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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03678-2

[REDACTED]

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request his referral officer performance report (OPR) for the period ending 2 Apr 21 be removed from his records on the basis of allegations of reprisal pursuant to DoDD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034.

RESUME OF THE CASE

The applicant is an Air Force Reserve (AFR) major (O-4).

The applicant served a prior period of duty in the Air National Guard (ANG). While the applicant was in the ANG he filed multiple inspector general (IG) complaints pertaining to concerns with the delay in his accession package, OPR ending 2 Apr 21, lack of Position Vacancy (PV) promotion to the grade of O-4 and allegations his rating chain was bias.

On 5 Nov 20, the State ANG Wing Inspector General (WG/IG) completed a complaint analysis of the applicant's complaint that [redacted] during the timeframe of Aug 16 to Dec 18 failed to submit a complete accession package to NGB/AIPO. The WG/IG found the applicant did not contact the IG within 90 days of learning of the alleged wrongdoing as required by AFI 90-301, *Inspector General Complaints and Resolution*. Due to the nature of the alleged wrong and the passage of time, there was reasonable probability that sufficient information could not be gathered to make a determination. Therefore, per AFI 90-301, the applicant's complaint was dismissed.

On 23 Mar 21, the applicant received a letter of reprimand (LOR) from the State Assistant Adjutant General (AAGA) for living with a senior master sergeant (E-8) in violation of the prohibition of shared living accommodations in the Adjutant General (TAG) policy letter 13-07, *Unprofessional Relationships*. The applicant provided a response and contended he did not violate the TAG policy on unprofessional relationships. On 29 Apr 21, the AAGA sustained the LOR.

The applicant received a referral OPR for the reporting period 3 Apr 20 to 2 Apr 21. The reason was he received a general officer LOR for an unprofessional relationship and making a false official statement.

The military personnel data system (MilPDS) shows his date of rank (DOR) and effective date for the grade of O-4 as 30 Jul 21.

AFBCMR Docket Number BC-2021-03678-2

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On 21 Apr 22 and 17 Oct 22, the Board considered and denied his request for removal of his LOR dated 23 Mar 21, removal of his referral OPR for the period ending 2 Apr 21 and his promotion to the grade of O-4 reflect he was promoted under the PV program with an adjustment of his DOR. The applicant alleged he was the victim of discrimination and reprisal in violation of AFI 90-301. He contended his two prior predecessors who were not members of a minority group were promoted under PV. The Board reviewed the WG/IG Complaint Analysis dated 5 Nov 20 and the applicant's complaint of reprisal and found no evidence the applicant was reprised against in violation of 10 U.S.C. § 1034. The Board concurred with the rationale and recommendations of the WG/IG, NGB/AIPO and the State ANG/JA. While the Board acknowledged there were administrative errors in the processing of his accession package, the Board did not find the administrative delays resulted in an error or injustice. The Board also noted the PV promotion was not an entitlement, nor was it based on a particular position and the majority of the officers (his peers) were promoted under the Reserve Officer Personnel Management Act (ROPMA) and central selection boards (CSB), like the applicant. While the applicant and his commander may have discussed a PV promotion, there was no evidence that a PV promotion package was officially submitted. The Board also found his commander's statements regarding the lateness of the LOR was due to not knowing until Mar 21, that the applicant was residing at the senior master sergeant's resident while not paying rent and that he made a false statement regarding the PV promotion were reasonable explanations. The Board found the LOR and referral OPR properly documented his infractions and he was afforded all due process.

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 M.

On 16 Aug 23, the ARPC Evaluation Reports Appeal Board (ERAB) partially granted the applicant's request to void his referral OPR with a close out date of 2 Apr 21. The ERAB concurred with the removal of attached documents and that only the referral OPR, referral memorandum and a 10-page rebuttal be included in his records. In this respect, the LOR previously attached is no longer in the applicant's Automated Records Management System (ARMS) record. The ERAB denied the applicant's request the OPR be removed and be replaced with an AF Form 77, *Letter of Evaluation (LOE)*.

On 4 Feb 24, the applicant was honorably discharged from the ANG in the grade of O-4 and transferred to the Air Force Reserve.

On 11 Jun 24, the applicant requested reconsideration of his request for removal of his referral OPR. He exhausted the administrative remedy and requested the ERAB remove the OPR. The OPR was in reprisal after he raised concerns regarding his PV promotion. The investigation initiated after multiple IG complaints was biased and marked with procedural regularities. His commander failed to address the procedural and retaliation concerns and the violations of AFI 90-301 and AFI 36-2909, *Air Force Professional Relationships and Conduct*.

The AAGA signed an AF Form 77 to remove the OPR. This endorsement highlights the procedural and legal errors in the OPR and supports the need for its removal. Due to the bias, the legal standards of due process were violated. The witness statements were also biased and created unreliable information, which violated AFI 36-2406, *Officer and Enlisted Evaluation Systems*. One of the star witnesses stated her testimony was altered multiple times, which raised serious concerns about the reliability of the evidence used in the evaluation. The investigation, evaluation and procedural actions fall short of meeting the preponderance of the evidence standard for the administrative actions. The mentioning of a "GO LOR" which does not exist in the pertinent Air Force Instructions violates the directive to focus on conduct and not punitive actions. The wording

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also gives the false appearance that the events occurred during the 2020-2021 rating period. The biased investigation by the AAGA is a critical issue but it did not absolve the rater and additional rater of their procedural responsibilities.

The applicant provides an AF Form 77 signed by the Illinois State AAGA on 29 Aug 23 stating he was not rated for the period of 3 Apr 20 to 2 Apr 21. However, the referral OPR was issued by the Utah ANG. Further, the AAGA is without authority to remove the OPR. Only the ERAB and the AFBCMR may remove a referral OPR.

In support of his request, he provides AF Forms 102, *Inspector General Complaint Form*, AF Form 77, *Letter of Evaluation*, certificates of recognition, awards, extract of his OPRs and other documents in support of his request.

The applicant's complete submission is at Exhibit N.

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2406, *Officer and Enlisted Evaluations Systems*, paragraph 10.1.3., An applicant's second and last avenue for correction or removal of an evaluation is via the AFBCMR.

Paragraph 1.8.7.2. For Officers. Paragraph 1.8.7.2.1. If a member has adverse information filed in their officer selection record (OSR), comments relating to the ratee's adverse conduct are mandatory on the next officer evaluation or training report, if not already documented; the evaluation becomes a referral.

AIR FORCE EVALUATION

State HQ/SSJA (State Staff Judge Advocate) recommends denial. A timeline of the relevant events is provided. The SSJA recommends the Board deny the application based on the request for reconsideration not being filed within three years. There is also no evidence of an error or injustice in the OPR. The applicant's claims his rater and additional rater failed to follow procedures, included unauthorized comments on his evaluation and that his raters were biased in their evaluation of his performance are without merit. The applicant does not provide any evidence he was deprived due process.

The applicant claims his rater failed to communicate the expected standards. The SSJA states the applicant's (a company grade officer at the time and an Academy graduate) claim he did not know he was expected to not make a false official statement or that he was not supposed to engage in an unprofessional relationship because his rater failed to communicate expected performance standards is an absurd assertion.

The applicant objects to the comment "Received GO LOR for an unprofessional relationship and making a false official statement during the rating period." The statement satisfies the requirements of AFI 36-2406 as it does not merely refer to the LOR but also the underlying misconduct. There were no findings supporting his claims of retaliation and reprisal in the evaluation process. The applicant claims his raters were biased, there was a conflict of interest or impartiality. The fact that the applicant filed an IG complaint against his rater and additional rater does not prevent them from carrying out their command responsibility of rating the applicant. AFI 90-301, *Inspector General Complaints Resolution*, paragraph 2.7 states the filing of an IG complaint does not delay or prevent a commander from completing command actions, like completing an OPR. Additionally, the assertion that his rater and additional rater were biased is

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completely unsupported by the evidence. The SSJA also disagrees that the OPR is misleading or punitive. It merely states the facts, both the good and the bad. All of the information was considered by the rater and the additional rater upheld the referral OPR.

The complete advisory opinion is at Exhibit P.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Nov 24 for comment (Exhibit Q), and the applicant replied on 11 Dec 24. The applicant provides a timeline, refutes claims in the advisory and highlights violations of Air Force Instructions and legal standards. He emphasizes the need for corrective action to ensure procedural fairness and compliance with regulations. AFI 90-301 mandates that investigators must remain unbiased and impartial. By conducting the CDI and subsequently issuing punitive actions, the AAGA’s overlapping roles compromised procedural integrity of the investigation and violated the principles of impartiality as required by AFI 90-301. The applicant also contends his raters did not understand the feedback process and that it is required to document and address deficiencies in an officer’s qualities. The SSJA also targeted him regarding the college he attended (United States Air Force Academy). This illustrates a pattern of discrimination and inequity within the State ANG. Such targeting violates AFI 36-2706, *Equal Opportunity Program Military and Civilian*, and raises concerns with the 14th Amendment’s Equal Protection Clause. The discriminatory language in the advisory must be addressed as part of the systemic bias in the State ANG’s handling of his case.

The SSJA acknowledges the AAGA’s involvement in withholding his accelerated promotion based on unsubstantiated allegations which highlights the withhold of favorable actions based on hearsay, which violates 10 U.S.C. § 1034 and AFI 90-301. The SSJA’s inability to address the issue raises concerns of procedural reprisal and bias.

The applicant also argues 10 U.S.C. § 1552(b) allows the Board to waive the timeliness requirement if it is in the interest of justice and new evidence is uncovered. The filing was within three years of the new evidence. He also disagrees with the SSJA that he was afforded due process.

The applicant’s complete response, with attachments, is at Exhibit R.

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 that the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of the State HQ/SSJA and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The Board conducted an independent review of the applicant’s case and finds insufficient evidence the applicant was the victim of reprisal in violation of 10 U.S.C. § 1034. The Board also finds insufficient evidence he was discriminated against in violation of AFI 36-2706, *Equal Opportunity Program Military and Civilian*. Moreover, there was also insufficient evidence to find the resolution of his IG complaints was contrary to AFI 90-301. The Board finds no evidence he was denied any due process rights. The applicant has not sustained his burden of proof to find the referral OPR is not correct or accurate as written based on information available at the time. While the Board acknowledges the ARPC ERAB removed the LOR previously

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attached to the referral OPR, there is no evidence the referral OPR was not correct or accurate at the time it was rendered to warrant its removal. Further, the applicant was afforded all of his appeal rights for removal of the OPR by the ERAB and this Board. The Board acknowledges the applicant provides an AF Form 77 signed by another State AAGA supporting the removal of the referral OPR ending Apr 21; however, the State AAGA is without authority to remove an OPR as this authority remains with the ERAB and this Board. The applicant also contends the advisory opinion's comments referencing his attendance at the USAFA as discriminatory and that it highlights the systemic bias in the handling of his case by the State ANG. However, the applicant has provided insufficient evidence to sustain his contention and the Board finds his claims the advisory opinion is discriminatory without any merit. The Board finds it is clear the advisory opinion's reference to his grade and attendance at the USAFA as rationale to support the applicant should have known it was wrong to make false statements or that he should not engage in an unprofessional relationship without his supervisor having to directly tell him not to engage in behavior that was contrary to regulations and policy. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant that 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-2021-03678-2 in Executive Session on 8 Apr 25:

- [REDACTED], Panel Chair
- [REDACTED], Panel Member
- [REDACTED], Panel Member

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

- Exhibit M: Record of Proceedings, w/ Exhibits A-L, dated 20 Oct 22.
- Exhibit N: Application, DD Form 149, w/atchs, dated DD MMM YY.
- Exhibit O: Documentary evidence, including relevant excerpts from official records.
- Exhibit P: Advisory Opinion, State HQ/SSJA, dated 25 Nov 24.
- Exhibit Q: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Nov 24.
- Exhibit R: Applicant's Response, w/atchs, dated 11 Dec 24.

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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.

4/18/2025

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[Redacted]
Board Operations Manager, AFBCMR
[Redacted]

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