

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2015-01472-2

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for the following:

1. He be credited with an additional three years of active duty service.
2. He receive three years back-pay, to include all applicable pay raises and cost of living adjustments.
3. His leave balance be restored with 79 days of leave and any additional leave accrued from May 12 – May 15.
4. He be granted repayment for three years of medical insurance coverage in the amount of \$7,200.
5. He receive credit for Air War College (AWC).
6. He be granted a 20-year active duty retirement in an appropriate grade equal to or higher than lieutenant colonel (O-5).
7. He be granted a monetary amount due to mental anguish, financial stress or pain and suffering.

RESUME OF THE CASE

The applicant is an Air Force Reserve lieutenant colonel (O-5) awaiting retired pay at age 60.

On 20 Sep 16, the Board considered and denied his request for the following: restoration of three years of active duty, salary/benefits, restoration of leave, COLA and salary increases, medical costs for his daughter, and 20-year active duty retirement as lieutenant colonel. The Board agreed with the opinion and recommendation of the Air Force office of primary responsibility and adopted its rationale as the basis for their conclusion the applicant had not been the victim of an error of injustice. Additionally, the Board did not find the applicant had been the victim of reprisal pursuant to Title 10, U.S.C. Section 1034. Rather, the evidence suggested the administrative actions would have taken place regardless of the protected communications based on his behavior and actions.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit H.

On 15 Jul 22 and 10 Feb 23, the applicant requested reconsideration of his request. He again contends his command directed investigation (CDI) to support his Active Guard and Reserve (AGR) tour curtailment was simply a pre-planned retaliatory event to disguise and justify actions taken based on his whistleblower activity and his refusal to go along with unlawful orders and requests that fell outside Air Force standards. His leadership at the Air National Guard (ANG) performed actions that were far worse than he was accused of doing yet not one of them had ever been held accountable for their actions and the same leadership team is still in place, yet their illicit, immoral and unprofessional behavior has gotten worse and additional military members have been impacted in much the same way he was. New evidence has come to light that lends credibility to his original submission to the AFBCMR in 2012. The same officers who retaliated against him for speaking up and following regulations, also retaliated against other officers and enlisted members who did the same. A general officer, named in his original 2012 complaint, was finally held accountable after nearly a decade of retaliation. In support of the applicant's reconsideration request, the applicant submitted the following new evidence: (1) SAF/IG Report of Investigation, dated Sep 21; (2) Notification of Eligibility for Reserve Retired pay at Age 60, dated 22 Dec 22; (3) Memo to the Secretary of the Air Force (SecAF) titled, Response to Record of Promotion Proprietary Action, dated 25 Apr 14; (4) various news articles; and (5) letters of support.

The applicant's complete submission is at Exhibit I.

AIR FORCE EVALUATION

DAF/IGQ recommends the AFBCMR review the evidence and decide as appropriate. DAF/IGQ cannot make recommendations on a Command decision. The applicant's removal from command, AGR Tour curtailment, and entry into the Individual Ready Reserve was Command action that is not within the IG's purview to change. However, the reprisal complaint made in 2011 was dismissed and the 2015 complaint did not include new and compelling evidence supporting the re-opening or further investigation into his 2001 IG case. The evidence and analysis in the case supports the Command Action was due to substandard performance of duties as Logistics Management officer.

The complete advisory opinion is at Exhibit J.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Oct 23 for comment (Exhibit K), and the applicant replied on 24 Nov 23. In his response, the applicant points out he has presented a compelling case backed by evidence, highlighting the violation of Department of the Air Force Instructions (DAFI) that led to his premature separation from service thus denying him the opportunity to reach active-duty retirement eligibility. He requests the Board consider the evidence of blatant DAFI and Air National Guard Instruction (ANGI) violations, specifically focusing on Personnel regulations, which clearly demonstrate a failure on the part of the ANG leaders to ensure due process before his unjust removal from service. In support of his request, the applicant provided additional evidence in the form of two witness statements.

The applicant's complete response 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, to include the applicant's response to the DAF/IGQ evaluation and the two additional witness statements, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board notes the DAF/IGQ evaluation and finds the new evidence provided by the applicant is not sufficient to overturn the Board's previous decision.

Furthermore, the applicant again contends he was retaliated against by his leadership and based on the authority granted to this Board pursuant to 10 U.S.C. § 1034, the Board reviewed the complete evidence of record to reach its own independent determination of whether reprisal occurred. Based on that review, the Board concludes the applicant has failed to establish within the supporting evidence provided, he was reprisal against. Therefore, in the absence of persuasive evidence to the contrary, the Board does not find the applicant has been the victim of reprisal pursuant to 10 U.S.C. § 1034. In view of the above, the Board finds the applicant has not sustained his burden of proof to warrant granting any of the requested relief. 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-2015-01472-2 in Executive Session on 18 Jan 24:

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Panel Chair
Panel Member
Panel Member

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

- Exhibit H: Record of Proceedings, w/ Exhibits A-G, dated 24 Aug 16
- Exhibit I: Application, DD Form 149, w/atchs, dated 15 Jul 22, 10 Feb 23, and 3 Mar 23.
- Exhibit J: Advisory Opinion, DAF/IGQ, dated 13 Oct 23.
- Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Oct 23.
- Exhibit L: Applicant's Response, w/atchs, dated 24 Nov 23.

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.

2/20/2024

X

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Board Operations Manager, AFBCMR
Signed by: USAF

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