



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02550

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

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

1. His letter of counseling (LOC) dated 5 Oct 20 be removed from his records, to include his officer selection record (OSR).
2. His referral officer performance (OPR) for the period ending 20 Apr 21 be replaced with a nonreferral OPR with the original stratification.
3. He receive a Meritorious Service Medal (MSM) for the period of his assignment.

**APPLICANT'S CONTENTIONS**

The LOC violates numerous 10 U.S.C. statutes., DODIs, and DAFIs and/or policy memorandums. He received an LOC on 5 Oct 20 based on a legally insufficient equal opportunity (EO) management inquiry (MI). The MI was in retaliation for numerous protected communications he made regarding his supervision.

Between May 19 and Aug 20, he made several protected communications to his chain of command in accordance with AFI 90-301, *Inspector General Complaints Resolution*, regarding his Navy civilian supervisor for fraud, waste and abuse and gross mismanagement, to include failure to follow senior leaders' directions, insubordination, false official statements and other violations. His complaints led to at least three investigations into his supervisor, resulting in a letter of reprimand (LOR) and a notice of proposed suspension, which was later downgraded to a second LOR. In direct response to the investigations initiated by his protected communication, his supervisor filed allegations against him with the equal employment office (EEO) claiming he contributed to a hostile work environment. After the inquiry, his supervisor was removed as confirmed by the letters provided. The Navy EEO had no authority to investigate him and the complaint should have been forwarded to the Air Force Inspector General (IG). Further, the investigating officer (IO) approached the situation as if he was a civilian employee and in doing so violated his due process and protection under the law. The EEO office proceeded with the inquiry despite his reprisal complaint and 10 U.S.C. § 1034. He also did not harass his supervisor, nor did he create a toxic work environment as the LOC alleges. While they occasionally had disagreements, he always remained professional. The MI is an instance of retaliation and reprisal and should be removed from his record, to include the LOC and referral OPR.

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Controlled by: SAF/MRB  
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He assumed the LOC would not find its way in his permanent records and affect his promotability based on statements that it would be a “desk drawer” LOC. Upon learning a referral OPR was intended, he requested the LOC be removed. He again addressed the reprisal actions in violation of 10 U.S.C. § 1034; however, no corrective action was taken. In Apr 21, his supervisor advised him he was not sure if the LOC would be filed in his OSR per DAFPM 2021-36-03, *Department of the Air Force Policy Memorandum on Adverse Information for Total Force Officer Selection Board*.

In Jul 21, he notified his chain of command the OPR filed in his records was missing eight pages of his response. His chain of command continued to engage in retaliatory actions against him by withholding the eight character references attached to his response. Per DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, paragraph 1.10.5.2.3.2, his full response, including attachments must become a part of the evaluation filed in the personnel record.

His chain of command did not notify the Air Force IG per DODD 7050.06. Then on 15 Aug 22, he was advised the group commander (GP/CC) used the LOC to disapprove an MSM for him in further violation of 10 U.S.C. § 1034.

He filed six Freedom of Information Act (FOIA) requests and there was no documentation attributed to any investigations or inquiries on file pertaining to allegations he created a hostile and/or toxic work environment.

In accordance with DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1.8, standalone LOCs are not considered adverse actions and should not be filed in an OSR. He also believes it is beyond the scope of the Evaluations Report Appeals Board (ERAB) and the DODIG to correct his records. He provides letters of support and character references proclaiming his professionalism, leadership and efficacy.

The applicant’s complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a major (O-4) in the Air Force.

On 5 Oct 20, his squadron commander (SQ/CC) issued the applicant a LOC. An investigation revealed between 1 Jun 19 to 30 Jul 20, he was derelict in the performance of his duties in that he made comments which were unprofessional and/or disrespectful about [redacted] and he created a toxic work environment. The contentious and toxic environment he created and/or enabled in the workplace had a negative impact on the mission and members of the unit. On 13 Oct 20, the applicant responded to the LOC. He privately challenged [redacted] and notified senior management when [redacted] was acting insubordinate to their authority and that he on more than one occasion had to correct information. The work environment between himself and [redacted] was challenging. However, he made reasonable attempts to work with him on their relationship while continuing to ensure operations.

The applicant received a referral OPR for the period 21 Apr 20 to 20 Apr 21. It stated he received a LOC for creating a toxic work environment, which created a negative impact upon members of his unit. In his response dated 21 May 21, he stated the referral OPR did not appropriately document his leadership and performance. Senior Navy leadership and those who directly supervised his performance for nearly twice as long as his current commander confirmed he was not the source of the toxic work environment and advocated against a permanent detriment to his career.

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SAF/IG provides documents pertaining to the applicant's reprisal complaint, FRNO 2022-01816. In a memorandum to the DOD IG dated 18 Jan 22, the applicant alleged reprisal by his supervisor, SQ/CC, GP/CC and wing commander (WG/CC). He was the deputy to his civilian supervisor. The reprisal came in the form of allegations used to initiate an investigation of a hostile work environment. The applicant included character reference letters. In a memorandum for record (MFR) dated 12 Sep 22, the numbered air force commander (NAF/CC) stated the applicant filed a reprisal complaint with the DOD IG on 18 Jan 22. On 4 May 22, the DOD IG dismissed the allegations citing no inference or causation. On 18 May 22, the major command IG (MAJCOM/IG) received the DOD Hotline Referral. Three of the potential subjects are no longer stationed at the installation and one is no longer employed with the Air Force. Due to the nature of the alleged wrong and the passage of time, there was reasonable probability sufficient information could not be gathered to reach a conclusion. Therefore, only the allegations of abuse of authority were addressed.

Allegation: The applicant's commander violated AFI 90-301, *Inspector General Complaints Resolution*, when he abused his authority by conducting a commander directed investigation (CDI), administered a LOC and endorsed a referral OPR. The IG found the actions administered did not result in a personal gain or advantage to his commander. The actions were based on relevant data and factors and they acted in a rationale matter, The evidence indicated the investigation was directed in response to a third party complaint to the EEO. The investigation found the applicant engaged in a pattern of misconduct intended to undermine his supervisor. The chain of command issued the applicant a LOC. The misconduct and the LOC were later documented in the applicant's OPR. The actions of his commander did not meet the criteria for abuse of authority. **(NOT SUBSTANTIATED)**

Allegation: His GP/CC violated AFI 90-301 when she abused her authority in the oversight of the CDI, issuing a LOC and endorsement of the referral OPR. The actions administered did not result in a personal gain or advantage to his commander. The GP/CC acted within her prescribed authority and the actions were based on relevant data. The investigation found the applicant engaged in a pattern of misconduct intended to undermine his supervisor. The chain of command issued the applicant a LOC. The misconduct and the LOC were later documented in the applicant's OPR. The actions of his commander did not meet the criteria for abuse of authority. **(NOT SUBSTANTIATED)**

Allegation: The WG/CC violated AFI 90-301 by abusing his authority by providing oversight during a CDI and his endorsement on a referral OPR. The actions administered did not result in a personal gain or advantage to his commander. The actions were based on relevant data and factors and he acted in a rationale matter, The evidence indicated the investigation was directed in a response to a third party complaint to the EEO. The investigation found the applicant engaged in a pattern of misconduct intended to undermine his supervisor. The chain of command issued the applicant a LOC. The misconduct and the LOC were later documented in the applicant's OPR. The actions of his commander did not meet the criteria for abuse of authority. **(NOT SUBSTANTIATED)**

Allegation: His supervisor abused his authority by his testimony during a CDI, his role in the applicant being administered a LOC and a referral OPR. The actions administered did not result in a personal gain or advantage to his supervisor. The actions were based on relevant data and factors and he acted in a rationale matter, The investigation found the applicant engaged in a pattern of misconduct intended to undermine his supervisor. The chain of command issued the applicant a LOC. The misconduct and the LOC were later documented in the applicant's OPR.

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The actions of his supervisor did not meet the criteria for abuse of authority. **(NOT SUBSTANTIATED)**

The applicant provides responses to his FOIA requests dated 19 Sep 22. An anonymous complainant alleged the applicant violated abuse of authority, mismanagement, oversight, systemic problems and fraud, waste and abuse. The redacted MI into Allegations of a Hostile Work Environment includes a report of inquiry (ROI) with multiple allegations, witness statements, letter to the Secretary of Navy, letters of reprimand (LOR), reply to notice of proposed suspension and performance appraisals. The management inquiry found the applicant was determined to discredit [redacted] to his leadership and second line supervisors was supported. The applicant attempted to misrepresent his leadership's intents in order to support his campaign against [redacted] (Allegation a).

On 20 Jul 20, the Navy IG forwarded the complaint and MI ROI to AFPC/IG for action deemed appropriate.

On 3 Jan 23, the applicant wrote to the P0523A Lieutenant Colonel CSB members to address the referral OPR. He stated he submitted a Whistleblower Reprisal case with the DOD IG and that the DOD IG found merit and assigned an investigator; however, his case was closed as it was beyond the 12-month window and was currently pending consideration by the AFBCMR. He requested the Board review his record as if the adverse information under review by the AFBCMR was not a part of his record.

The applicant was deferred for promotion to the rank of lieutenant colonel (O-5) by the P0523A CSB, public release date 26 Apr 23. It was his first nonselection and the military personnel data system (MilPDS) reflects his promotion deferral.

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.

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. Paragraph A14.2.1.8, LOCs related to a substantiated finding or conclusion from an officially documented investigation or inquiry. Paragraph A14.2.2., LOCs unrelated to a

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substantiated finding or conclusion from an official documented investigation or inquiry will not be considered adverse information.

DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, paragraph 1.10.5.2.3.2. Ratee Responsibilities. Must limit comments on referral OPRs, including pertinent attachments, to a total of 10 single sided pages or five double sided pages.

AFI 36-2406, *Officer and Enlisted Evaluations Systems*, The evaluation report appeals board (ERAB) will not consider nor approve requests to 10.2.4.1. Void an evaluation when the error or injustice can be corrected administratively. 10.2.4.2. Void an evaluation while keeping attachments to that evaluation. 10.2.4.3. Void an evaluator's section while keeping comments or ratings of subsequent evaluators. 10.2.4.4. Void an evaluator's comments but keep the ratings (or vice versa). 10.2.4.5. Delete required information or add unauthorized information to an evaluation. 10.2.4.6. Change (except for deletions) an evaluator's ratings or comments if the evaluator does not support the change. When an evaluator supports changing ratings, all subsequent evaluators must also agree to the changes (including the commander on EPRs, the reviewer on OPRs, and the Management Level Review Board President on PRFs). (T-1). Justification is required from the original evaluators. See Attachment 2, paragraph A2.3. 10.2.4.7. Re-accomplish an evaluation without the applicant furnishing the new evaluation.

**AIR FORCE EVALUATION**

AFPC/DP2SSM recommends denial for removal of the LOC. The applicant's commander issued a LOC based on the preponderance of evidence in accordance with AFI 36-2907, *Adverse Administrative Actions*. The LOC met the AFI requirements.

In accordance with DAFPM 2021 36-03, Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgement on the part of the individual. Adverse information includes but is not limited to LOCs related to a substantiated finding or conclusion from an officially documented investigation or inquiry. LOCs unrelated to a substantiated finding or conclusion from an officially documented investigation or inquiry will not be considered adverse information.

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 17 Apr 23 for comment (Exhibit E), and the applicant replied on 26 Apr 23. In his response, the applicant contended AFPC/DP2SSM cited DAFPM 2021 36-03, which requires LOCs related to a substantiated finding or inquiry be filed in the OSR; and that his commander issued the LOC based on the preponderance of evidence per AFI 36-2907 as satisfying the standard for the LOC, although they had no evidence to review. He reminds AFPC that per is FOIA case, AFPC has no officially documented investigation or inquiry on file in his case. Additionally, no other agency has any records that meet the standard. The LOC also cited four attachments, two of which were memorandums from individuals who later recanted. The recantations can be found in the character references in support of his case.

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/DP2SSM and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant contends he was the victim of reprisal and abuse of authority per 10 U.S.C. §1034. However, the Board reviewed the applicant’s reprisal complaint (FRNO: 2022-01816) and finds no evidence the applicant’s LOC dated 5 Oct 20 and the referral OPR ending 20 Apr 21 were due to any reprisal or abuse of authority. Accordingly, the Board concurs with the DOD IG’s conclusion on 4 May 22 there was no inference or causation and the complaint of reprisal was dismissed. Moreover, the 12 Sep 22, NAF/CC MFR concluded the applicant’s allegations his supervisor and commanders abused their authority in the issuance of the LOC and referral OPR were not substantiated.

The applicant contends there is no record of any official investigation and his stand alone LOC did not meet the criteria for AIS and should be removed from his records. However, the Board disagrees. Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, DAFI 36-2501 and DAFPM 2021-36-03, adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. The Board finds the LOC was based on an official Department of Navy MI. Moreover, the applicant’s DOD IG reprisal complaint, which was dismissed, and the NAF/CC MFR dated 12 Sep 22 document the applicant engaged in a pattern of misconduct intended to undermine his supervisor. The chain of command issued the applicant a LOC and later documented the applicant’s misconduct in his OPR. The Board finds the commander’s decisions to issue the applicant an LOC and referral OPR based on the MI were sound, within their discretion and authority and proper based on the findings and conclusions substantiating the applicant’s misconduct. With respect to the request for award of the MSM, the applicant has provided no evidence to show he was recommended or approved for award of the MSM. Accordingly, the Board finds the applicant has not provided sufficient evidence to warrant relief. 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-2022-02550 in Executive Session on 12 Jun 23:

<b>Work-Product</b>	Panel Chair
<b>Work-Product</b>	Panel Member
<b>Work-Product</b>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 12 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: SAF/IG Documentation, FRNO 2022-01816 (WITHDRAWN).
- Exhibit D: Advisory Opinion, AFPC/DP2SSM, dated 14 Oct 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Apr 23.
- Exhibit F: Applicant's Response, w/atchs, dated 26 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.

4/30/2024

*Work-Product*

Board Operations Manager, AFBCMR

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