Board finds the letters of support and the Dec 20 IRDR sufficient to conclude the applicant was more likely than not the victim of racial disparity and was treated more harshly than similarly situated peers. Further, while there is no evidence the CDI into allegations the applicant created an unhealthy command climate was flawed, the Board finds ample evidence in the ROI dated 2 Jun 14 that there was significant turmoil and morale issues prior to the applicant's arrival to the unit. It appears the applicant attempted to make changes to operations in an effort to improve mission accomplishment but relationships became strained soon after his arrival. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. The applicant requests he receive a direct promotion to the rank of colonel; however, this Board, which serves on behalf of the Secretary of the Air Force in the correction of military records, is without authority to grant the applicant a direct promotion. With respect that he be awarded an MSM or higher level award for his PCS, the Board remains unconvinced the evidence presented demonstrates an error or injustice to override the Board's earlier decision to conclude the applicant was unjustly denied an award upon his PCS. Therefore, the Board recommends correcting the applicant's records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a. AF Form 707, *Officer Performance Report (Lt thru Col)*, for the reporting period of 16 May 13 to 30 Jun 14 be void and removed from his records and replaced with an AF Form 77, *Letter of Evaluation*, which states "Not rated for the above period. Evaluation was removed by Order of the SecAF."

b. He be considered by an SSB for promotion to the rank of colonel for the CY16C (P0616C) Chaplain CSB.

c. If not selected for promotion by the CY16C (P0616C) Chaplain CSB, he be considered for SSB for subsequent CSBs that would have reviewed his 30 Jun 14 referral OPR.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2015-04980-3 in Executive Session on 16 Mar 23:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit P: Record of Proceedings, w/ Exhibits A-J, dated .
Exhibit Q: Application, DD Form 149, w/atchs, dated 11 Jul 22.
Exhibit R: Documentary evidence, including relevant excerpts from official records.
Exhibit S: SAF IG IRDR, Dec 20.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.