

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03768

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXXXXXXXXXX

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

He requests all adverse actions, to include the following, be removed from his record based on allegations of reprisal pursuant to DoDD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034:

1. His relief of command on 8 Mar 21.
2. His letter of reprimand (LOR), dated 8 Mar 21.
3. His referral officer performance report (OPR) for the reporting period ending 14 Mar 21.

### APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, states his wife was sexually assaulted by the operations group commander (OG/CC), who was the applicant's supervisor. His wife reported the assault and from that point forward, he was harassed, targeted and ultimately subjected to a series of adverse actions. Prior to the incident, he was recognized as a highly proficient operator, skilled combat leader and a highly successful commander. The false allegations were the result of reprisal against him for standing by his wife and providing truthful testimony during the investigation.

The wing commander (WG/CC) engaged in a clear pattern of abuse of authority that deprived the applicant of any form of meaningful due process. This concluded with the applicant being relieved of command and an LOR based on a legally and factually flawed commander directed investigation (CDI). The WG/CC appointed a close colleague and personal friend of the OG/CC to conduct the investigation as a clear bias and a desire for retaliation. The WG/CC ignored the evidence exonerating the applicant from any wrongdoing and accused the applicant of lying despite not having any evidence to support his claim. During the investigation, it came to light that the WG/CC himself participated in call sign naming and condoned actions not in line with the Air Force. By not recusing himself and ignoring facts, he abused his authority. The applicant did nothing wrong while carrying out the Secretary of the Air Force (SECAF) and Chief of Staff (CSAF) tasker while deployed to perform critical evaluations of diversity and inclusion.

The OG/CC was an "old school fighter pilot" and a controversial figure. Because he was fun to be around and a good drinking buddy, his mistreatment of females, harassment and retaliation against subordinates were ignored. He came under tremendous pressure to be loyal and to get his wife in line. Instead, he chose to stand by his wife and tell the truth to investigators. Despite being ostracized and harassed on a regular basis, he was forced to work directly for the OG/CC as a squadron commander (SQ/CC). The evidence clearly showed the motivation for the adverse action could not have been based on facts and evidence but was instead based on retaliation and retribution. It is clear his command abused discretion in relieving him from command and issuing an LOR. The applicant provides letters of support and character references in support of his request.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

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

The Air Force Office of Special Investigations (AFOSI) Report of Investigation (ROI) dated 6 Sep 19, shows an investigation was conducted from 7 May 19 to 28 Aug 19 into allegations the subject (OG/CC) committed abusive sexual contact on or after 28 Jun 12. Specifically, on 3 May 19, he rubbed his penis against the victim's buttocks (over clothes) while he passed behind her during an off base going away party. The subject denied having any sexual contact with the victim and claimed any contact was incidental, with no intent for arousal, sexual gratification or attempts to abuse, humiliate or degrade the victim. On 20 May 19, the AFOSI reviewed the statement provided by the victim. The victim and applicant walked around the venue and stopped to talk with [redacted]. The victim stood to the right of [redacted], with the applicant at her right side. About 30 individuals passed by the center main aisle without any physical contact. As the victim listened to the conversation, she felt a man rub his penis against her buttocks. She quickly turned her head and identified the subject. She was certain he touched her buttocks with his penis. The applicant also saw the incident take place but neither knew how to respond and did not want the incident to ruin the night so they went about the night as if nothing happened. [Redacted] recalled with absolute resolve that the applicant made a rather incredulous look which followed with the question, "Did he just touch your butt?" On 9 Jul 19, the AFOSI discovered new information pertaining to possible unprofessional conduct by the subject from Nov 03 to Mar 05. Multiple interviews revealed he participated in practical jokes, referred to as "steam rolling," where they jumped into an unassuming person's bed while naked and rolled around. It was reported that steam rolling was performed by half of the fighter pilots but the intent was benign and never to harass or humiliate. Another interview revealed the wing leadership had to counsel the subject once for making an inappropriate comment during a sexual assault/harassment training skit. On 22 Jul 19, the numbered air force commander (NAF/CC) provided a statement he was briefed by the WG/CC on the victim's initial equal opportunity (EO) complaint describing a crowded unit event wherein the subject was "horse playing" and tried to touch [redacted's] buttocks but touched the victim in the process.

Counsel provides a news article dated 15 Jan 20 showing the OG/CC was disciplined with an administrative action after an investigation into allegations he inappropriately touched a lieutenant colonel's wife at a dinner party the preceding year. The WG/CC took administrative action based on the completed AFOSI investigation. Criminal charges were not filed and the major command (MAJCOM) would not say what administrative action was taken against the OG/CC. The MAJCOM stated the OG/CC chose to retire. Witnesses had also revealed in 2004, while the OG/CC was in the rank of captain (O-3), he engaged in a prank called steam rolling, barging naked into sleeping pilots' beds and rolling on them until they woke up. He also placed a much smaller pilot in a chokehold and refused to let go and the chokehold was a full asphyxiation that caused the drunk pilot to lose consciousness and soil himself.

In a memorandum for all commanders dated 23 Dec 20, the SECAF, CSAF and Chief of Space Operations (CSO) directed every commander at squadron level and above to conduct a comprehensive review of official and unofficial unit emblems, morale patches, mottos, nicknames, coins and other forms of unit recognition and identity to ensure an inclusive and professional environment. It stated commanders should remove any visual representations, symbols, or language derogatory to any race, gender, sexual orientation, ethnicity, religion, age or disability status either implicitly or explicitly. The review was required to take place within 60 days of the date of the memorandum.

On 27 Dec 20, while the applicant was deployed with his unit as the expeditionary fighter squadron commander (EFS/CC), he received an email to conduct the comprehensive review per the SECAF, CSAF and CSO memorandum.

SAF/IG provides the CDI ROI, concerning the allegations the applicant was derelict in the performance of his duties dated 24 Feb 21. On 18 Nov 20, while the applicant's squadron was deployed a parcel arrived containing name patches for [redacted] and several other pilots. Some of the patches for [redacted] were embroidered with an inappropriate call sign. On 20 Nov 20, the patches were placed in a common area so the intended recipients could pick them up. Personnel from another unit discovered the patches, confiscated them and passed them up to their chain of command. The applicant initiated a CDI into the circumstances surrounding the patches after being made aware of the issue and appointed a unit member as the IO. However, on 18 Dec 20, the applicant was informed by the Expeditionary Wing Commander that the CDI would be withheld from the applicant's level and that the case would be handed off to his home station wing. On 25 Jan 21, the WG/CC appointed the Maintenance Group Commander (MXG/CC) as the IO and an investigation was conducted from 25 Jan 21 to 19 Feb 21. The IO investigated the following allegations:

**Allegation 1:** Between 1 Oct 20 and 1 Nov 20, the applicant was derelict in the performance of his duties in that he negligently failed to enforce Air Force cultural standards on conduct and discipline by approving or endorsing two call signs during the naming ceremony involving [redacted]. The IO found the applicant endorsed the call signs during the 30 Oct 20 naming ceremony. The applicant's primary defense of his failure to immediately recognize the inappropriate nature of the call signs was essentially he frequently does not get jokes or innuendos used at roll calls. The IO took it at face value that he did not immediately recognize the call signs as inappropriate and that he was not fluent in pop culture and other slang terms. The applicant walked into the ceremony on 30 Oct 20, an event ripe for inappropriate innuendos with a young lieutenant whose last name made it all the more likely that lines of professionalism would be challenged. However, as the commander, it was his responsibility to ensure the selection of a respectable call sign for [redacted] and to enforce Air Force cultural standards on conduct and to model the behaviors. On 30 Oct 20, the applicant fell short of the standards. **(SUBSTANTIATED).**

**Allegation 2:** Between 1 Nov 20 and 6 Jan 21, while deployed as the EFS/CC, he was derelict in the performance of his duties in that he negligently failed to refrain from directing and/or influencing squadron members to write statements about the circumstances surrounding the naming of [redacted], and to add or omit certain facts about the applicant's involvement in the naming of [redacted]. The IO described witnesses stating the applicant discussed the name tag issues with them and asked each officer if they thought his guidance had been clear about any future inappropriate call signs for [redacted] and asked each officer to provide him a statement to include his guidance on the call signs had been clear. Another witness testified the applicant asked him to include a statement the squadron did not have a culture problem. The applicant advised the director of operations he asked for the statements as a reflection exercise to ensure applicable lessons from the name patch issue were learned. The explanation that the statements were a personal reflection exercise was not believable in the eyes of the captains providing the statements. **(SUBSTANTIATED).**

On 8 Mar 21, the applicant was relieved of command per the WG/CC memorandum dated 8 Mar 20 [sic]. It stated he decided to relieve him from squadron command for cause in accordance with AFI 51-509, *Appointment to and Assumption of Command*, effective immediately. His WG/CC stated he lost confidence in his ability to command after reviewing the CDI that substantiated an allegation he directed and/or influenced members under his command to write statements in his behalf that had the potential of obstructing justice by compromising witnesses in a future

investigation. His WG/CC stated he reached the decision after careful consideration and notifying the NAF/CC.

On 8 Mar 21, the applicant received an LOR. An investigation was conducted between Dec 20 and Jan 21, following a CDI he initiated that was withheld from his authority. He directed and/or influenced members of his squadron to write statements concerning his involvement in the circumstances surrounding the call sign designation for [redacted]. Specifically, he gave direction to his subordinates to add or omit specific information, which was not necessarily an accurate reflection of their recollection or beliefs in anticipation of a future investigation. As a result of his actions, he failed to maintain a healthy command climate within his squadron that resulted in a loss of trust and confidence as a SQ/CC, which led to the decision to relieve him from command on 8 Mar 21. In a response dated 10 Mar 21, his counsel stated there was no evidence to suggest he would intentionally or with malice attempt to improperly influence an investigation or take steps to hinder good order and discipline. The alleged misconduct represented a complete and total deviation from his character and performance. Per AFI 51-509, a commander's decision to relieve a commander for cause must not be arbitrary and capricious. There was no credible evidence to support any conclusion his actions reflected any level of intent or even rose to the level of a career ending misconduct. The applicant never asked or attempted to influence members to add or omit anything. The only evidence the applicant supposedly did anything that could have encouraged or discouraged statements within the investigation comes from individuals who appear to be motivated by a desire for their own failures to try and cast blame on the applicant. Absent a specific factual and legal basis, the issuance of career ending actions creates an appearance of retribution or retaliation against the applicant. He was treated poorly for the negative publicity surrounding his wife's reporting of the sexual assault and spoken to in a negative light by the vice wing commander (WG/CV). At a minimum, the CDI should have been conducted, reviewed and actions taken by reviewing authorities without a blatant and obvious existing bias or conflict of interest. Even if assumed the applicant's efforts to self-correct and implement the SECAF guidance warranted adverse documentation, the action to address the deficiency should not be career ending. The applicant accepted responsibility for his squadron and subordinates with regarding to the naming and name tags. He never tried to hide anything. The entire unit learned valuable lessons to further the SECAF's mandate and his willingness to champion appropriate culture was in part why the CDI started in the first place.

On 8 Mar 21, the applicant filed an IG complaint alleging reprisal under 10 U.S.C. § 1034. The applicant alleged his commander conducted a retaliatory CDI and issued him a LOR, unfavorable information file (UIF), removed him from senior developmental education (SDE) and relieved him of command in reprisal for making protected communication. In a memorandum dated 24 Sep 21, the DoD IG informed the applicant the available evidence did not support the reprisal complaint. The statute provides an affirmative defense against such an allegation to a commander who consulted with a superior in the chain of command, an IG or judge advocate general. In the applicant's case, the appointing authority sought and received consultation with a superior in the chain of command before initiation of the investigation. The CDI substantiated the allegation he negligently failed to enforce Air Force cultural standards on conduct and discipline during a call sign naming ceremony. The CDI also substantiated he directed and/or influenced members of his command to write statements to add or omit information regarding his guidance during the naming ceremony, in anticipation of an investigation into the ceremony. Therefore, the evidence did not support an inference his protected communication could have been a factor in the actions and his complaint was closed. The applicant was informed he could address his reprisal complaint to the AFBCMR.

The applicant received a referral OPR for the reporting period 11 Jun 20 to 14 Mar 21. It stated a CDI substantiated an allegation that in anticipation of a future investigation, he directed and/or influenced members under his command to make or omit information regarding his involvement in a naming ceremony that resulted in an inappropriate call sign for a pilot. The additional rater

stated he considered the applicant's comments to the referral document dated 17 May 21; however, the applicant's automated records management system (ARMS) does not include a rebuttal response. Counsel in the applicant's request provides a timeline for rebuttal of the referral OPR. He denied the accusation he influenced or directed any subordinate to add or omit things from a written statement and he was not informed until 10 Feb 21 there was a CDI in which he was the subject.

On 22 Mar 21, the AF/A1 approved the applicant's WG/CC's request the applicant be removed from DE designation. A copy of the removal letter would be filed in the applicant's OSR in accordance with AFI 36-2670, *Total Force Development*, the officer would no longer be eligible for future in-residence DE.

On 29 Jun 22, the AFBCMR Board Analysis Division informed the applicant his case would be administratively closed since he had not exhausted available administrative remedy by submitting an application to the Evaluation Reports Appeal Board (ERAB) for removal of his referral OPR prior to submitting his application to the Board. In an email dated 29 Jun 22, counsel stated he did not believe this was accurate as the issue is the LOR and there is no other way to get the LOR removed. It would be a waste of time and cause the applicant harm to go to the ERAB first. If required, they would remove the request for removal of the OPR; however, counsel believed the AFBCMR was only looking at a symptom of the issue of the referral OPR and not the cause of the issue, which is the LOR. Per AFBCMR instructions, counsel amended the request.

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

#### **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 36-2907, *Adverse Administrative Actions*, paragraph 2.3.5. LOR. Administrative censure for violation of standards which is more severe than a record of individual counseling (RIC), letter of counseling (LOC) and letter of admonishment (LOA) and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior.

AFI 51-509, *Appointment to and Assumption of Command*, paragraph 14.2. For cause. An officer may be relieved of command for cause, including instances where the superior competent authority has lost confidence in the officer's ability to command due to misconduct, poor judgment, the subordinate's inability to complete assigned duties, the interests of good order and discipline, morale, the good of the organization, or other similar reasons. Paragraph 14.2.1., A superior competent authority's decision to relieve a commander for cause must not be arbitrary and capricious.

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information"). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from

developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an AFBCMR recommendation.

DAFI 36-2670, *Total Force Development*, paragraph 3.3.5.4., When a request from the senior rater, management level or developmental team to remove an officer from a developmental education designation list for cause is approved by AF/A1, that officer will be permanently removed from the nomination list. This results in the permanent loss status as well as eligibility to compete in the Developmental Education Designation Board for an in-resident school. These details will be disclosed in the officer's single unit retrievable format (SURF), Duty Qualification History Brief and the Officer Selection Brief. The letter will be filed as a permanent part of the officer's selection record (OSR).

DAFII 36-2406, *Officer and Enlisted Evaluation Systems*, paragraph 10.1.1., The Evaluation Reports Appeal Board (ERAB) was established to provide airmen with an avenue of relief for correcting errors or injustices in evaluations at the lowest possible level. Paragraph 10.1.3., An applicant's second and last avenue of relief is via the AFBCMR. Applicant should exhaust all other avenues of relief (ERAB) before submitting their request to the AFBCMR.

## **AIR FORCE EVALUATION**

AF/JAJI recommends denial for removal of the LOR and any record of relief of his command on the basis of any legal error and concludes there is insufficient evidence to demonstrate a material error or injustice. LORs issued to officers are authorized under DAFI 36-2907 and pursuant to DAFI 51-509, DAFGM 2023-01, command is a privilege and not a right. As such a superior competent authority may relieve an officer of command for any reason not prohibited by law or policy. When removal is for cause, the reasoning can include instances where the superior competent authority has lost confidence in the officer ability to command due to misconduct, poor judgment, the interests of good order and discipline, morale, the good of the organization or other similar reasons.

The WG/CC appointed an IO to investigate allegations the applicant was derelict in the performance of his duties for failing to enforce Air Force standards and improperly instructing subordinates to write statements regarding the events under investigation which would place the applicant in a better light. At two separate points during the call sign naming ceremony, the applicant announced the new call signs. The next day the applicant directed the squadron would not be using either call signs for the officer in question. The CDI concluded that despite the applicant's subsequent rescission of the inappropriate call signs, he did, to some extent, approve and endorse inappropriate call signs. Later during the deployment, patches arrived at their deployed location which included the previously rescinded call signs. After the patches were found in a common area and discovered by personnel in another unit, the applicant initiated a CDI. However, on 18 Dec 20, the applicant was informed the CDI would be withheld from the applicant's level and would be forwarded to the home station wing. Within days of the notification, the applicant asked to speak with two separate members of his command regarding the incident and asked them to write statements about whether his guidance was clear and to omit certain other information about the naming ceremony. The IO concluded the applicant attempted to influence members of his squadron to write statements to protect himself from adverse action. Although the requests were painted by the applicant as innocent requests for self-reflection and an effort to identify cultural issues within the squadron, the facts indicate a motive to protect himself in the investigation, and both the IO and the WG/CC concluded the applicant attempted to influence the investigation and protect himself. On 8 Mar 21, the applicant received a LOR for the substantiated misconduct discovered by the CDI and was relieved of command. The applicant disputed the credibility of the evidence and the findings. The LOR was nonetheless upheld.

On 8 Mar 21, the applicant filed an IG complaint alleging reprisal under 10 U.S.C. § 1034. The applicant alleged his commander conducted a retaliatory CDI in response for his wife's allegations of sexual assault by the former OG/CC because the IO was a close friend of the OG/CC. The applicant offered no evidence of bias on the part of the IO. The DOD IG reviewed the case and determined the evidence did not support a reprisal complaint because the statute provides an affirmative defense against reprisal when the commander consulted a superior in the chain of command.

DAFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 3.4.4., provides the burden of providing evidence in support of their allegation is on the applicant. The applicant has offered no such evidence outside of the claims contained within his brief. AF/JAJI concurs with the DoD IG there is no evidence supporting a claim of reprisal. Pursuant to 10 U.S.C. § 1034, there is an affirmative defense when the imposing authority concurs with a superior in the chain of command, which occurred in this case. There is no evidence the WG/CC acted in reprisal and his actions were not arbitrary or capricious. The applicant also alleges an abuse of discretion. However, the facts do not support a finding of an abuse of discretion. AF/JAJI finds no error and defers to the fact finder, the WG/CC. While deference to the fact finder is not blind deference, as findings of fact can be evaluated for arbitrariness and capriciousness. Under the deferential standard, AF/JAJI finds the applicant's claims are no more than a disagreement with the interpretation of the evidence and further finds the WG/CC had ample evidence to support his actions. Far from being arbitrary or capricious, the WG/CC's conclusions were based on many witness statements and other evidence discovered by the CDI. There is no evidence showing an abuse of discretion. Unsupported claims of a conflict of interest are insufficient to conclude an abuse of discretion occurred. The applicant has failed to show a material error or injustice.

With respect to allegations of procedural due process violations, to show a violation, the applicant must show the government deprived him of a liberty or property interest to which he has a legitimate claim of entitlement and the procedures used to effectuate such a deprivation were constitution deficient. The applicant appears to claim he was entitled to a military record free of adverse information and asserts the cause of his career altering administrative actions was the flawed investigation and reprisal. However, the applicant has failed to present evidence sufficient to demonstrate a material error or injustice. His argument relies on presumptions which are not meted out in the evidence. The applicant's record properly documents, and the adverse actions within it, appropriately document his substantiated misconduct. The proper procedures were followed and there was no abuse of discretion.

The complete advisory opinion is at Exhibit G.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 25 Apr 23 for comment (Exhibit H). Counsel, on behalf of the applicant, contends the advisory opinion fails to address issues related to abuse of authority and clear conflicts of interest. The WG and GP commanders engaged in a pattern of abuse of authority that deprived the applicant of any form of meaningful due process. The reality is that his WG/CC handpicked an IO with a clear conflict of interest and motivation to retaliate. There is no rational, logical or legal justification for the decision to handle the investigation in this matter. The advisory opinion does not acknowledge or address this issue. The advisory opinion also does not address or engage with the fact that all the actions the applicant took were directly related to the CSAF's directive and the IO chose to ignore the facts. The applicant was successfully leading a squadron and flying the hardest combat missions and still prioritized carrying out the CSAF tasker. Further, it would be a legal and procedural error for the Board to speculate why the IG failed to conduct a full investigation into reprisal. Regardless of the IG's handling of the case, a conflict of interest existed. His wife was sexually assaulted by his

commander. His wife reported it and he testified on her behalf. The friends of the perpetrator of a substantiated sexual assault not only forced the applicant to continue to work for the perpetrator but they also acted as investigators and decision makers in the applicant's case.

The complete response is at Exhibit I.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant did not exhaust all available non-judicial relief for removal of the referral OPR before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant alleges he was the victim of reprisal and abuse of authority for his protected communication in his wife's sexual assault case more than one year prior in violation of 10 U.S.C. § 1034. However, the Board finds no evidence of any reprisal or abuse of authority. Based on the evidence, the CDI which substantiated the allegations that the applicant while deployed as the EFS/CC failed to enforce Air Force cultural standards on conduct and discipline and failed to refrain from directing and/or influencing squadron members to write statements concerning his involvement was initiated by the applicant. However, his deployed WG/CC on 18 Dec 20 determined the CDI should be withheld from the applicant's level and forwarded it to his home station WG/CC for action. The applicant contends the WG/CC appointed a biased IO with a conflict of interest; however, other than his own uncorroborated assertions he has provided no evidence to sustain his allegations. Moreover, military commanders are presumed to act lawfully and in good faith and entitled to substantial deference, unless there is evidence to the contrary. In this case, the applicant wishes the Board to believe the adverse personnel actions for his failure to maintain an inclusive and professional environment and his attempts to influence subordinates were the result of reprisal, abuse of authority and bias; however, the substantiated allegations clearly show the applicant fell short of meeting Air Force standards. The relief of command and the LOR were well within his WG/CC's authority and discretion and not disparate for the offenses committed. The Board agrees with the DoDIG there was no evidence of reprisal and concurs with the dismissal of his complaint. While the applicant contends the IG failed to investigate the abuse of authority and conflict of interest, no evidence has been provided to warrant further investigation. With respect to the request for removal of his referral OPR for the period ending 14 Mar 21, the Board finds the request is not ripe for adjudication by the Board at this time since there is no evidence he applied to the ERAB for relief prior to submitting his AFBCMR request. Therefore, the Board recommends against correcting the applicant's records.

## **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-2021-03768 in Executive Session on 26 Apr 23 and 15 May 23:

, Panel Chair



, Panel Member  
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: AFOSI ROI, dated 6 Sep 19. (WITHDRAWN)
- Exhibit D: SAF/IG Documents, CDI ROI, dated 24 Feb 21. (WITHDRAWN)
- Exhibit E: Letter, SAF/MRBC, dated 29 Jun 22.
- Exhibit F: Counsel's response, dated 29 Jun 22.
- Exhibit G: Advisory Opinion, AF/JAJI, dated 24 Apr 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Apr 23.
- Exhibit I: Applicant's Response, 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.