



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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02312

**COUNSEL:**

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

She requests her referral officer performance report (OPR) for the period ending 22 Dec 18 be removed from her record, along with the accompanying documents; or in the alternative the OPR be revised based on an allegation of reprisal pursuant to DODD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034.

**APPLICANT'S CONTENTIONS**

Counsel, on behalf of the applicant, contends the referral OPR is unjust and the result of reprisal. The Board should also consider the referral comments derived from a lack of mentoring and training by her leadership and includes vague comments.

On 10 May 18, she received her first mid-term feedback and was praised for her performance. A few weeks later, her supervisor in an informal feedback addressed her sleeping and eating habits. The Equal Opportunity (EO) office advised her to request in writing that the comments be removed; however, the staff judge advocate (SJA) denied her request. She then returned to the EO office and was advised to speak with the Inspector General (IG) office. Then in Jul 18, the legal office was inspected pursuant to Article 6, Uniform Code of Military Justice (UCMJ). She expressed her opinion during the investigation that there was negative treatment towards paralegals. It is her understanding the legal office underperformed in the inspection.

In Oct 18, she served as a witness for a commander directed investigation (CDI). A paralegal filed a complaint against the SJA and a CDI was initiated. She relayed to the investigating officer (IO) much of the same information she shared with the Article 6 inspectors. Then on 10 Oct 18, she received a letter of counseling (LOC) alleging she failed to deliver a confined member's documentation and improperly communicated the discharge process to a first sergeant. However, she had not been trained in the pretrial confinement process.

In Nov 18, she filed a reprisal complaint with the IG relating to the LOC received on 10 Oct 18 and on 9 Dec 18, she also filed an Article 138 complaint requesting immediate removal from the legal office and reassignment. Within a week, the JA assignments office informed her they would work to reassign her as soon as possible.

On 13 Dec 18, she received a letter of admonishment (LOA) indicating she was unprofessional. She was then reassigned to the wing staff agency. On 17 Dec 18, she received an LOC that stated

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[REDACTED]

she attempted to undermine the legal office leadership and the CDI was cited. She has never received a copy of the CDI nor had an opportunity to review the allegations against her.

On 21 May 19, she had already been reassigned on a permanent change of station (PCS) when she received a referral OPR. She submitted her rebuttal response on 23 May 19.

Her new wing commander (WG/CC) stratified her as #20 out of 210 captains (O-3) and she received a "Definitely Promote" promotion recommendation. However, in Jul 22, she was notified she was not selected for promotion.

In Nov 22, she filed an Evaluation Report Appeals Board (ERAB) request; however, the request was denied stating she failed to prove the behavior did not take place. The ERAB's analysis was flawed and did not consider or address several of her contentions, to include improper comments on the OPR in violation of DAFI 36-2406, *Officer and Enlisted Evaluation Systems*.

The referral OPR is a clear result of reprisal. She was not afforded the protections under 10 U.S.C. § 1034. Besides reprisal, the evidence submitted clearly supports the existence of a personality conflict, the actions mostly pertaining to her duty performance did not rise to the level of a referral OPR. The additional rater's comments stating she had a substantiated unprofessional relationship allegation from a 14 Nov 18 CDI is vague and improper per DAFI 36-2406. She submits character letters providing insight into her character, integrity and professionalism.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

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

On 10 Oct 18, the applicant received a LOC. On 26 Sep 18, the applicant failed to ensure proper service on the accused of pretrial confinement documents. Also, on 1 Oct 18, the SJA was alerted by the wing leadership the applicant had made comments to a first sergeant about the timeliness of the administrative discharge program.

SAF/IG provides CDI report of investigation (ROI) dated 14 Nov 18 concerning poor management practices, wasted resources and possible abuse of authority at the wing legal office. On 12 Oct 18, the WG/IG received a complaint ([REDACTED] *Work-Product* [REDACTED]) concerning members of the WG legal office. After conducting an independent determination, the case was referred to the WG/CC. An investigating officer (IO) was appointed and a CDI was conducted. The CDI ROI includes several allegations pertaining to members of the WG/JA office. The following allegations pertain to the applicant:

Allegations 5 and 6. Between 1 Aug 17 and the present, the applicant and [redacted] engaged in an unprofessional relationship, in violation of AFI 36-2909, *Professional and Unprofessional Relationships*. **(SUBSTANTIATED)**. The IO indicated several former and current members of the WG/JA office brought information to the SJA and the comptroller squadron commander (CPTS/CC) suggesting the applicant and [redacted] engaged in an unprofessional relationship with each other. The IO concluded the preponderance of the evidence supported the applicant and [redacted] engaged in an unprofessional relationship. There was no evidence of sexual or even physical contact; however, the repetitive and lengthy nature of the time they spent together created a very real disruption in the legal office and was known to others in the

[REDACTED]

office. It was also apparent to the command chief master sergeant and the AF/JAJI inspectors after only brief periods of observation. Multiple witnesses also complained their work suffered and others were picking up their slack. Both the applicant and [redacted] confided they had feelings for each other and [redacted's] wife contacted a captain in the office to find out what was going on.

On 13 Dec 18, the applicant received an LOA for sending an unprofessional email criticizing office leadership and policies to junior administrative discharge team members. The LOA also stated the SJA in Sep 18 identified numerous deficiencies, errors and delays in the discharge program.

The applicant received a referral OPR for the reporting period 24 Jun 18 to 22 Dec 18. The rater (SJA) stated the applicant did not ensure timely service and created a liability for the government. She failed to deliver legally sufficient discharge packages, misrepresented the review process to a first sergeant and strained JA and commander relationships. The applicant sent an unprofessional email to co-workers and disregarded senior attorney guidance on discharge package compliance. The applicant was talented but failed to be professional. The additional rater (WG/CC) noted the applicant had a substantiated unprofessional relationship allegation from the 14 Nov 18 CDI. In her response dated 23 May 19, she states she filed a reprisal complaint with the IG, a Congressional inquiry complaint and an Article 138 complaint. She further contended the WG/CC responded to her Congressional complaint but did not address that the 17 Dec 18 LOC had been withdrawn. The WG/CC also did not address the lack of response regarding sexual harassment. Despite her reassignment from the WG/JA office in Feb 19, she received the referral OPR on 21 May 19 for the rating period 24 Jun 18 to 22 Dec 18. She stated she was a diligent and hardworking attorney and officer and did not believe her performance warranted a referral OPR.

The applicant provides her PRF for the P0422B major promotion board showing she received a "Definitely Promote" recommendation. The PRF stated she was "#1/3 of captains eligible and was #20 of 210 captains." The military personnel data system (MilPDS) reflects the applicant has one promotion deferral for the rank of major (O-4).

On 3 Jan 23, the ERAB denied the applicant's request for removal or correction of her referral OPR for the period ending 22 Dec 18. The ERAB was not convinced the behavior did not take place and noted the ERAB was not an investigative body in accordance with DAFI 36-2406.

DAF Form 100, *Request and Authorization for Separation*, Special Order dated 20 Apr 23 shows the applicant's resignation request was approved and she is projected for separation on 25 Aug 23.

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

#### **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.

DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, 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.

[REDACTED]

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.

### **AIR FORCE EVALUATION**

AFPC/DP3SP recommends denial. Evaluators must focus their comments, ratings and overall performance assessment ratings based on a member’s behavior and duty performance. Ultimately, evaluators must document how well a member does their job and the qualities the individual brings to the job. In the OPR, the rater, additional rater and reviewer documented and/or concurred with the overall performance assessment. The OPR represents the rating chain’s assessment of the individual’s performance at the time the report was completed. Therefore, based on the analysis of the facts and documentation provided, the applicant has provided insufficient evidence to substantiate there was an error or injustice as the OPR was accomplished according to regulatory/instruction guidance.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 12 Apr 23 for comment (Exhibit E). The applicant contends AFPC failed to address many pertinent facts, to include the reprisal, lack of mentorship and vague/improper comments on the OPR. AFPC’s advisory is void of any pertinent analysis to this Board and cannot be seriously considered.

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 AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant contends she was the victim of reprisal; however, the Board finds the applicant has provided no



[REDACTED]

evidence to sustain she was the victim of reprisal per 10 U.S.C. § 1034. The CDI ROI dated 14 Nov 18 substantiated two allegations the applicant engaged in an unprofessional relationship, which disrupted operations in the legal office. The Board finds the applicant's referral OPR for the period ending 22 Dec 18 properly documents the substantiated allegations in the CDI ROI and her failure to meet performance expectations and professionalism as indicated in the 10 Oct18 LOC and the 13 Dec 18 LOA. Accordingly, the Board agrees with the finding of the ERAB, the applicant failed to prove her behavior as indicated on the 22 Dec 18 referral OPR did not take place. 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-2022-02312 in Executive Session on 12 Jun 23:

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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 9 Jan 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: SAF/IG CDI ROI, dated 14 Nov 18. (WITHDRAWN)
- Exhibit D: Advisory Opinion, AFPC/DP3SP, dated 8 Apr 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Apr 23.
- Exhibit F: Applicant's Response, w/atchs, dated 21 Apr 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.

5/8/2025  
[REDACTED]

Board Operations Manager, AFBCMR  
[REDACTED]

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