

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

XXXXXXXXXXXXXXXXXX

**DOCKET NUMBER:** BC-2022-02004

**COUNSEL:** XXXXXXXXXXXXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

He requests the following based on allegations of reprisal, abuse of authority and fraud, waste, and abuse pursuant to DODD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034:

1. All negative administrative paperwork, to include letters of counseling (LOC) and letters of reprimand (LOR) be removed from his record.
2. He be reinstated in the Air Force Reserve.
3. His Air Force Specialty Code (AFSC) of Bomber Pilot (11B3) be restored.
4. He be given the opportunity to be upgraded to aircraft commander.

### APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends he unjustly received multiple LOCs and LORs based on minor instances from officers who were scheming to force him out of the squadron.

In Dec 13, he was harassed by his squadron commander (SQ/CC). Eventually another member of the squadron made a complaint the SQ/CC created a hostile work environment. He also provided a statement in the CDI and the SQ/CC was forced to retire. In 2016, he transitioned to a Traditional Reservist. In 2017, the director of operations who knew the former SQ/CC, determined he required additional training for upgrade. This was complicated as he held a full time civilian job. It took him most of 2018 to complete the requirements.

In 2019, the reprisal actions began. One senior officer was disturbed by the comments and in a memorandum addressed he had been set up for failure. He was denied required training hours for upgrade and in Jan 20, his SQ/CC initiated personnel reliability program (PRP) decertification. He was administratively removed from flying duties and was not permitted to enter the building. He would also learn later his AFSC was changed from Bomber Pilot to Executive Officer (86M0) without his knowledge.

Faced with continued harassment, he filed an inspector general (IG) complaint on 26 Feb 21 outlining various allegations of reprisal, abuse of authority, and fraud, waste and abuse. Through a Freedom of Information Act (FOIA) request, he learned the AFRC/IG only investigated the allegations of reprisal. He informed the IG he could provide witnesses and that [redacted] provided commentary to the incidents. In early 2022, he transitioned to the Individual Ready Reserve based on the injustices he suffered with his unit.

He provides an email of support dated 13 Aug 20. It states he was not put in the best position to succeed. The applicant had a full time civilian job from the start and had to juggle the conflict of time and the squadron was usually unwilling and unable to accommodate him. There was a lack of expectations and requirements for upgrade and there was no squadron standard. The draft letter

of the requirements was created solely to prove the applicant was not ready for upgrade. His flight commander failed to provide any sort of positive mentoring for him. In Jan 19, he began writing accounts and quotes attributed to the applicant in case anything ever came of it. He did not know what caused the applicant to be removed from the squadron but there appeared to have been a deliberate effort to have him removed. The squadron failed as a whole.

The applicant's complete submission is at Exhibit A.

## **STATEMENT OF FACTS**

The applicant is a captain (O-3) in the Air Force Reserve.

Aeronautical Order (AO) dated 8 Mar 22, shows the applicant was disqualified from aviation service for failing to maintain medical certification. The applicant's physical health assessment (PHA) expired on 4 Mar 22.

The military personnel data system (MilPDS) shows the applicant's Primary Air Force Specialty Code (PAFSC) is 86M0 and his Secondary AFSC (2AFSC) is 11B3C.

The applicant's automated records management system (ARMS) record does not contain any LOCs or LORs. However, they are in the IG Automated Case Tracking System (ACTS) FRNO 2021-03027.

Per SAF/IG provided documentation for FRNO 2021-03027, the applicant, through counsel, filed an IG complaint on 26 Feb 21 alleging his career was negatively impacted since his involvement in a 2015 CDI against his SQ/CC. His counsel urged the IG to investigate the reprisal, abuse of authority and fraud, waste and abuse. The applicant requested a neutral and fair review of the events impacting his career progression. He alleged he was treated unfairly, verbally abused, and deprived of career opportunities afforded to his peers. Most recently, his SQ/CC denied his request for transfer to another wing. His civilian career was also hindered. The following documents are included in the applicant's IG complaint:

a. LOC dated 22 Aug 19 for being late to training and acting in an unprofessional manner. He was in his room but did not participate in the training and became a distraction for the squadron.

b. LOR dated 21 Nov 19 shows an investigation revealed he altered medical documentation when only the military medical facility was authorized to add any physical restrictions. In response, the applicant obtained a memorandum from the Medical Squadron dated 22 Nov 19 stating upon review of the applicant's provided medical documentation from his civilian provider, it was noticed not all sections were completed. The applicant was asked to complete the member's section and provided the clinic's information so they could request the records.

c. LOC dated 18 Dec 19 for requesting additional ground training period (AGTP) in the unit assembly processing system (UTAPS) while not being on base nor having a completed mission verification. It was the applicant's third attempt to inaccurately log into the AGTP. In his response dated 31 Jan 20, he stated it was not his intent to classify the AGTP as mission verification. It was possible he accidentally selected the wrong classification or misread the action while speaking with squadron officers.

d. AF Form 286, *Personnel Reliability Program (PRP) Permanent Disqualification or Decertification Action*, dated 18 Dec 19 shows the applicant was decertified from PRP due to a loss of confidence involving questionable judgment and untrustworthiness, which are incompatible with PRP.

e. On 10 Apr 20 an email was sent to his employer from “concerned citizen.” It stated they wanted to bring to their attention the applicant’s disturbing behavior. It stated he was deceptive by falsely calling in sick and falsifying military leave orders so he could fly corporate/private aircraft for financial gain while in their employment. The most concerning accusation was the falsification of military leave orders. It stated the Air Force Office of Special Investigations (AFOSI) was notified. His unit confirmed with his civilian employer discrepancies regarding unit training assembly (UTA) dates and stated the applicant had been removed from all flight duties. It stated the applicant was a skilled liar and had an excuse or cover story for just about everything; however, he was not very smart and seeing through his charade was very easy.

f. AF Form 1058, *Unfavorable Information File (UIF)*, dated 17 Nov 20 shows a UIF was established and his LOR dated 21 Nov 19 was placed in the UIF.

g. LOC dated 9 Jan 21 for failure to report to duty on 9 and 10 Jan 21. The unit attempted to contact the applicant in the morning but he did not respond until 1545 hours. The applicant was advised the week prior his UTA would not be excused. In his response dated 11 Mar 21, he stated he emailed notice he would be unable to report to the UTA. Prior to Jan 20, he was able to change UTA periods. On 6 Nov 20, he was informed he would not be excused for future UTAs.

On 1 Jun 21, the AFRC/IG informed the applicant in accordance with AFI 90-301, *Inspector General Complaints Resolution*, an analysis of a reprisal investigation was conducted and there was insufficient evidence to conduct a reprisal investigation under 10 U.S.C. § 1034. The SAF/IG and DOD IG concurred with the analysis and findings.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

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

Department of the Air Force (DAFI) 36-2907, *Adverse Administrative Actions*, Paragraph 2.1., Use of Administrative Counselings, Admonishments and Reprimands, General officers, commanders, first sergeants, supervisors and other individuals in the member’s administrative or operational chain of command can issue administrative actions. Paragraph 2.3.3., LOC. Administrative censure for violation of standards. The intended outcome of a LOC is to help airmen and guardians use good judgment, assume responsibility, understand and maintain standards and solve problems. Generally, this is a form of corrective action appropriate for correcting habits or shortcomings not necessarily criminal or illegal, but which can ultimately affect job performance, work center morale and discipline. Paragraph 2.3.5., LOR. Administrative censure for violation of standards which is more severe than a record of individual counseling (RIC), 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.

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 officer selection record (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 36-2603, *Air Force Board for Correction of Military Records*, paragraph 2.4. Deciding Cases. 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.

## AIR FORCE EVALUATION

AFRC/JA (Staff Judge Advocate) recommends denial. The record as presented does not warrant removal of the adverse actions. The IG investigated the applicant's allegations of reprisal and found insufficient evidence to substantiate his allegations. AFRC/JA does not have a copy of the investigation and cannot opine as to whether the investigation was conducted pursuant to the guidance and instructions. However, action was taken to investigate his allegations and his allegations were not substantiated.

Between Aug 19 and Jan 21, the applicant received numerous counselings, formally documented and verbal. Allegations ranged from failure to report, unprofessional conduct, altering a medical document and incorrect duty status documentation. For the most serious misconduct of providing his civilian employer with false information regarding his official military duty status, he received an LOR. The applicant provided a statement by [redacted] in which he outlines issues with the command such as poor communication, lack of mentorship, unclear expectations, and lack of support from the unit. It was his impression the applicant was being singled out, not supported, and left to figure things out on his own.

The applicant contends there were no apparent reasons or justification for many of the adverse actions; however, AFRC/JA disagrees and finds sufficient justification to support the LOCs and LOR to the applicant were reasonable. AFRC/JA provides the list of adverse actions and documented verbal counseling by his supervisor. There were numerous unexcused UTAs, memorandum for records (MFR) documenting verbal counselings and no shows. A personnel statistics report shows his participation between 1 Oct 20 and 23 Aug 21 included 12 unexcused absences and 16 excused absences and that he reported for drill for 12 training periods, the equivalent of three UTAs over just under a 12 month period. Although he cites a civilian employment conflict as to why he failed to attend the UTA, it was clear he missed numerous UTAs during the timeframe. He was advised via verbal counseling in Mar 20 regarding his supervisor's participation expectations. The applicant may have felt his request for excusal or rescheduling were justified; however, his unit had the discretion to determine if excusal or rescheduling was warranted. Based on the several prior excused UTAs, the decision not to excuse or reschedule the UTA was not unreasonable.

The applicant contends his unit contacted his civilian employer to cause trouble for him. However, his civilian employer contacted the unit after a receiving a complaint that caused them to check into the applicant's records due to allegations raised by the complainant, to include suspicions he was flying corporate or private aircraft for financial gain, although it was contrary to his conditions of employment. It appears his military duty was often in flux and had to be rescheduled on multiple occasions; however, the applicant had an obligation to reconcile his status.

The complete advisory opinion, with attachments, is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 11 Apr 23 for comment (Exhibit E). In a response dated 10 May 23, counsel contends it is apparent that whoever reviewed their petition did not actually review it and has taken a general defense that lacks any specificity. The intention behind all the counselings and reprimands was to create a paper trail to get rid of the applicant despite the lack of evidence and any discussion with the applicant prior to the counselings and reprimands.

His commander openly discussed how he wanted to drop the applicant from the program. The actions were so disturbing another Airman complained that he was creating a hostile work environment and a CDI was opened. The CDI revealed numerous Airmen discussing the applicant was unnecessarily attacked and harassed by the command. Once the CDI was concluded, his commander retired. The timing of the CDI and his retirement is not coincidental.

The advisory opinion states they did not have a copy of the investigation. All information about the IG complaint has been provided and is easily accessible for the author of the advisory opinion. The complaint was filed on 26 Feb 21 and the applicant was interviewed on 25 Mar 21. In Jan 19 [redacted] provided a statement that clearly demonstrated the intention to get rid of the applicant at any cost despite no basis to do so. However, the advisory opinion is silent to the fact there was a deliberate effort to have him removed. The Air Force allowed the retaliation and harassment of the applicant to continue from the change in squadron command and through the investigating officer.

The applicant's complete response is at Exhibit F.

## **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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFRC/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant asserts there was a deliberate effort to remove him from the squadron; however, he has provided insufficient evidence to sustain this to be the case. While the applicant contends the LOCs and LORs were unjust, his SQ/CC harassed him, his unit contacted his civilian employer and that he was the victim of reprisal, abuse of authority and fraud, waste and abuse, he has not sustained his burden of proof to sustain his assertions. The Board conducted an independent review of the applicant's allegations in his IG complaint of reprisal (FRNO 2021-03027) and concurs with the findings of the AFRC/IG, SAF/IG, and the DODIG there was insufficient evidence to sustain he was the victim of reprisal or abuse of authority pursuant to 10 U.S.C. § 1034. The applicant provides a letter of support from a squadron member dated 13 Aug 20; however, the Board finds the letter of support not persuasive or convincing. Further, it does not corroborate the LOCs and LORs were unjust as it states he did not know why the applicant was removed from the squadron. The letter of support also indicates the applicant had a conflict of time between his Reserve duty and civilian employment and that the unit was unwilling or unable to accommodate him. In this respect, the applicant, like all Reserve Component members, had a responsibility to report to UTAs as required and it was within the discretion and authority of his SQ/CC to determine if any absences would be excused or unexcused. As pointed out by AFRC/JA, it appears the applicant was unable to satisfactorily report for Reserve duty as required and expected. Moreover, the Board finds the issuance of LOCs and LORs for his failure to adhere to standards and expectations were in

accordance with DAFI 36-2907 and within the discretion and authority of his chain of command. The Board also finds no evidence of an error or injustice with the AO dated 8 Mar 22 removing him from aviation service for failure to maintain medical certification as required. With respect to the change of the applicant's AFSC, the Board notes the MilPDS reflects the applicant's 2AFSC as 11B3. Accordingly, the Board finds no evidence his AFSC of 11B3 was removed unjustly. 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-2022-02004 in Executive Session on 4 May 23 and 6 Jun 23:

, Chair, AFBCMR  
, 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 18 Jun 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: SAF/IG Documentation, FRNO 2021-03027, w/atchs, dated 1 Jun 21.  
(WITHDRAWN)  
Exhibit D: Advisory Opinion, AFRC/JA, w/atchs, dated 14 Mar 23.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Apr 23.  
Exhibit F: Applicant's response, dated 10 May 23.

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.