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**SECOND ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

XXXXXXXXXXXXXXXXXX

**DOCKET NUMBER:** BC-2016-04933

**COUNSEL:** XXXXXXXXXXXXX

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

The Board reconsider the following requests:

1. His Officer Performance Report for the period 2 Nov 12 through 15 Jun 13, be voided and removed from his Official Military Personnel File.
2. His Officer Performance Report for the period 16 Jun 13 through 27 May 14, be voided and removed from his Official Military Personnel File.
3. He be awarded an end of tour Meritorious Service Medal for his time at Joint Base San Antonio-Lackland.
4. His Promotion Recommendation Form for the P0414B Selection Board be voided and removed from his Official Military Personnel File.
5. His original rater, additional rater, and reviewer be removed from his rating chain for the 2013 Officer Performance Report.
6. His original rater, additional rater, and reviewer be removed from his rating chain for the 2014 Officer Performance Report.
7. Independent and non-biased officials be assigned as replacement members of his rating chain and senior rater.
8. The replacement Officer Performance Report be signed by the replacement members of his rating chain and it be substituted for the 2013 Officer Performance Report.
9. The replacement Officer Performance Report be signed by the replacement members of his rating chain and it be substituted for the 2014 Officer Performance Report.
10. Mimic the records of his closest peers Chaplain J. R., Chaplain K. H., or Chaplain D.L.) for the 2016-2022 time period. **(New request; previous request covered the time period 2016-2020)**
11. The Secretary of the Air Force submit his name to the President for promotion to major general (O-8). **(New request; previously requested promotion to colonel (O-6)**

11. He be retired in the rank of major general with 40 years of service as of 1 Jun 23. **(New request; previously requested he be retired in the rank of colonel with 30 years of service as of 1 Jun 21)**

12. He be awarded a Legion of Merit for his exemplary service to the United States of America, especially in light of the great injustices done to him by the United States Air Force.

13. He be given all back pay and allowances without any offset or deductions as if he had been promoted to major in 2014, lieutenant colonel twice below-the-zone in 2017 and colonel twice below-the-zone in 2020. **(New request; previously requested he be given all back pay and allowances without any offset or deductions as if he had been promoted to major in 2014 and lieutenant colonel in 2019 without having to pay back any severance pay.)**

## **RESUME OF THE CASE**

The applicant is former Air Force captain (O-3), who was honorably discharged from the Air Force on 31 Jul 16.

On 19 Dec 19, the Board considered and denied his requests, finding the evidence presented did not demonstrate material error or injustice to justify relief. Additionally, as the applicant alleged he was a victim of reprisal and was not afforded full protection under the Whistleblower Protection Act (10 U.S.C. § 1034), the Board reviewed the evidence of record, and determined the applicant was not a victim of reprisal. The following were the requested items of relief:

1. His AF Form 707, *Officer Performance Report* (Lt through Col), for the period 2 Nov 12 through 15 Jun 13, be voided and removed from his records.

2. His Officer Performance Report for the period 16 Jun 13 through 27 May 14, be voided and removed from his records.

3. He be awarded an end of tour Meritorious Service Medal for his time at Joint Base San Antonio-Lackland.

4. His AF Form 709, *Promotion Recommendation Form*, for the P0414B Major Central Selection Board be voided and removed from his records.

5. His original rater, additional rater, and reviewer be removed from his rating chain for the Officer Performance Report closing out 15 Jun 13.

6. His original rater, additional rater, and reviewer be removed from his rating chain for the Officer Performance Report closing out 27 May 14.

7. His original senior rater be removed from his Promotion Recommendation Form for the P0414B Major Central Selection Board.

8. Independent and non-biased officials be assigned as replacement members of his original rating chain and as senior rater.

9. His replacement Officer Performance Report be signed by the newly assigned members of his rating chain and be substituted for the Officer Performance Report closing out 15 Jun 13.

10. His replacement Officer Performance Report be signed by the newly assigned members of his rating chain and be substituted for the Officer Performance Report closing out 27 May 14.

11. His replacement Promotion Recommendation Form be signed by the newly assigned senior rater and be substituted for the Promotion Recommendation Form rendered for the P0414B major Central Selection Board.

12. He be placed on the Air Command and Staff College in-residence list and be provided an opportunity to attend the next class.

13. He be assigned as an instructor at the Chaplain Corps College as a follow-on assignment to Air Command and Staff College.

14. His records meet the next Special Selection Board using a procedure that does not require he beat any benchmark records.

15. This application be reviewed in an expedited manner.

On 25 Jan 21, 6 Jul 21, and 15 Jul 21, the applicant submitted a DD Form 149, *Application for Correction of Military Record*, and supporting documentation requesting reconsideration of his following requests:

1. His Officer Performance Report, for the period 2 Nov 12 through 15 Jun 13, be voided and removed from his Official Military Personnel File.

2. His Officer Performance Report, for the period 16 Jun 13 through 27 May 14, be voided and removed from his Official Military Personnel File.

3. He be awarded an end of tour Meritorious Service Medal for his time at Joint Base San Antonio-Lackland.

4. His Promotion Recommendation Form for the P0414B Selection Board be voided and removed from his Official Military Personnel File.

5. Chaplain M., Chaplain C., and Brigadier General L., be removed from his rating chain for the 2013 Officer Performance Report.

6. Chaplain K., Chaplain J., and Brigadier General L., be removed from his rating chain for the 2014 Officer Performance Report.

7. Independent and non-biased officials be assigned as replacement members of his rating chain and senior rater.

8. The replacement Officer Performance Report be signed by the replacement members of his rating chain and it be substituted for the 2013 Officer Performance Report.

9. The replacement Officer Performance Report be signed by the replacement members of his rating chain and it be substituted for the 2014 Officer Performance Report.

10. Mimic the records of his closest peers (Chaplain J. R., Chaplain K. H. or Chaplain D.L.) for the 2016-2020 time period. **(New request, not previously considered by the Board)**

11. The Secretary of the Air Force submit his name to the President for promotion to Lieutenant Colonel. **(New request, not previously considered by the Board)**

12. He be given all back pay and allowances without any offset or deductions as if he had been promoted to major in 2014 and lieutenant colonel in 2019 without having to pay back any severance pay. **(New request, not previously considered by the Board)**

13. He be retired in the rank of colonel with 30 years of service as of 1 Jun 21. **(New request, not previously considered by the Board)**

14. He be awarded the Legion of Merit for his exemplary service to the United States of America, especially in light of the great injustices done to him by the United States Air Force. **(New request, not previously considered by the Board)**

Alternatively, he requested the items of relief 1 – 12 from above, plus:

15. Since all the wing chaplain positions have already been assigned, allow him to serve a Clinical Pastoral Education residency with a Veterans Administration hospital of his choosing. **(New request, not previously considered by the Board)**

16. Upon completion, he be assigned the wing chaplain at Hurlburt Field, Maxwell Air Force Base, or Randolph Air Force Base. **(New request, not previously considered by the Board)**

17. He then be placed on the Air War College in-residence list and be provided the opportunity to attend the next session of Air War College. **(New request, not previously considered by the Board)**

On 15 Mar 21, the DoD Oversight Branch Chief, Whistleblower Reprisal Investigations digitally signed a letter to the applicant informing him that his 5 Nov 20 DoD Hotline complaint requesting reconsideration of their 2 Aug 16, determination that his complaint (XXXXXXXXXX-XXXXXXXX-CASE-XX) was closed. DoD reviewed their prior decision and found no basis to reverse their decision because the applicant provided no evidence to dispute the fact the actions taken were in violation of regulation or statute.

On 11 Aug 21, after reviewing all Exhibits, the Board remained unconvinced the evidence presented demonstrates an error or injustice. Furthermore, the Board applied liberal consideration to the new evidence submitted by the applicant; however, it was not sufficient to overturn the previous Board's 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 K.

On 1 Oct 22, the applicant requested reconsideration of his requests first listed above. He again contends through counsel he was reprimanded for preaching a sermon that was not properly investigated and he was retaliated against for preaching that sermon, all of which are illegal. Had the Air Force not violated his constitutional and statutory rights (Section 533, FY13 NDAA, *Protection of Rights of Conscience of Armed Forces Members and Chaplains*), and its own regulations, he would have certainly been promoted in his 2014 Primary Zone promotion board. As a "fast-burner," having been hand-selected to work in Basic Military Training, he would have likely been promoted twice below-the-zone to lieutenant colonel in 2017 and twice below-the-zone to colonel in 2020. His career has been irreparably damaged by the Air Force. In support of his reconsideration request, the applicant submitted a memorandum dated 26 Jan 22, from a

Former Senior Investigator. Additionally, the applicant through counsel requests the Board obtain an unredacted copy of the Whistleblower Reprisal Investigation review conducted by the former Senior Investigator of the applicant's appeal of the Reprisal IG investigation.

The applicant's complete submission is at Exhibit L.

## **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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board applied liberal consideration to the new evidence submitted by the applicant; however, it is not sufficient to overturn the previous Board's decision. The applicant again contends he was reprimanded for preaching a sermon and subsequently alerting trainees the command was lying to them, saying their survey results would be confidential and anonymous. Furthermore, he contends the Report of Investigation concerning his allegations of reprisal was not properly investigated, he was retaliated against, all of which are illegal, violating his constitutional and statutory rights under Section 533 of FY13 NDAA, *Protection of Rights of Conscience of Armed Forces Members and Chaplains*, culminating in irreparable damage to his Air Force career. However, the Board disagrees. In support of his reconsideration request the applicant submitted as new evidence a memorandum provided by a former Senior Investigator, Whistleblower Reprisal Investigations, DoD/IG; who conducted a review of the applicant's request for appeal of the Reprisal IG investigation of his complaint XXXXXXXX-XXXXXX-CASE-XX. Specifically, on 5 Nov 20, the applicant requested the DoD/IG, Whistleblower Reprisal Investigations, reconsider their 2 Aug 16, determination that his complaint XXXXXXXX-XXXXXX-CASE-XX was closed. On 15 Mar 21, the Oversight Branch Chief, Whistleblower Reprisal Investigations, advised the applicant that after review of their prior decision to close his complaint, they found no basis to reverse their prior decision. Additionally, they determined he provided no evidence to dispute the fact that the actions taken (denied an award, received counseling after he had made protected communications) were a violation of regulation or statute. At the request of the applicant, the former Senior Investigator, Whistleblower Reprisal Investigations Directorate, provided a memorandum, dated 26 Jan 22. He identified himself as the DoD/IG member who conducted the applicant's request for reconsideration. In his memorandum, he reconstructed the applicant's case on memory and wrote that under no circumstances does anything contained therein represent the DoD/IG or any of its subordinate directorates. His review of the applicant's request for reconsideration took place in the summer of 2021, and he opines he found there were obvious errors, that taken together, could have substantiated the applicant's reprisal case. The errors he noted were: (a) The applicant made protected communications to his Troop Commander; (b) His rater did not dispose of an unfavorable personal action as he said he would; (c) At Shaw AFB, in his opinion, the applicant experienced bias by his immediate rater and additional rater, both first-time supervisors, that viewed the applicant's previous protected communications to the Commanding General of Training and Education Command, as a "Lack of Officership;" and (d) even though the Air Force Inspector General ACTS [Automated Case Tracking System] database properly documented the applicant's supervisors' poor handling of his evaluation and performance recommendation; the lack of action, oversight and acknowledgement, he was more than likely retaliated against, and ultimately due to the DoD/IG's failure to connect the evidence, cost the applicant his Air Force career. In addition to this memorandum, the applicant requested the Board obtain an unredacted copy of the DoD/IG report. While the applicant's counsel alleges the Senior Investigator's memorandum states the unredacted copy of the report will vindicate the applicant, the Board notes the counsel's brief, dated 7 Oct 22, makes this statement,

not the Senior Investigator's memorandum, dated 26 Jan 22. The AFBCMR attempted to obtain an unredacted copy of the DoD/IG report but was unsuccessful.

Notwithstanding the Senior Investigator's personal observation that the applicant was more than likely retaliated against, and due to the DoD/IG's failure to connect the errors he identified in his memorandum; and despite not being able to review an unredacted copy of the DOD/IG report, the Board is not compelled to overturn the previous Board's decision. Specifically, while the former Senior Investigator believes there is sufficient evidence to support the applicant was reprised against, it appears the Oversight Branch Chief, Whistleblower Reprisal Investigations, the primary reviewer in the DoD/IG office, did not support that conclusion. Additionally, this Board notes the Report of Investigation conducted by the 502 ABW/IG analyzed nine allegations of reprisal against the applicant and determined the allegations were not substantiated. Subsequent reviews of the Report of Investigation by SAF/IG, DoD/IG, and previous AFBCMR Boards found the preponderance of evidence showed the Air Force actions taken in this matter regarding the applicant did not violate regulations or the applicant's constitutional and statutory rights, nor was the applicant reprised against pursuant to Title 10, U.S.C. § 1034. Given there is no basis to recommend approval of his previous requests, there exists no basis to recommend relief for the applicant's new or amended requests. Therefore, the Board recommends against correcting the applicant's records.

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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

#### **CERTIFICATION**

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2016-04933 in Executive Session on 27 Mar 23:

, Chair, AFBCMR  
, Panel Member  
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit K: Addendum Record of Proceedings, w/Exhibits A-J, dated 19 Dec 19.  
Exhibit L: Application, DD Form 149, w/atchs, dated 1 Oct 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

**X**

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Board Operations Manager, AFBCMR