



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00597

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His Letter of Admonishment (LOA), dated 21 Feb 19 be removed from his Military Human Resource Record (MHRR).
2. The reprisal Inspector General (IG) investigation be overturned and removed from his MHRR.
3. He be awarded the Legion of Merit (LOM) decoration.

APPLICANT'S CONTENTIONS

He received an LOA based on a Commander Directed Investigation (CDI) that was found unsubstantiated and executed in a manner outside of normal operating procedures. Specifically, he was denied the opportunity to represent and defend himself when the investigator did not interview him, nor was he provided a copy of the CDI report in order to prepare an adequate response.

In addition, he received a substantiated IG complaint of reprisal against him based on a flawed, untrue and biased IG investigation that disregarded Headquarters Air Force (HAF) and Major Command (MAJCOM) subject matter expert (SME) policy guidance. The investigator was hostile towards him during the investigation, and he was the subject of an additional CDI investigation that was also found unsubstantiated. Although the CDI was unsubstantiated, he was asked to leave command early without a change or relinquishment of command or a decoration, despite the fact that he received two positive Officer Performance Reports (OPRs). He was told that if he did not leave his command position, the CDI would remain open for further clarification, which was a veiled threat of reprisal for exposing unethical commanders and a hostile work environment. The disparate treatment he received while in command was completely different than the courtesies shown to his Caucasian peers, subordinates and superiors.

Based on the fact that he received administrative action for an allegation that was unsubstantiated, was not given the opportunity to properly address the allegations, and the disparate treatment he received, the applicant believes that the Board should correct his record.

AFBCMR Docket Number BC-2021-00597

In support of his application, the applicant provides a copy of his response to the LOA with the supporting attachments, copies of his formal feedback and OPRs, documents from the CDI and IG complaint, character reference letters, and various documents that demonstrate his successful performance as a group commander and an officer.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a Regular Air Force colonel (O-6).

On 19 Nov 18, an investigating officer (IO) was appointed to conduct a CDI on the applicant for the allegations listed below. The report was completed on 22 Dec 18, which covers the investigation conducted from 26 Nov 18 to 14 Dec 18.

Allegation 1: Since July 2018, [the applicant], [W...], MSG/CC created a command climate that was abusive or hostile. Due to [the applicant's] attitude and approach, the workplace environment has become "toxic", to wit: subordinate commanders feel resentment or fear and this climate has negatively impacted the ability of subordinate commanders to make decisions properly within their purview.

Finding: Not Substantiated.

Allegation 2: Since July 2018, [the applicant], [W...], MSG/CC did influence or sought to exert influence over the outcome of disciplinary matters being handled by subordinate commanders resulting in unlawful command influence.

Finding: Not Substantiated

On 21 Feb 19, the applicant's wing commander issued him a LOA for dereliction in the performance of his duties, in that he was inefficient in discipline, teamwork, cohesion and trust in violation of AFI 1-2, *Commander's Responsibilities*. Specifically, the applicant publicly berated, bullied and challenged some of his squadron commanders by questioning who was in charge of their squadrons. Moreover, he questioned their leadership, was tantamount to intimidating his commanders, and undermined their ability to effectively lead.

On 9 Apr 19, a Substantiated Investigation Without Written Command Action memorandum, dated 28 Jun 21, shows that findings were approved for an investigation conducted by the Air Mobility Command (AMC) IG on an allegation of reprisal against the applicant. Specifically, on or about 18 Oct 18, the applicant failed to endorse a senior master sergeant's (SMSgt) Enlisted Performance Report (EPR) in reprisal for the SMSgt making a protected communication, which resulted in the member's evaluation closing out at the squadron level with an intermediate evaluator signature (which is lower than the deputy evaluator). As such, the IO found the reprisal allegations and the downgraded performance report substantiated. For the substantiated finding the applicant received a verbal counseling from the USAFE EC/CC on 30 Jul 19.

On 15 Jul 19 and 14 Aug 19, two Reports of Investigation (ROI) concerning abuse of authority and reprisal by the [W...] Air Base Wing leadership were signed by the investigating officer (IO). The ROIs show that the IO investigated the following allegations made by the applicant:

Allegation 1: On or about (O/A) 19 Nov 18, the (then) [Work...] Air Base Wing ([W] ABW) Commander abused his authority as the appointing authority for a CDI by directing the IO not to interview [the applicant], [W] MSG Commander, the subject of the CDI, in violation of AFI 90-301.

Finding: Substantiated.

Allegation 2: O/A 25 Feb 19, the (then) [W] ABW Commander abused his authority as the appointing authority by not releasing the CDI he chartered to [the applicant], [W] MSG Commander, or his legal advisor, for proper defense to the LOA the [W] ABW Commander issued [the applicant], in violation of AFI 90-301.

Finding: Not Substantiated.

Allegation 3: O/A 15 Feb 19, the (then) [W] ABW Commander abused his authority by removing the command authority of [the applicant], [W] MSG Commander, to discipline a subordinate commander, in violation of AFI 90-301.

Finding: Not Substantiated.

Allegation 4: O/A 21 Feb 19, the (then) [W] ABW Commander issued a LOA to [the applicant], [W] MSG Commander, in reprisal for making a protected communication in violation of Title 10 USC, Sect 1034.

Finding: Not Substantiated.

Allegation 5: O/A 21 Feb 19, the (then) [W] ABW Commander, threatened to create an Unfavorable Information File (UIF) on [the applicant], [W] MSG Commander, in reprisal for making a protected communication in violation of Title 10 USC, Sect 1034

Finding: Not Substantiated.

On 24 Sep 19, a letter from AMC/IGQ, provided by the applicant and notifying him of the disposition of his allegations concerning reprisal and abuse of authority by the [Work...] Air Base Wing leadership states that AMC/IG (the Appointing Authority) reviewed the report and concurred with the IO's findings for allegations 2, 3, 4, and 5; however, they did not concur with the IO's substantiated finding on allegation 1. As such, the AMC/IG completed an Addendum to Report of Investigation (FRNO 2019-05377) and while the IG agreed that the IO applied the appropriate standards, the IG did not concur with the conclusion in applying those standards of fact due to the subjective nature of assessing whether [redacted] actions were reasonable. The IG therefore found Allegation 1 to be Not Substantiated.

On 13 Nov 19, an IO was appointed to conduct a second CDI on the applicant for the allegations listed below. The report was completed on 5 Mar 20, which covers the investigation conducted from 14 Nov 19 to 21 Feb 20.

Allegation 1: Whether between on or about 1 August 2018 and 11 November 2019, [W] MSG/CC, [the applicant], failed to establish and maintain a healthy command climate within [W]

MSG in violation of AFI 1-2, paragraphs 3.2 and 4.1, by engaging in the following or similar conduct:

On or about Sep 2019, inappropriately interfered with [W...] LRS/CC's investigation of a Senior Noncommissioned Officer previously assigned to [W...] LRS, and decisions related to her re-assignment;

On or about Aug 2018, inappropriately instructed an [W...] LRS officer to have [W...] LRS/CC change flight-level responsibilities to include but not limited to changing the Unit Manning Document;

Between on or about Feb 2019 and on or about Nov 2019, attempted to create or created unprofessional relationships with Airmen on JB [Work-Pr...] that resulted in actual or perceived preferential treatment;

Between on or about 1 Jan 19 and on or about 11 Nov 19, exhibited favoritism or preferential treatment toward some subordinate commanders in [W...] MSG vis-à-vis other subordinate squadron commanders.

Finding: Not Substantiated.

Allegation 2: Whether from 1 Jan 19 to present, [the applicant], [W...] MSG/CC, failed to establish and maintain a healthy command climate in [W...] MSG, in violation of AFI 1-2, Commander's Responsibilities, 8 May 14.

Finding: Not Substantiated

On 16 Sep 21, Special Orders [Work-Product] was issued to the applicant and states that effective 1 May 22 the applicant will be retired in the grade of colonel (O-6).

For more information, see the excerpt of the applicant's record at Exhibit B, the advisories at Exhibit C, D, E, H and J, and the reports of investigation at Exhibits L-P.

APPLICABLE AUTHORITY

AFI 36-2907, *Unfavorable Information File*:

2.3.4. Letter of Admonishment (LOA). Administrative censure for violation of standards which is more severe than a RIC and LOC. It could be used to document a first offense or address behaviors not corrected through counseling. Do not use it when a reprimand is more appropriate. For officers, if not filed in the UIF, an LOA must be filed in the individual's PIF.

4.1. Who Can Use Counseling, Admonitions, and Reprimands. Commanders, supervisors, and other persons in authority can issue administrative counseling, admonitions, and reprimands. These actions are intended to improve, correct, and instruct subordinates who depart from standards of performance, conduct, bearing, and integrity, on or off duty, and whose actions

degrade the individual and unit's mission. This includes issuing administrative counseling, admonitions, and reprimands to reservists who commit an offense while in civilian status.

Paragraph 4.1.3. Standard of Proof. While no specific standard of proof applies to administrative action proceedings, commanders should utilize the “preponderance of the evidence” standard when evaluating the evidence and every element of the offenses committed. A preponderance of the evidence means simply the greater weight of credible evidence. Whether such proof is available should be considered before initiating the administrative action. If such proof is lacking, administrative action is susceptible to being found to be legally unsupportable and, as a result, could be set aside. There is no requirement to prove any allegation beyond a reasonable doubt

AFMAN 36-2806, *Awards and Memorialization Program*, dated 10 June 2019:

A2.6. Legion of Merit (LOM). The medal was established by an act of Congress on 20 July 1942 and is currently awarded pursuant to 10 USC § 1121. The medal is awarded to any member of the U.S. Armed Forces or any friendly foreign nation who, after September 8, 1939, has distinguished himself or herself by exceptionally meritorious conduct in performing outstanding services.

A2.6.1. Eligibility. A2.6.1.1. The performance merits recognition of key individuals for service rendered in a clearly exceptional manner. Performance of duties normal to the grade, branch, specialty, assignment or experience is not an adequate basis for this award. A2.6.1.2. For service rendered in peacetime, the term “key individual” applies to a narrower range of positions than would be the case in time of war and requires evidence of significant achievement. In peacetime, service should be in the nature of a special requirement or of an extremely difficult duty performed in an unprecedented and clearly exceptional manner. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of important positions.

A2.6.1.2.1. Service should have been of marked national or international significance to the Air Force or the DoD; or A2.6.1.2.2. Service that has aided the U.S. in furthering its national policies; or

A2.6.1.2.3. Service which has furthered the interest or the security of the U.S.; or A2.6.1.2.4. Service that has furthered the interests or the security of the U.S., or any

AFI 36-3203, *Service Retirements*:

8.6.3. Initiating an Officer Grade Determination (OGD). The unit commander or other appropriate authority must initiate an OGD when:

8.6.3.5. The officer, since the last promotion, has been the subject of any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation, proceeding, or inquiry conducted by competent military or civilian authorities (except minor traffic infractions), regardless of the command action taken against the officer (if any). (T-0). Examples of officially documented investigations, proceedings, or inquiries include, but are not limited to: command-

directed investigations (CDIs); Inspector General (IG) investigations; and Equal Opportunity investigations.

AIR FORCE EVALUATION

AFPC/DP2SSM, recommends denying the applicant's request to remove the LOA. The commander and supervisor have the authority to issue a LOA. IAW AFI 36-2907 there is no requirement to prove any allegation beyond a reasonable doubt.

The complete advisory opinion is at Exhibit C.

AFPC/DP3SP, recommends denying the applicant's request for the LOM. The applicant has not provided documentation, which demonstrates all administrative avenues for relief have been exhausted. Applicant should first appeal to the chain of command at the time of the act/achievement or to the original award approval authority for award of the LOM. In the event that the original approval authority approves award of the LOM, the applicant can contact his Military Personnel Flight for the appropriate next course of action for update to his military personnel records.

The complete advisory opinion is at Exhibit D.

DAF/JA, recommends granting the applicant's request to overturn the reprisal IG investigation, but denies the applicant's request to remove the LOA or award the applicant an LOM; however, given the totality of the circumstances surrounding the applicant's allegations, DAF/JA also states that the Board could consider granting other relief in the interest of justice.

In the advisory, DAF/JA lays out the pertinent facts and addresses the five allegations of error or injustice, summarized as 1) erroneous/unjust CDI and LOA; 2) erroneously substantiated IG complaint of reprisal; 3) reprisal against the applicant; 4) racially disparate treatment of the applicant; and 5) unjust harm to career and retirement. Their analysis of these contentions are as follows:

Allegation 1, Erroneous/Unjust CDI and LOA: The Applicant alleges that the first CDI against him and the resulting LOA were erroneous or unjust because the [REDACTED] ABW/CC wrongly directed the CDI IO to not interview him, and then wrongly issued the LOA despite unsubstantiated findings. These facts are verified, and DAF/JA find troubling irregularities of process in both instances. However, based on the evidence presented in the IO's report and the "preponderance of the evidence" standard, the wing commander concluded that the applicant "publicly berated, bullied and challenged some of [his] squadron commanders" and was therefore "culpably inefficient in establishing and maintaining a healthy command climate." As such, DAF/JA notes that while the IO did not substantiate the CDI allegations, there was sufficient evidence for the wing commander to issue an LOA under a "preponderance" standard.

While the LOA was legally sufficient and it was within a wing commander's discretion to decide contrary to a ROI, it is highly irregular for a commander to advise an IO that the very subject of a CDI need not be interviewed, especially if that same commander subsequently disregards unsubstantiated findings and administers an LOA to a fellow colonel (O-6). In spite of these irregularities, a CDI is merely part of the deliberative process that forms a commander's decision; it does not supplant a commander's decision or authority. In this regard, a commander is not bound by the IO's conclusions, and a commander is not even required to charter a CDI prior to issuing an LOA. As such, despite process irregularities, the LOA is not erroneous or unjust.

Allegation 2, Erroneously Substantiated IG Complaint of Reprisal: In reference to the IG complaint of reprisal against the applicant, DAF/JA has misgivings about the incident forming the "protected communication" made by the complainant (the applicant's first sergeant). In this regard, DAF/JA contacted the servicing JA (SJA) who was present at the time, and he was unequivocal that neither the tenor nor the substance of the applicant's questions to his subordinate command staff constituted unlawful command influence (UCI). Furthermore, the applicant's denial of the "deputy evaluator" endorsement was likely not an "unfavorable action taken" or "positive action withheld" and note that the applicant had information suggesting that the first sergeant had been unprofessional and disrespectful. As such, the first sergeant was not entitled to have his group commander be a "deputy evaluator" and the group commander has the right to determine whether his endorsement is warranted. Moreover, if compared to the command decision made by his wing commander, when he instructed the CDI IO to not interview the applicant, this EPR command decision appears more deserving of deference. DAF/JA further notes that the AMC IO overruled the first IG IO without applying the same analysis to the second IG IO's determination and finds the inconsistencies to be troubling. As a result, while DAF/JA does not find error in the AMC IO's factual or legal determination, they do find an injustice in the AMC IO's inconsistent application of subjectivity and deference to command discretion and therefore recommends that the Board overturn and remove the unjustly substantiated reprisal IG investigation along with the related adverse information summary.

Allegation 3, Reprisal against the Applicant: DAF/JA finds no evidence that the applicant's command took an unfavorable action or withheld a positive action in reprisal. The totality of the evidence, including the facts uncovered in the first CDI against him and the facts plus substantiation in the second CDI against him, reveal that the applicant created a command climate and composed himself in a way that his commander could reasonably say formed the basis for the actions taken against the applicant. A commander's discretionary command actions require deference, and DAF/JA find no error or injustice.

Allegation 4, Racially Disparate Treatment: There is no evidence of racially disparate treatment. While DAF/JA does note the disparate treatment in how the two IG investigations (one investigating his former wing commander, and one investigating the applicant) were reviewed by the AMC IG, the record does not contain evidence that racial disparity was the basis. As a result, in the narrow scope of their review, they find no error injustice.

Allegation 5, Unjust Harm to Career and Retirement: In viewing the totality of the record presented, as well as the information that DAF/JA received independently, they find evidence of unjust harm based on their analysis of the IG investigation into the applicant (Allegation #2 above). However, they do not opine on the specific nature or extent of the harm as that is beyond their review. Nevertheless, they do note for the Board that according to section 8.6.3 of AFI 36-3203, although an officer grade determination is not required as a result of a LOA, one “must” be initiated when the retiring officer “has been the subject of any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation, proceeding, or inquiry...regardless of command action taken against the officer” since the last promotion. As such, there are two adverse information summaries in the applicant’s file related to his time as [REDACTED] MSG/CC.

In summary, DAF/JA recommends approving the applicant’s request to remove the substantiated reprisal IG investigation and denying his request to remove the LOA and award the LOM. However, despite their denial recommendations, they note problematic irregularities in the applicant’s wing commander’s instructions to the first CDI IO, an irregularity in how the initially substantiated investigation against the wing commander was reversed by the AMC IG, a dysfunctional command prior to the applicant’s arrival, and an unjustly disparate adjudication of the reprisal IG investigation against the applicant. Based on the provided and independently obtained record, AFPC/JA are of the opinion that the applicant, as [REDACTED] MSG/CC, commanded in a direct and sometimes harsh manner that did not suffer fools gladly, but that he believed was necessary given some underperforming and self-interested squadron commanders and senior NCOs he inherited. There are documented IG complaints within the command unrelated to the applicant, and documented evidence of toxic behavior by senior personnel. The Applicant tried to fix those problems and to earnestly mentor personnel who demonstrated potential. In response he was investigated three times within his first two years as the [REDACTED] MSG/CC, had squadron commanders and at least one senior NCO openly undermine him, and despite clear evidence to the contrary, he received IG complaints for only targeting African Americans for mentoring. As such, the applicant was found responsible by his wing commander for creating an unhealthy command climate, and then found responsible again by the second CDI IO for maintaining an unhealthy command climate. Therefore, DAF/JA additionally concludes that based on the totality of the circumstances, there is room for the Board to consider granting other relief in the interest of justice.

The complete advisory opinion is at Exhibit E.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 Nov 21 for comment (Exhibit F), and the applicant replied on 22 Dec 21. In his response, the applicant states that from the DAF/JA memo, he first learned about another substantiating finding from a referenced CDI that started in Nov 2019, in which one of two allegations were substantiated. This further shows that the handling of this CDI and its finding is problematic as he was never informed of, disciplined for, nor given the opportunity to respond to the substantiated finding for unhealthy command climate. As he is only just learning of this “substantiated finding,” it further demonstrates the deliberate collusion to degrade his character and justify the dubious actions of others.

The DAF/JA memo gives extraordinary deference and benefit of the doubt to investigation officers, agencies and perpetrators (Commanders) while at the same time describing him and his alleged actions as harsh, tone-deaf and not suffering fools gladly. However, the assessment of his character is based on investigations done in as the memo describes, “a dysfunctional command climate that existed prior to my arrival.” This same deliberate pattern of ill language used to describe his character compared to the palatable language to defend those agencies and individuals that committed actions that are more dubious is what prevents the corrective actions and accountability from occurring. Furthermore, the DAF/JA memo fails to provide an alternative outcome if proper actions would have been taken. Had the substantiated finding against his wing commander stood, he would have immediately petitioned and gained relief from the issued LOA, the collusion within the AMC/IG would not have found the second complaint for an unhealthy command climate substantiated, and his squadron commanders would not have been emboldened to undermine his command. As such, if he were given fair and unbiased deference in the first place, this petition would not be before the Board.

Finally, the DAF/JA memo references various irregularities and inconsistencies with the overall assessment of injustice towards him; however, it stops short of what should be done to bring about justice, what entity should further investigate the matter to ensure accountability, and the role that race played.

The AFBCMR is charged with ensuring “Fairness, Equality, Due-Process and Integrity for all Airmen” and this should be accomplished by ensuring the appropriate investigative agency or command probes deeper into the problematic irregularities exposed by DAF/JA.

The applicant’s complete response is at Exhibit G.

ADDITIONAL AIR FORCE EVALUATION

DAF/JA, responded to the applicant’s rebuttal, dated 22 Dec 21, to address the incorrect accusations the applicant made against DAF/JA’s original advisory dated 19 Nov 21. DAF/JA addresses the following unfounded allegations made against the legal advisory:

1) The applicant’s claim that the legal advisory included an indecisive recommendation: DAF/JA states that they recommended the denial of his two requests to remove his LOA and award him the Legion of Merit, because there was no error in the commander’s administrative actions and found sufficient evidence of the applicant’s misconduct to justify his commander’s decisions. In reference to the IG investigation, DAF/JA found a disparate application of deference to a commander’s discretion and therefore recommended that the Board grant the request to remove the IG investigation. While DAF/JA identified issues for the Board that may not fit within their scope of review and recommend that the Board could grant other relief as they saw fit, DAF/JA did not equivocate regarding the matters that were within the scope of their legal review. As such, their recommendations of denial and grant remain unchanged.

2) The applicant's claim of disparate treatment: The applicant alleges that DAF/JA "utilize[d] very palatable and soothing words to describe obvious wrongdoing by individuals and helping agencies" such as "collusion, ineptness, and wrongdoings," but does not give that "extraordinary deference and benefit of the doubt" to the applicant. DAF/JA argues that this is a complete misinterpretation by the applicant. First, DAF/JA found that the commander or investigator did not exceed the boundaries of reasonableness and that their actions were not clearly erroneous. Second, the allegation of "palatable words" were not only used for those that took action against the applicant, but were used to describe the applicant himself. In fact, it would have been reasonable to view his conduct in a harsher light, but deferred to the applicant's command discretion and viewed his conduct in the light most favorable to him. Therefore, any allegation of disparate treatment against the legal advisory is completely unfounded.

3) The applicant's new claim that there was collusion: The applicant alleges that he had only just learned of the second CDI results from their advisory; however, DAF JA believes that the applicant was well aware of the CDI, and notes that he was even interviewed as part of the investigation. There is no basis to speculate that the findings were kept hidden from him, or that such an alleged withholding was motivated by collusion against him. As such, DAF/JA finds no evidence of collusion.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Feb 22 for comment (Exhibit I), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

DAF/JA provided an additional advisory to correct factual history in the advisories they previously provided on 19 Nov 21 and 9 Feb 22. They state that subsequent to their response to the applicant's review of their initial advisory, they noticed a potential error in the factual history regarding the second CDI. In this regard, they uncovered that there were two versions of the second CDI's report of investigation (ROI). One version is dated 3 Feb 20, and another version is dated 5 Mar 20. The February ROI finds Allegation #2, regarding an unhealthy command climate to be substantiated, while the March ROI does not find it to be substantiated. They have concluded that the 3 Feb 20 ROI was a first draft and that the 5 Mar 20 finding Allegation #2 as unsubstantiated to be the final and official version.

In response to this finding, DAF/JA states that the second CDI (or by extension, the Feb 2020 ROI) did not form a basis for any of the applicant's requests, so this new discovery does not change their legal opinion. However, the second CDI did form the basis for the applicant's response to their legal advisory – specifically, he alleged that the 3 Feb 20 ROI proved there to be collusion, since he was not aware of it beforehand. Nevertheless, DAF/JA finds that this new discovery of Allegation #2 as unsubstantiated is still not evidence of collusion and does not, as the applicant

previously stated, “illuminate the deliberate collusion to denigrate my character and justify other dubious actions.” In fact, DAF/JA finds that the unsubstantiated finding in the 5 Mar 20 ROI is further support for the absence of collusion.

The complete advisory opinion is at Exhibit J.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 May 22 for comment (Exhibit K), but has received no response.

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 concurs with the rationale and recommendation of AFPC/DP2SSM, AFPC/DP3SP, and DAF/JA and finds a preponderance of the evidence substantiates the applicant’s contentions in part. Specifically, the Board notes that the Substantiated IG Complaint of Reprisal IG investigation with a “Date Findings Approved” of 9 Apr 19 should be overturned and the Adverse Information Summary (AIS), dated 28 June 2021 be removed from his military record. In this regard, the Board agrees with JAs findings that the applicant’s denial of the “deputy evaluator” endorsement was likely not an “unfavorable action taken” or “positive action withheld” and note that the applicant had information suggesting that the first sergeant had been unprofessional and disrespectful. As such, the first sergeant was not entitled to have his group commander be a “deputy evaluator” and the group commander has the right to determine whether his endorsement is warranted. Moreover, the Board does not find a preponderance of the evidence shows that the applicant made the decision not to provide his endorsement as the “deputy evaluator” to the squadron first sergeant in an act of reprisal, but instead made a discretionary command decision based on facts he claims shaped a reasonable decision. 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 Board notes that the LOA was issued for failure to maintain a healthy command climate in violation of AFI 1-2, *Commander’s Responsibilities*, and a substantiated CDI is not a pre-requisite for the issuance of an LOA. In accordance with AFI 36-2907, *Unfavorable Information File*, “[c]ommanders, supervisors, and other persons in authority can issue administrative counseling, admonitions, and reprimands...in an effort to improve, correct, and instruct subordinates who depart from standards of performance...or whose actions degrade the individual and unit’s mission.” It further states, “commanders should utilize the ‘preponderance of the evidence’ standard when evaluating the evidence...” and “there is no requirement to prove any allegation beyond a reasonable doubt.” In this regard, the Board finds the applicant has provided insufficient evidence to prove the incident or behavior did not occur. To the contrary, various

individuals corroborated statement that were made by the applicant that depicted a type of leadership style that is not only berating and abusive but contrary to a healthy command climate and good order and discipline. In addition, there is no evidence the applicant was submitted for the LOM decoration and the Board finds no error or injustice that would warrant award of the LOM. Therefore, the Board recommends correcting the applicant's records as indicated below.

4. The applicant alleges he has been the victim of abuse of authority and reprisal and has not been afforded full protection under 10 U.S.C. §1034. The Board notes that the applicant filed an IG complaint; while the IO found four allegations of reprisal and abuse of discretion to be unsubstantiated, they did find that allegation #1 for directing the investigating officer not to interview the applicant, who was the subject of the CDI, to be substantiated; however, AMC/IGQ completed an Addendum to the ROI and non-concurred and ultimately found the allegation to be unsubstantiated. AMC/IG noted that while the IO applied the appropriate standards, the IG did not concur with the conclusion in applying those standards of fact due to the subjective nature of assessing whether [redacted] actions were reasonable. Nevertheless, in accordance with Title 10, United States Code, Section 1034, the Board reviewed the evidence of record to reach our own independent determination of whether reprisal occurred. The Board finds that while the actions identified in Allegation #1 by his wing commander are irregular, they do not appear to be in a targeted act of reprisal against the applicant. Furthermore, the Board agrees with the IO that the applicant's allegations that his commander abused his authority or acted in reprisal when he issued the LOA to be unsubstantiated. Despite the removal of the CDI with findings approved on 9 Apr 19, we conclude the applicant has not established that the actions he alleges were in retaliation to making a protected communication, and it is our opinion he has not been the victim of reprisal. Therefore, the Board finds that the applicant's commander was well within his authority to issue the applicant an LOA and chose not to award the applicant the LOM decoration.

5. 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 the APPLICANT be corrected to show the Report of Investigation (ROI) for Allegations of Reprisal with a date of findings approved on 9 Apr 2019 be overturned and the Adverse Information Summary dated 28 June 2021 be removed from the applicant's Master Personnel Records Group (MPerRg) and Officer Selection Record (OSR).

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

Work...

Work... Work-Product

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-2021-00597 in Executive Session on 10 Dec 21, 25 Apr 22, and 7 Dec 23:

Work-Product

Panel Chair
Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Feb 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DP2SSM, dated 23 Jun 21.
- Exhibit D: Advisory opinion, AFPC/DP3SP, dated 31 Oct 21.
- Exhibit E: Advisory opinion, DAF/JA, dated 19 Nov 21.
- Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 22 Nov 21.
- Exhibit G: Applicant's response, dated 22 Dec 21.
- Exhibit H: Advisory opinion, DAF/JA, dated 9 Feb 22.
- Exhibit I: Notification of advisory, SAF/MRBC to applicant, dated 9 Feb 22.
- Exhibit J: Advisory opinion, DAF/JA, dated 10 May 22.
- Exhibit K: Notification of advisory, SAF/MRBC to applicant, dated 19 May 22.
- Exhibit L: Command Directed Investigation Report, dated 22 Dec 18 – WITHDRAWN
- Exhibit M: AMC/IGQ Report of Investigation dated 4 Jun 19 – WITHDRAWN
- Exhibit N: IG Abuse of Authority Report, dated 15 Jul 19 – WITHDRAWN
- Exhibit O: IG Reprisal Report, dated 14 Aug 19 – WITHDRAWN
- Exhibit P: Command Directed Investigation Report, dated 5 Mar 20 – WITHDRAWN

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.

6/12/2025

Work-Product

AFBCMR Docket Number BC-2021-00597

Work... Work-Product

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