

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02537

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The 2016 substantiated commander directed investigation (CDI) be removed from his records.

APPLICANT'S CONTENTIONS

The CDI is not legally sufficient. He was not named as the subject of the CDI by the authorizing officer. The investigating officer (IO) was authorized to look at the failure to lead at the element, flight and squadron levels. The IO exceeded his authority by naming him as a subject and substantiating the allegation against him. He was also denied due process. He was informed by the IO he was not suspected of any wrongdoing. He was not advised of his Article 31 rights and was not given the opportunity to provide evidence or rebut the findings. He requested a complete copy of the CDI from the IG but has not received the requested documentation. The CDI was not submitted to the IG at the time it was concluded. However, after no action was taken against him, the complainant made an identical complaint to the IG in 2015. During a major command inspector general (MAJCOM/IG) review of the 2015 IG, the CDI was identified and entered into his records without his knowledge.

The applicant provides a letter of support from a clinical psychologist dated 8 Jul 21. She states she was the behavioral health optimization program (BHOP) trainer at the time of the CDI. She states the complainant was not licensed and had not completed an Air Force internship towards his social work licensure. Every effort was made to train and equip the complainant with the requisite skills for safe and competent patient care; however, the efficacy of training was stymied by the complainant's perception that efforts made to train and develop him were unnecessary and even persecutory. He refused to accept accountability. She addressed the concerns with the applicant who provided the complainant with all of the opportunities for success while balancing patient safety and enforcing accountability. The complainant addressed to the chain of command that he was being held to standards that were unfair. The accusations made by the complainant were categorically false.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a lieutenant colonel (O-5) in the Air Force.

DAF/IGQ provides the Report of Investigation (ROI) for the CDI conducted 11 Feb 13 to 21 Feb 14 concerning the failure to lead at the element, flight and squadron level. The complainant alleged four officers, including the applicant, failed to properly lead, mentor and professionally develop the complainant between 1 Feb 13 and 6 Feb 14. The IO concluded the leadership at the element, flight and squadron failed to provide the complainant with opportunities or tools needed to develop his basic skills and when difficulties arose, a clear path forward was not developed to correct his behavior and mistakes. The IO noted the complainant had approximately 500 hours

of clinical experience as a social worker while most graduates with a masters in social work (MSW) graduate with typically 2,000 hours. The complainant was a basic entry social worker and never had anything other than supervised privilege and was taken out of patient care in Dec 13. **(SUBSTANTIATED)**. In a memorandum dated 19 Oct 16, the applicant's wing IG (WG/IG) informed the major command IG (MAJCOM/IG) of the substantiated allegation against the applicant.

The applicant's automated records management system (ARMS) record includes Adverse Information Summary (AIS), which states between 1 Feb 13 and 6 Feb 14, the applicant as the Mental Health Flight Commander failed to properly lead, mentor and professionally develop the [redacted] first lieutenant (O-2). The AIS stated it appeared the findings were not approved until 19 Oct 16. In a memorandum dated 30 Jun 21, his MAJCOM section commander (MAJCOM/CCQ) referred the AIS to the applicant for comment before it was filed in his master personnel records group and officer selection record (OSR) per the Department of the Air Force Policy Memorandum (DAFPM) 2020-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 Jan 21. On 22 Jul 14, the applicant provided a response to the notification of substantiated investigation without command action. He stated in 2014, a CDI was conducted into the failure to lead, mentor and professionally develop the complainant. No command action was taken and the group commander (GP/CC) did not submit the results of the CDI to the IG. It was not until 30 Jun 21, when he was served with the AIS that he was informed the CDI substantiated he was a subject. In 2015, the complainant filed an IG complaint of reprisal, which was not substantiated.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, and Section 502 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020, signed on 20 Dec 19, as codified in title 10 U.S.C. § 615(a)(3) requires all adverse information to be filed in an officer's master personnel records group and OSR for consideration by promotion boards. Any substantiated adverse findings or conclusions from an officially documented investigation or inquiry, regardless of whether command action was taken as a result is required to be filed in the records.

AIR FORCE EVALUATION

DAF/IGQ cannot make a recommendation and recommends the AFBCMR review the evidence and decide appropriately. The applicant was the subject of the following two investigations. The allegations of reprisal were not substantiated. The facts submitted show the substantiated CDI was caused by actions under his commander's authority. Only the commander is authorized to remove a CDI from an individual's records.

The applicant was the named subject of a reprisal complaint opened on 26 Jun 15 and closed on 13 Oct 16 (FRNO 2015-11851). The complainant alleged the following:

Allegation 1: On or about Jul 13 and on or about 8 Oct 13, the applicant withheld the complainant's plan of clinical supervision and supervision by an independent licensed social worker in reprisal for the complainant's protected communication in violation of 10 U.S.C. § 1034. **(NOT SUBSTANTIATED)**.

Allegation 2. On or about 7 Nov 13, the applicant presented the complainant with a letter of reprimand (LOR) in reprisal for the complainant's protected communication in violation of 10 U.S.C. § 1034. **(NOT SUBSTANTIATED)**.

Allegation 3. On or about 19 Nov 13, the applicant presented the complainant with a LOR in reprisal for the complainant's protected communication in violation of 10 U.S.C. § 1034. **(NOT SUBSTANTIATED)**.

A second IG case was opened on 19 Oct 16 and closed 25 Oct 16 (FRNO 2016-19025) pertaining to a CDI to look into the squadron's leadership element at the flight and squadron levels to determine if the complainant was properly led, mentored and developed professionally. The complainant alleged that between 1 Feb 13 and 6 Feb 14, the applicant failed to properly lead, mentor and professionally develop the complainant. **(SUBSTANTIATED)**. This case constituted the AIS reporting on the applicant.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 Mar 22 for comment (Exhibit E), 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 notes the applicant was the subject of two IG complaints, with the same complainant over the same period of time. The Board conducted its own independent review of the two investigations and recommends the second IG case (FRNO 2016-19025) substantiating the allegation the applicant failed to properly lead, mentor and professionally develop the complainant be removed from his records and the IG Automated Case Tracking System (ACTS). The Board finds the CDI ROI conducted 11 Feb 13 to 21 Feb 14 and the letter of support provided by the BHOP trainer dated 8 Jul 21, sufficient to conclude the issues and circumstances pertaining to the complainant's clinical licensing, training, removal from patient care and the LOR were not due to the applicant's failure to properly lead, mentor or develop the complainant as alleged and substantiated. In this respect, the evidence shows the complainant arrived to the unit unlicensed and required significant training and supervision. The evidence shows the applicant, the complainant's supervisor and BHOP trainer were resolute in their efforts to provide the complainant with the required training and support; however, there were performance issues and concerns with patient care and safety due to the complainant's lack of qualification, experience and unwillingness to accept feedback and accountability. The Board finds the second IG case is not only inaccurate but resulted in an injustice to the applicant. Therefore, the Board recommends correcting the applicant's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. The Inspector General (IG) case (FRNO 2016-19025) dated 19 Oct 16, to include the WG/IG memorandum dated 19 Oct 16 and the commander directed investigation (CDI) report of investigation (ROI) be removed from his record and the IG Automated Case Tracking System (ACTS).
- b. The Adverse Information Summary (AIS) dated 30 Jun 21 and all attached documents of the substantiated investigation without written command action be removed from his records.

CERTIFICATION

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-2021-02537 in Executive Session on 17 May 22:

, 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 27 Jul 21.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: CDI, SAF/IG, dated 21 Feb 14. (WITHDRAWN).
Exhibit D: Advisory Opinion, DAF/IGQ, dated 10 Mar 22.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Apr 22.

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