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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FOURTH ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2016-04933-5

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COUNSEL:

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HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for the following based on allegations of reprisal pursuant to DoDD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034:

1. His Officer Performance Report (OPR) for the period 2 Nov 12 to 15 Jun 13 be voided and removed from his records.
2. His OPR for the period 16 Jun 13 to 27 May 14 be void and removed from his records.
3. He be provided an end of tour Meritorious Service Medal (MSM) for his permanent change of station (PCS) from Joint Base San Antonio-Lackland, Texas.
4. His Promotion Recommendation Form (PRF) for the P0414B Central Selection Board (CSB) be voided and removed from his records.
5. His rating chain, to include rater, additional rater and reviewer be removed from his 2013 OPR.
6. His rating chain, to include rater, additional rater and reviewer be removed from his 2014 OPR.
7. Independent and non-biased officials be assigned as replacement members of his rating chain and senior rater.
8. The replacement OPR be signed and it be substituted for the 2013 OPR.
9. The replacement OPR be signed and it be substituted for the 2014 OPR.
10. His records mimic the records of those promoted in the 2017 and 2020 CSBs for the period of 2016 to 2025.
11. The Secretary of the Air Force (SecAF) submit his name to the President of the United States (POTUS) for promotion to the grade of major general (O-8).
12. He be retired in the grade of O-8 with 40 years of service, effective 1 Jun 25.
13. He be awarded the Department of Defense (DoD) Distinguished Service Medal, the Air Force Distinguished Medal, the Defense Superior Service Medal and the Defense Meritorious Service Medal.

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14. He be awarded a Legion of Merit for his exemplary service and the injustice.
15. His Air Force Commendation Medal for his deployment to Afghanistan be upgraded to a Bronze Star.
16. He be provided back pay and allowances with any offsets or deductions as if he had been promoted to the grade of major (O-4) in 2014, if he had been promoted to the grade of lieutenant colonel (O-5) twice below the promotion zone (BPZ) in 2017, to the grade of colonel (O-6) twice BPZ and to the grade of O-8 in 2021.
17. He be given an incentive ride on the AC-130 aircraft.
18. He be appointed as a reviewing official for an Air Force Basic Training (BMT) graduation of his choosing.
19. He be appointed as a reviewing official for a West Point parade of his choosing.
20. The Air Force make available any requested Air Force personnel for his promotion and retirement ceremony.
21. The Air Force make available C-21, C-17 and C-130 aircrafts for transporting individuals to and from his promotion and retirement ceremonies.
22. He receive a flyover at his promotion and retirement ceremonies by F-22, F-35 or B-2 aircrafts on the date and time of his choosing.
23. He receive coins from the POTUS, Secretary of Defense (SECDEF), SecAF, Chief of Staff of the Air Force and commanders of Air Combat Command, Air Education and Training Command, Air Force Global Strike Command and Air Force Special Operations Command.

RESUME OF THE CASE

The applicant is a former Air Force captain (O-3).

The applicant completed a prior period of active duty in the Regular Army from 1 Jun 91 to 1 Mar 95 as an infantry officer.

The applicant was commissioned in the Regular Air Force and entered active duty as a chaplain on 28 Feb 07.

The applicant was stratified 1/3 and 2/12 by his rater and additional rater, respectively, on his OPR for the period 2 Nov 11 to 1 Nov 12.

The applicant received a "Meets Standards" OPR for the period 2 Nov 12 to 15 Jun 13. He was recommended for assignment to a Deputy Wing Chaplain position and in-residence professional development education (PDE). The OPR includes no stratification statements or any negative comments. The additional rater stated he was an "outspoken officer/chaplain." The applicant acknowledged the completed OPR on 3 Aug 13.

The applicant provides AF Form 724, *Performance Feedback Worksheet (PFW)*, dated 6 May 14. The mid-term PFW includes the following suggested goals: 1. Becoming an expert at AFCCARS.

2. Better utilize the chain of command. 3. When working on a special event, keep everyone up to date at staff meetings regarding planning and contacts made.

The applicant received a “Meets Standards” OPR for the period 16 Jun 13 to 27 May 14. The OPR includes no negative comments. The rater and additional rater recommended he be challenged with more responsibility. The applicant acknowledged the OPR on 18 Jun 14.

The applicant’s PRF for the P0414B CSB reflects a recommendation to challenge with deputy chaplain next with an overall rating of “Promote.”

The unredacted SAF/IGQ case file for ACTS FRNO 2014-22818 reflects on 12 Dec 14, the applicant filed an Inspector General (IG) complaint of reprisal. The report of investigation (ROI) shows on 31 May 13, the applicant was removed from serving in the BMT branch for comments made to trainees. On 17 Jun 13, he received a letter of counseling (LOC) for comments made to trainees and undermining the group commander during a staff meeting. On 29 Jul 13, the applicant filed an IG complaint regarding the BMT end of course (EOC) survey and that he was removed from the BMT branch, issued an LOC and a weak 2013 OPR for raising concerns with the EOC survey (FRNO 2013-013535). On 1 Aug 13, the applicant filed a third party IG complaint with the major command (MAJCOM) alleging undue command influence (FRNO 2013-13951). The applicant contended he received his 15 Jun 13 OPR on 3 Aug 13. The push lines from the rater and additional rater were not as strong as his previous OPRs. The OPR was not considered as an unfavorable personnel action by the IG since no allegations of reprisal or abuse of authority were substantiated. On 7 Oct 13, he filed an IG complaint with the MAJCOM IG appealing the decision of his 29 Jul 13 complaint (FRNO 2013-18230). Upon his return from deployment, he filed an IG complaint with SAF/IGQ (FRNO 2014-00804) appealing the decision on his 7 Oct 13 complaint. On 26 Mar 14, the applicant received counseling in the form of a Memorandum for Record (MFR) from his supervisor for failure to properly utilize his chain of command. In Jun 14, the applicant contended he received a weak push line on his OPR ending 27 May 14. On 10 Dec 14, the applicant filed a complaint with his Wing IG (WG/IG) alleging he received a weak OPR and a PRF with weak promotion push lines in reprisal for reporting the EOC survey results.

The SAF/IGQ case file includes an email, dated 15 Jul 15, from the Chaplain Force Development Office to the IG investigating officer (IO) that in their opinion the 27 May 14 OPR did not include strong push lines and there was no stratification. The statements “bold and tenacious,” and “outspoken” left her wondering what was meant and she did not consider them to be strong statements. Further, words such as “continue to challenge” were used to send a message that the chaplain was not ready for the next rank. She also stated the PRF for P0414B CSB included good job performance and the necessary input to capture the applicant’s career in a positive and competitive manner. However, the use of the word “challenge” did not make the push line strong and a “Promote” recommendation did not make the PRF as competitive as others that state “Definitely Promote.”

The SAF/IGQ case file includes an email, dated 23 Nov 15, from the Chaplain Force Development Office, which states it was impossible to put a percentage rate on opportunities since every promotion board was different. They also did not know what push lines all the above the zone (APZ) O-3s received. Receiving a “Definitely Promote” APZ promotion recommendation was very hard for anyone because it was taking a “Definitely Promote” from someone in the promotion zone (IPZ). In the preceding five years, no APZ O-3 had received a “Definitely Promote” PRF.

On 6 May 16, SAF/IGQ informed the DoD Office of Inspector General (DoD OIG), the nine allegations of reprisal were **NOT SUBSTANTIATED**. The nine allegations of reprisal are addressed in the Third Addendum to the Record of Proceedings, dated 23 Feb 24, at Exhibit Q.

On 31 Jul 16, the applicant was honorably discharged in the grade of O-3 with a narrative reason for separation of “Non-selection, Permanent Promotion.” He was credited with 9 years, 5 months and 3 days of active duty service. He was also credited with 3 years, 10 months and 16 days of prior active duty service.

On 19 Dec 19, the Board considered and denied the applicant’s initial case. The Board reviewed the complete case, to include the 2 Nov 12 to 15 Jun 13 OPR, the 16 Jun 13 to 27 May 14 OPR and the PRF for the P0414B CSB. In an advisory opinion dated 7 Dec 17, AFPC/DP2SPE recommended denial for removal of the 15 Jun 13 and 27 May 14 OPRs and the PRF for the P0414B CSB. The applicant provided no evidence the evaluations were unjust or wrong. The applicant contended the weak OPRs ensured he would not be promoted and that the practice was improper and unjust. However, he did not provide any substantiated information from any credible officials that the reports were not accurate as written. It was also noted that in accordance with DAFI 36-2406, *Officer and Enlisted Evaluations*, the replacement reports should be reaccomplished and signed by evaluators who signed the original evaluation. Further, AFPC/DP2SPE stated there was no documentation to prove his assertions that the evaluations were rendered unfairly or unjustly. Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. The applicant did not provide evidence the contested reports were not rendered accurately or in good faith based on knowledge available at the time. The Board agreed with the rationale and recommendation of AFPC/DP2SPE and found no evidence of an error or injustice in his OPRs for the periods 2 Nov 12 to 15 Jun 13 and 16 Jun 13 to 27 May 14 and his PRF for the P0414B CSB. The Board conducted an independent review of his allegations of reprisal, reviewed the Wing IG ROI, 10 Jun 15 to 29 Dec 15, and found no evidence he was the victim of reprisal in violation of 10 U.S.C. § 1034.

On 15 Mar 21, the DoD OIG informed the applicant his 5 Nov 20 request for reconsideration of his IG reprisal complaint was denied and he was advised his complaint would remain closed.

On 11 Aug 21, the Board again considered and denied his request. The applicant contended he was punished for preaching the tenets of his faith and the punishment violated his first amendment protection rights. He further contended the IO failed to consider the retaliation against him and did not investigate the matter. He was not allowed to respond to the downgraded OPRs. He stated his OPRS should have been referred so he would have had the opportunity to rebut the information presented. The Board noted the applicant received a Record of Individual Counseling (RIC) for “undermining leadership/training.” While the applicant asserts the RIC was not placed in his records and should not have been used to downgrade his 15 Jun 13 OPR, the RIC is the least severe form of written administrative actions and is not required to be filed in a member’s record or an unfavorable information file (UIF). While the applicant contended he should have had the opportunity to comment on his downgraded OPRs, AFI 36-2406 only provides for comments on referral OPRs. The OPRs in question did not meet the criteria to be referred to the applicant; therefore, his rights were not violated. While the applicant questions the motives of his raters, the Board was not persuaded the OPRs were an unfair assessment of his performance during the specified periods or that the comments contained in the reports were in error or contrary to the provisions of the governing instructions. The applicant’s numerous contentions were duly noted; however, there was no persuasive evidence that substantiated the RIC he received was beyond the commander’s scope of authority. The Board noted there was insufficient evidence to overturn the Board’s prior decision. Further, his allegations of reprisal were **NOT SUBSTANTIATED** and the DoD Oversight Branch Chief, Whistleblower Reprisal Investigation declined to revise the prior determination his reprisal complaint would remain closed. The Board conducted an independent review of his reprisal complaint and found no evidence he was the victim of reprisal.

On 27 Mar 23, The Board again considered and denied his request. The Board again found no evidence his OPRs ending 15 Jun 13 and 27 May 14 and the P0414B PRF were incorrect as written

and found no evidence he suffered retribution for expressing his religious views or that his first amendment rights were violated. The Board noted the nine allegations of reprisal were **NOT SUBSTANTIATED**. SAF/IGQ conducted a review and completed an Addendum to the ROI on 22 Apr 16 to provide clarity and ensure the proper application for Abuse of Authority. The DoD Oversight Branch Chief, Whistleblower Reprisal Investigations, also declined to revise the prior determination that his reprisal complaint remain closed. The applicant submitted a memorandum from the former DoD OIG senior investigator who conducted a review of the applicant's appeal of the reprisal investigation. While the Oversight Branch Chief, Whistleblower Reprisal Investigations found no basis to reverse the prior decision and determined his case would remain closed, the former investigator wrote there were errors that taken together could have substantiated the applicant's reprisal complaint. The former investigator alleged the unredacted ROI would vindicate the applicant. The AFBCMR attempted to obtain the unredacted copy of the IG report but was unsuccessful. Nonetheless, the Board was not compelled to overturn the previous Board's decision. The Board noted that while the former senior investigator believed there was sufficient evidence to substantiate reprisal, the Oversight Branch Chief, Whistleblower Reprisal Investigations, the primary reviewer in the DoD OIG office did not support his conclusion.

On 6 Oct 23, the Office of the Under Secretary of Defense, Personnel and Readiness (OUSD P&R) remanded the applicant's case to the AFBCMR for consideration of the SAF/IG's complete report, including exhibits, related to the applicant's allegation of reprisal.

On 19 Oct 23, counsel, on behalf of the applicant, requested reconsideration of his request. He provided new evidence to include from the former DoD OIG senior investigator who provided a declaration in the United States District Court for the District of Columbia (Civil Action) that stated the unredacted version of the ROI demonstrated there was possible animus against the applicant which may have contributed to the decision to not investigate his reprisal allegation. The investigator noted these were his views and did not represent the views of the DoD OIG. He believed the applicant experienced bias by his immediate and additional rater and it was more likely than not he was retaliated against. The applicant also asserted there were problems with his reprisal investigation. He contended the IO did not consider all of his protected communication and that there was a predetermined outcome. His removal from BMT and subsequent LOC formed the basis of his unfavorable personnel actions.

On 25 Jan 24, the Board reconsidered the applicant's request. Per the OUSD P&R memorandum of remand, dated 6 Oct 23, and 10 U.S.C. § 1034, the Board reviewed the applicant's complete unredacted IG reprisal complaint and the additional evidence submitted by the applicant. The Board reviewed the concerns of the former DoD senior investigator; however, the Board noted these were his opinions and beliefs and not the decision of the DoD OIG. The former DoD senior investigator indicated a review of the unredacted reprisal complaint would provide the Board with additional evidence. The Board reviewed the complete unredacted reprisal complaint, to include the exhibits, and did not find any evidence to substantiate the applicant was the victim of reprisal in violation of 10 U.S.C. § 1034. The applicant's reprisal complaint underwent numerous levels of review, to include by the WG/IG, SAF/IG and the DoD OIG, and there was no evidence the applicant was the victim of reprisal in violation of 10 U.S.C. § 1034. The Board noted the ROI included nine allegations pertaining to his contested OPRs ending 15 Jun 13 and 27 May 14 and his PRF for the P0414B CSB. All nine allegations were investigated and not substantiated. The IO concluded the decisions on the wording of his OPRs and PRF were based on observations of his performance, past behavior, discussions with his first line supervisor and a review of his existing records. Based on the evidence, the Board concluded it appeared the applicant and his supervision differed in their opinions of his performance. The Board found no evidence his OPRs ending 15 Jun 13 and 27 May 14, the P0414B CSB PRF and the decision to not recommend him for an MSM were in reprisal. The Board reviewed the concerns of the former DoD senior investigator; however, noted the applicant's complaint of reprisal underwent multiple reviews by

the SAF/IG and the DoD OIG and the findings and conclusion were determined to be legally sufficient. The Board concurred with the IO, SAF/IGQ, the DoD OIG and the prior decisions of the Board that the applicant was not the victim of reprisal or abuse of authority in violation of 10 U.S.C. § 1034. The Board also denied the applicant's request he be provided a copy of the unredacted ROI, noting the Board was not a records repository and the document was considered privileged documentation and not available for release by the AFBCMR.

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 Q.

On 24 Jul 24, the OUSD P&R again remanded the applicant's case to the AFBCMR. The reason for this second remand was for consideration of the 2 Nov 12 to 15 Jun 13 OPR. The applicant's submission to OUSD P&R included a 2014 PFW (AF Form 724) and the AFBCMR case file. OUSD P&R stated the AFBCMR's final decision did not indicate the 2 Nov 12 to 15 Jun 13 OPR was considered in reviewing the applicant's case.

On 24 Jul 24, OUSD P&R advised the applicant's counsel the applicant's case was remanded to the AFBCMR for reconsideration of reprisal allegations related to the 2 Nov 12 to 15 Jun 13 OPR. The OUSD P&R letter, dated 24 Jul 24, stated the applicant may wish to provide the AFBCMR the signed 2014 Mid-Term PFW submitted to their office.

In a DD Form 149, *Application for Correction of Military Record*, dated 22 Oct 24, counsel, on behalf of the applicant, requested reconsideration of his request. Counsel stated the Board was unaware or ignored the requisite legal standard. Also, since OUSD P&R remanded the case back to the Board with the express order to address the 2013 OPR, they provided their summarized arguments for the applicable legal standard.

In a brief dated 21 Oct 24, counsel states nothing in the supplement replaces or should be construed as a revocation or withdrawal of any issue presented. Counsel also wanted to update the Board on the applicant's successful Freedom of Information Act (FOIA) case in the District of Columbia District Court. The former DoD senior investigator's memorandum shows the redacted reports concealed government misconduct. On 13 Jan 21, the Court ordered the DoD to produce the portions of the former DoD senior investigator's 13 Jan 21 MFR previously withheld, which supports the applicant's claims of illegal retaliation, incompetent investigations and religious prejudice. The applicant spent most of 2013 and the portion of 2014 deployed and the only thing his new chain of command knew about him was that he was removed from working in BMT. His mid-term PFW did not track with his 2014 OPR and PRF, the 2014 OPR and PRF should also be removed.

If the Air Force had not violated the applicant's rights and had not violated its own regulations, he would have been promoted in 2014. He would have likely been promoted twice below-the-promotion zone (BPZ). However, his career was irreparably damaged. The Board must comply with the applicable standard of proof in DAFI 36-2907, *Adverse Administrative Actions*.

Counsel also cites DAFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 4.2.2.4, which states that if a matter before the Board pertains to a high level decoration or allegations of reprisal, the opinion must be signed by at least an O-6 or GS-15 within the organization. Only one of the three advisory opinions the applicant received from his 2016 submission complied with this requirement.

In an additional submission dated 3 Dec 24, counsel states on 26 Sep 24, the District of Columbia District Court ordered the DoD OIG to produce the unredacted ROI by the former DoD senior investigator. On 26 Nov 24, the DoD OIG produced and provided the appropriate unredacted

former DoD senior investigator's report. The unredacted version is further evidence supporting his claim he was the victim of a continued pattern of retaliation and religious prejudice. The unredacted report confirms the applicant's supervisors and superior officers retaliated against him for making protected communication. The former DoD senior investigator pointed out the improper conduct of his supervisors to include the issuance and handling of his LOC and the retaliatory actions. The unredacted former DoD senior investigator's report shows the AFBCMR's prior review was deeply flawed. The report undermines the AFBCMR's assessment and he identifies numerous errors in the ROI that violate the standards for investigations. The unredacted former DoD senior investigator's report supports his argument that the totality of the circumstances require granting his appeal. There is evidence of retaliation and prejudice. The conduct of senior officers destroyed his exemplary chaplain career due to his orthodox religious beliefs expressed in a sermon to trainees voluntarily attending a chapel service. His addressing senior officers of the ethical and Uniform Code of Military Justice (UCMJ) violations of providing false statements to trainees that their EOC surveys were protected and confidential demonstrated a consistent pattern of religious prejudice and retaliation at the highest level. The DoD OIG provides no explanation why the former DoD senior investigator's report was ignored, contrary to law and regulation and the DoD OIG issued a false official statement prejudicial and contrary to the evidence and law. Justice and equity require his appeal to be granted.

In support of his request, the applicant provides an MFR, dated 13 Jan 21, signed by the former DoD senior investigator. It states due professional care was not met in the ROI and he recommended management conduct a formal roundtable discussion with the Office of General Counsel (OGC) to determine whether to reopen the case based on the review. The ROI did not capture all of the applicant's protected communication, especially to those he made to his chain of command while he was assigned to BMT before his removal from his position. There was a lack of witness interviews, even though the IO provided his reasoning for not interviewing 11 of the 12 witnesses. There exists an inference or perception for a lack of objectivity and thoroughness given the applicant's assertions of reported wrongdoing going back to Apr 13.

The applicant's complete submission is at Exhibit S.

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2406, *Officer and Enlisted Evaluation Systems*, paragraph 1.11.1, Purpose. Referral procedures are established to allow the ratee due process by giving the ratee an opportunity to respond and/or rebut any negative comments before it becomes a matter of record. The applicant's 2 Nov 12 to 15 Jun 13 OPR was not a referral report and included no negative comments. Therefore, the applicant would not have been provided an opportunity to comment. The applicant acknowledged the OPR as required by AFI 36-2406.

AFI 36-2406, paragraph 2.9.1., Do not make the performance feedback assessment an official part of any personnel record (including personal information files) or use it in any personnel action except for paragraph 2.9.3. At a minimum, the rater will maintain a copy of the feedback until the evaluation becomes a matter of record. Paragraph 2.9.3, the forms will not be reviewed by anyone other than the rater, ratee and authorized personnel as outlined, specifically for the purposes of completing performance evaluations. Neither form will be introduced in any other personnel action unless the ratee first introduces them or alleges either a performance feedback session was not conducted, or the sessions were inadequate.

AFI 36-2406, paragraph 3.1.5. Stratifications serve to provide clear feedback to ratees on their overall performance in relation to a relevant peer group with similar knowledge, skills, experience and scope of work and responsibility. Paragraph 3.15.3. Stratification statements, when

authorized are not mandatory and are limited to the scope of the rating period (start date to end date). The omission of stratifications does not constitute an error or injustice.

DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 4.2.2.4. If the matter before the Board pertains to a high level decoration, senior level (O-6 or higher) promotion issues, return to flying status or contains allegations of reprisal, the opinion must be signed by at least a colonel (O-6) or GS-15 within the organization providing the advisory.

AIR FORCE EVALUATION

AFPC/DPPSP (Evaluation Program) recommends denial. The advisory addresses only the evaluations portion of the applicant's request. The original advisory for AFBCMR consideration was accomplished on 7 Dec 17, and the recommendation remains to deny the applicant's request to void/remove the subject evaluations.

While the applicant provided additional input, this alone does not substantiate the applicant's assertion or conjecture of the evaluators. In fact, Air Force policy acknowledges that other performance issues may arise between when feedback is provided and the closeout of the performance period.

While Air Force policy requires performance feedback for personnel, a direct correlation between information provided during feedback sessions may decrease between the feedback session and the close out date of the evaluation.

A review of the additional information/documentation provided by the applicant does not provide compelling evidence to substantiate the allegations or change the original advisory. Consequently, due to the lack of corroborating evidence and the presumed legitimacy of the reports, AFPC/DPPSP recommends no changes be made to the contested evaluation as they are currently in the applicant's records.

The complete advisory opinion is at Exhibit U.

On 22 Jan 25, the AFPC/DPPSP advisory opinion was signed by the Chief, Military Sustainment and Transition Division, a colonel (O-6), as required by DAFI 36-2603 (Exhibit W).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant and counsel on 15 Jan 25 (Exhibit V) and a copy of the advisory opinion signed by the O-6 on 23 Jan 25 (Exhibit X). In an undated response, counsel contends the advisory opinion fails the presumption of regularity and must be ignored because it is arbitrary, capricious and contrary to law. The OUSD P&R gave the AFBCMR explicit instructions of what to consider and to ensure the analysis addressed all nonfrivolous arguments.

The OUSD P&R invited the applicant to provide the 2014 PFW (AF Form 724) and why prejudice and retaliation flawed the applicant's OPR as supported by the unredacted memorandum by the former DoD senior investigator. The advisory includes no explanation or justification. The advisory opinion ignored the OUSD P&R order, it does not address the issues and accomplishes none of the specific instructions as directed by OUSD P&R. Most importantly, it does not address the 2 Nov 12 to 15 Jun 13 OPR. The 2017 advisory opinions are signed by a GS-13 and not a GS-15 or higher, which is a clear violation of DAFI 36-2603.

The 15 Jan 25 and the 24 Jan 25 advisory opinions also do not address their supplemental memorandum dated 21 Oct 24. Since the AFBCMR had this information, the Board either failed to pass on the pertinent information or the tasked office ignored the information when producing the advisory opinion. This is further evidence of bad faith on the part of the Air Force.

Normally, there would be six months between the mid-term feedback and the OPR; however, in the applicant's case, there was only 21 days between the mid-term feedback and the closeout date of the OPR. Nothing derogatory happened. His performance should have remained at an exemplary level.

The applicant in his response, dated 21 Oct 24, pointed out the flaws in his RIC, dated 17 Jun 13. In addition to the previously outlined errors, the applicant noted there was no requirement in AFI 52-101, *Chaplain Corps Planning and Organizing*, to coordinate with the judge advocate when advising leadership. There are also problems and inadequacy of the SAF/JA and the DoD OIG legal review of the reprisal ROI. The assertion that a legal review by SAF/JA is adequate and proper is trumped by the former DoD senior investigator. The supervisor of the former DoD senior investigator's decision to not reopen the applicant's reprisal case without an explanation is in violation. His 2013 OPR captures one of his protected communications that the former DoD senior investigator pointed out in his report. In addition to his well-documented success working in BMT, he was lauded by the wing commander.

The applicant's complete response, with attachments, is at Exhibit W.

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 concurs with the rationale and recommendation of AFPC/DPPSP and finds a preponderance of the evidence does not substantiate the applicant's contentions he was the victim of reprisal in violation of 10 U.S.C. § 1034. The applicant makes many frivolous requests, including demands that do not pertain to correction of his records, such as incentive flights, coin presentations, appointment as a reviewing official at military parades, transport of civilian passengers by military aircraft and a flyover for his promotion and retirement ceremonies. However, the OUSD P&R memorandum, dated 24 Jul 24, remanded the applicant's case to the AFBCMR only for reconsideration of his 2 Nov 12 to 15 Jun 13 OPR. The OUSD P&R memorandum states the AFBCMR's final decision did not indicate the Board considered the applicant's request for removal and/or changes to the 2 Nov 12 to 15 Jun 13 OPR. It is noteworthy to mention that the applicant made the request for removal and/or changes to the 2 Nov 12 to 15 Jun 13 OPR in each of his four preceding AFBCMR cases. His most recent case (BC-2016-04933-4) was also remanded to the AFBCMR for reconsideration by OUSD P&R on 6 Oct 23. In that case, the remand was for the Board's consideration of the applicant's unredacted IG complaint of reprisal and all related matters. The Board complied with the OUSD P&R remand memorandum dated 6 Oct 23. The Board denied the applicant's case finding no evidence the applicant was the victim of reprisal in violation of 10 U.S.C. § 1034. With respect to the contested OPRs, the Board concurred with the IO's conclusion that the decisions on the wording of his OPRs and PRF and the decision to not recommend the applicant for an MSM were based on observations of his performance, past behavior, discussions with his first line supervisor and a review of his existing records. The Board stated it appeared the applicant and his supervisor differed in their opinions of his performance. The Board in his first, second and third cases also considered his request for the removal and/or changes to the 2 Nov 12 to 15 Jun 13 OPR and denied his request. The Board

in each case concluded the applicant provided insufficient evidence to substantiate the OPRs and PRF were not a true and accurate assessment of his potential during the period and found no basis to void the contested OPRs and PRF. Moreover, because the OPRs did not contain negative comments, they were not referred to the applicant for comments. Notwithstanding the applicant's assertions and motives of his evaluators and his opinions that the OPRs were not strong, the Board was not persuaded the contested OPRs were an unfair assessment or that the reports were in error or contrary to the governing instructions. The Board acknowledges counsel's argument that the AFPC/DP2SPE advisory opinion, dated 7 Dec 17, in his initial case was not signed by an O-6 or GS-15. The Board cannot go back in time but notes the AFPC/DPPSP advisory opinion for this case was signed by an O-6 on 22 Jan 25 as required by DAFI 36-2603.

In accordance with the OUSD P&R memorandum of remand, dated 24 Jul 24, the Board again considered the applicant's request for removal and/or changes to his 2 Nov 12 to 15 Jun 13 OPR. First, in accordance with DAFI 36-2406, the evaluation system focuses on performance. It is also important in determining who will be selected for advancement through assignments, promotions and evaluations. Moreover, stratification statements are not mandatory and are based at the snapshot in time and based on a comparison of the peer group at the time. The Board agrees the wording on the applicant's 2 Nov 12 to 15 Jun 13 OPR is not as strong as his preceding OPR for 2 Nov 11 to 1 Nov 12, which includes stratification statements. However, the receipt of a very strong OPR or a stratification statement does not guarantee that all subsequent reports will be as strong or that a service member is entitled to receive stratification statements on future OPRs. Every service member is evaluated and rated for the specific reporting period and in comparison to their peers during the reporting period. The 2 Nov 12 to 15 Jun 13 OPR appears to document the applicant's performance as viewed by his rater and additional rater. Overall, it captures his performance and positive contributions. It states he displayed solid leadership and he was a stand-out manager, planner and organizer. His rater indicated he impacted trainees and military training instructors on a daily basis. While the Board recognizes the OPR is absent of any stratification statements and the wording could be stronger, the Board finds the comments appear to properly capture and complement the assessment of his performance based on the totality of the evidence. As recommended by OUSD P&R, the applicant provided his May 14 mid-term PFW. While this PFW does not cover the period of the 2 Nov 12 to 15 Jun 13 OPR, it further corroborates the OPR is accurate as written. The PFW documents the suggested goals for the applicant to better utilize his chain of command and for the applicant to keep everyone informed regarding planning and contacts made. The totality of the evidence, to include the ROI which found his nine allegations of reprisal were **NOT SUBSTANTIATED**, clearly show the applicant's raters found the applicant's communication with trainees and his adherence to following his chain of command could be improved upon. While these suggested improvements did not result in his raters finding his performance did not meet standards, it appeared to be sufficient for them to find his performance may not have exceeded the performance of his peers who may have received stratification statements or stronger push lines in their OPRs for the period. As noted in his previous cases, there are no negative comments which would have required the OPR to be referred to the applicant for comments. The Board finds it is clear the applicant holds a very different opinion of his performance than that documented by his raters. However, he has not provided substantial evidence to find his 2 Nov 12 to 15 Jun 13 OPR is inaccurate or that it resulted in an error or injustice to the applicant to warrant granting the applicant's request the OPR be removed and/or changed. Therefore, the Board recommends against correcting the record.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2016-04933-5 in Executive Session on 23 Jan 25 and 3 Mar 25.

Work-Product	, Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

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

- Exhibit Q: Record of Proceedings, dated 3 Jan 20, w/Exhibits A-P.
- Exhibit R: Memorandum of remand, OUSD P&R, dated 24 Jul 24.
- Exhibit S: Application, DD Form 149, w/atchs, dated 23 Oct 24.
- Exhibit T: Documentary evidence, including relevant excerpts from official records.
- Exhibit U: Advisory Opinion, AFPC/DPPSP, dated 15 Jan 25.
- Exhibit V: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Jan 25.
- Exhibit W: Advisory Opinion, AFPC/DPPSP, dated 22 Jan 25.
- Exhibit X: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Jan 25.
- Exhibit Y: Applicant's rebuttal, w/atchs, undated.

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.

3/5/2025

Work-Product

Board Operations Manager, AFBCMR

Work-Product

AFBCMR Docket Number BC-2016-04933-5