

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXXXXXX

DOCKET NUMBER: BC-2020-00975

COUNSEL: NONE

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 AF Form 709, *Promotion Recommendation Form (PRF)*, for the CY17D Major Promotion Central Selection (CSB) (P0417D) with a "Do Not Promote" (DNP) recommendation be changed to reflect a "Promote" recommendation and comments in Section V of the PRF be removed.
2. He be promoted retroactively to the rank of major (O-4).

RESUME OF THE CASE

The applicant is a captain (O-3) in the Air Force. The military personnel data system (MilPDS) shows the applicant has been selected for promotion to the rank of major and the promotion is pending announcement of his line number.

The Commander Directed Investigation (CDI) Report of Investigation (ROI) Concerning the Allegations of Toxic Leadership and Unhealthy Command Climate Within the Wing, dated 4 Apr 18 substantiated allegations his senior rater (SR)/wing commander (WG/CC) failed to display exemplary conduct and failed to establish a healthy command climate.

The CDI ROI Concerning Abuse of Authority and Other Misconduct, dated 28 Jun 18 shows the applicant's allegations of reprisal in his inspector general (IG) complaint were not substantiated. On 30 Jul 18, the applicant was informed by his major command IG (MAJCOM/IG) the responsible management officers (RMOs) did not reprise against him or abuse their authority. They concluded there was insufficient justification to conduct an investigation under AFI 90-301 *Inspector General Complaints Resolution*, and 10 U.S.C. § 1034. The Secretary of the Air Force IG (SAF/IGQ) and the Department of Defense Inspector General (DOD/IG) concurred with the finding and dismissed the allegation of reprisal.

On 8 Mar 20, the applicant filed an AFBCMR request for change of his DNP PRF for the P0417D CSB to reflect a "Promote" recommendation, the comments in Section V of the PRF be removed, he be considered by a special selection board (SSB) for promotion to the rank of major and he be promoted. The applicant contended his SR should not have included flying downgrade comments on his PRF or reference an LOC that was not in his records. On 25 Apr 21, the Board considered and denied his request. The Board concurred with AFPC/DP3SP the applicant failed to substantiate his SR failed to render a fair and accurate evaluation and the removal of the SR from his position did not have any relationship with the assessment of the applicant's promotion potential. The applicant's promotion potential was also reviewed by the Management Level Review (MLR) and the MLR President. The Board reviewed the applicant's complaint of reprisal

pursuant to 10 U.S.C. §1034 and concluded there was no evidence the applicant was the victim of reprisal.

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 G.

On 22 Apr 23, the applicant requested reconsideration of his request. The promotion eligibility rate for the CY17D Major Promotion CSB was 100 percent. He would have been promoted if not for the influence and review of the illegal LOC by his SR. He provides statistics obtained through his Freedom of Information Act (FOIA) request and a timeline of the events following his SR's decision to give him a DNP PRF. The DNP percentage issued by his SR was 200 percent of the MAJCOM average, which demonstrates his recommendations deviated significantly from his peers. This brings into question his credibility to render a fair and accurate assessment of performance. The AFBCMR erred in its conclusion there was no evidence the SR did not assess his promotion potential fairly and objectively or that the removal of the senior rater had no impact on the assessment of his promotion potential. The CDI substantiated his SR on 6 Jul 17 and 1 Dec 17 failed to maintain effective communication processes, failed to lead by example and failed to establish and maintain a healthy command climate. The AFBCMR also concluded there was no injustice as the MLR reviewed the PRF for fairness and accuracy. However, the MLR was convened before the CDI was initiated and the ROI was completed. It is reasonable to assume someone relieved of command for failure to establish a healthy command climate may have allowed personal bias to inform decision making. The AFBCMR's reliance on the MLR and implied approval of the PRF is improper.

There is no LOC in his official record; therefore, he was denied due process when the PRF included reference to the LOC. Per AFI 36-2406, *Officer and Enlisted Evaluations Systems*, the reference of his LOC was improper. The LOC was already considered in a previous report as his prior commander determined not to include a comment on the adverse action in his 11 Apr 17 LOE. Further, the AFBCMR erred when it concluded performance in past jobs was relevant in the preparation of PRFs and senior raters may include it on PRFs. If an LOC exists in his records, it is the Air Force's burden of proof to demonstrate its existence and the Air Force has not met this burden of proof.

He provides a timeline which shows his PRF for the CY17D Major Promotion CSB was issued on 7 Nov 17, he then filed an inspector general (IG) reprisal complaint and an Article 138 complaint and his senior rater was relieved of command on 16 May 18.

The applicant's complete submission is at Exhibit H.

APPLICABLE AUTHORITY/GUIDANCE

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

AFI 36-2406, Paragraph 8.1.4.1., the SR may consider other reliable information about duty performance and conduct for the PRF. Examples of other reliable information may include but are not limited to letters of evaluation (LOE), bullets from a draft OPR and/or decorations. To reference the other reliable information in their record, the officer meeting the board may submit a letter to the CSB.

Per 10 U.S.C. § 624(a), When the report of a selection board is approved by the President, the Secretary of the Military Department concerned shall place the names of all officers approved for promotion within a competitive category on the promotion list. 10 U.S.C. § 624(c), Appointments under this section shall be made by the President, by and with the advice and consent of the Senate,

except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone. In this respect, the Board, which serves on behalf of the Secretary of the Air Force is without authority to promote an officer.

DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph 6.2.1, the AFBCMR or a federal court can direct an officer for consideration by SSB.

DAFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 2.4. The Board normally decides cases on the written evidence contained in the record. It is not an investigative body; therefore, the applicant bears the burden of providing evidence of an error or injustice.

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 applicant believes it is reasonable to conclude a commander relieved of command may have personal bias. However, the applicant has not sustained his burden of proof to substantiate his commander reprised against him in violation of 10 U.S.C. § 1034 when he issued him a DNP PRF for the CY17D Major Promotion CSB. In this respect, the Board agrees with the conclusion of the MAJCOM, SAF and DOD IG offices the applicant was not the victim of reprisal per 10 U.S.C. § 1034. The applicant also contends there is no LOC in his records and it was improper for his SR to mention the LOC and flying downgrade comments in the PRF. However, the Board finds it was within his SR's discretion per AFI 36-2406 to consider the LOC and the applicant's past and current performance in issuing the PRF. With respect to the request for a direct promotion to the rank of major, this Board, which serves on behalf of the Secretary of the Air Force in the correction of records is without authority to promote an officer per 10 U.S.C. § 624. 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-2020-00975 in Executive Session on 17 Aug 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit G: Record of Proceedings, w/ Exhibits A-F, dated 25 Apr 21.

Exhibit H: Application, DD Form 149, w/atchs, dated 22 Apr 23.
Exhibit I: Documentary evidence, including relevant excerpts from official records.
Exhibit J: SAF/IGQ Provided CDI ROI, dated 28 Jun 18. (WITHDRAWN)

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.