

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02637

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

The Board reconsider his request for the following:

1. The Letter of Reprimand (LOR), dated 24 Sep 19, be removed from his record.
2. His retired rank be changed to lieutenant colonel (O-5) with full back pay from date of retirement.

Additionally, in subsequent communication to the Board, the applicant requested removal of the Officer Grade Determination (OGD) from his record.

RESUME OF THE CASE

The applicant is a retired Air National Guard major (O-4).

On 15 Jun 23, the Board considered and denied his request to remove the LOR, dated 24 Sep 19, from his official military personnel record, his retired rank be changed to lieutenant colonel (O-5), and he receive full back pay from date of retirement, finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The applicant acknowledged using familiar tones when communicating with his colleagues, having sexually explicit photographs of an enlisted member on his phone, and releasing Personally Identifiable Information data to an unauthorized person. While the applicant contended the information that supported the allegations of his misconduct was an invasion of his privacy by his former girlfriend, the Board found no evidence that she accessed and copied the applicant's personal data at the behest of the government or its agents. Further, the Board found the applicant's contention regarding the standard of proof for his LOR was moot. Finally, the applicant's assertions he received disparate treatment, and the LOR, referral officer performance report (OPR), and OGD were unjust or in error failed to sustain the burden of proof in accordance with Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The applicant was afforded due process for the LOR, and the OGD was found to be legally sufficient.

On 22 Dec 23, the applicant requested reconsideration of his request for his retired rank be changed to lieutenant colonel (O-5) from major (O-4). The applicant did not provide any relevant new evidence as required by DAFI 36-2603; therefore, the case was closed as non-viable, and the applicant was notified by letter.

On 27 Mar 25, the Board considered and denied his request to remove the LOR, dated 24 Sep 19, from his official military personnel record, his retired rank be changed to lieutenant colonel (O-5), and he receive full back pay from date of retirement, finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The applicant's new evidence clearly stated neither criminal investigators nor reports of criminal investigation substantiate allegations or make conclusions, rather attorneys review and analyze evidence and commanders decide final action. In this case, the applicant was the subject of the criminal investigation. The

standard of proof utilized to support the applicant's LOR, and his commander's authority to issue the LOR, were both in compliance with Air Force Instruction (AFI) 36-2907, *Adverse Administrative Actions*. Further, the resulting OGD was conducted in accordance with DAFI 36-3203, *Service Retirements*, Title 10, United States Code § 1370 (10 USC § 1370) and 10 USC § 1370a.

For an accounting of the applicant's original request and the rationale of earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit M.

On 17 Jul 25, by virtue of an email to the Board, the applicant requested reconsideration of his request to remove the LOR, dated 24 Sep 19, from his official military personnel record, his retired rank be changed to lieutenant colonel (O-5), and he receive full back pay from date of retirement. He contended one of the Board members who adjudicated his case served as the Executive Officer for the Director of the Air National Guard who signed his OGD, creating the appearance of a conflict of interest. Additionally, the applicant contended no advisory memorandum was requested from Secretary of the Air Force Personnel Council (SAFPC) despite evidence that the OGD relied on unsubstantiated claims and unauthenticated evidence.

In subsequent email communications in support of his reconsideration request, the applicant also requested removal of the OGD contending it was based on unsubstantiated and procedurally improper evidence and did not meet the regulatory threshold for overturning the presumption of satisfactory service. Further, the applicant contended the previous SAFPC advisory is now obsolete as it relied heavily on an LOR and related OGD findings that were proven to be factually and legally defective. According to the applicant, a congressional inquiry confirmed the Security Forces investigation cited in the LOR and OGD did not substantiate or make conclusions on any adverse findings. The evidence referenced was never authenticated, never presented to the applicant, and never subjected to legal review or rebuttal opportunity, in violation of DAFI 36-3203 and fundamental due process. Therefore, the applicant requested the Board direct a new SAFPC advisory. In addition, the applicant requested all evidence used to issue the LOR be legally authenticated contending the chain of custody was compromised, it was taken without legal authority, and he was denied any opportunity to review or rebut its existence or relevance. Furthermore, the applicant contended the AFBCMR Resume of the Case should be revised to reflect only factually verified information, distinguishing fact from opinion.

Finally, the applicant contended he was caused harm due to the erroneous determination. He experienced reputational harm resulting from reliance on vague, unsubstantiated allegations, financial loss due to denial of retirement in grade, affecting retired pay and associated benefits, denial of due process, and procedural injustice, including the submission of false and misleading information to the Board due to influence by the Air National Guard (ANG) in shaping the narrative, suggesting a conflict of interest among senior officials who prioritized protecting one another over ensuring a fair and impartial review.

In view of the applicant's contentions and concerns expressed in his 23 Jul 25 email, and subsequent email correspondence, the AFBCMR agreed to reconsider the applicant's request on their own motion.

The applicant's complete submission is at Exhibit N.

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-3203, Chapter 8 – *Determining Retired Grade and Pay*:

8.6.3. Initiating an OGD. The unit commander or other appropriate authority must initiate an OGD when:

8.6.3.4. The officer received nonjudicial punishment pursuant to Article 15, UCMJ or a letter of reprimand, since the officer's last promotion. (T-0) If the nonjudicial punishment or letter of reprimand has been set aside or rescinded, then an OGD is not required under this paragraph unless the nonjudicial punishment or letter of reprimand resulted from a substantiated adverse finding or conclusion as set forth in paragraph 8.6.3.5. Note: The following documents do not require the initiation of an OGD under this paragraph: a letter of counseling, a letter of admonition, a record of individual counseling, and/or a referral officer performance report. Similarly, removal from command, not based on a substantiated adverse finding or conclusion as set forth in paragraph 8.6.3.5, does not require the initiation of an OGD under this paragraph.

8.6.3.5. The officer, since the last promotion, has been the subject of any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation, proceeding, or inquiry conducted by competent military or civilian authorities (except minor traffic infractions), regardless of the command action taken against the officer (if any). (T-0) Examples of officially documented investigations, proceedings, or inquiries include, but are not limited to: command-directed investigations (CDIs); Inspector General (IG) investigations; and Equal Opportunity investigations.

8.6.3.6. In any other case in which the commander or other appropriate authority believes an OGD is appropriate. (T-1) When an OGD is initiated under this paragraph only, the commander or appropriate authority who initiated the OGD may terminate it, if it is not determined to be necessary. In such cases, the initiating commander or appropriate authority must provide a signed memorandum to the RAA explaining the basis for terminating the OGD. (T-1)

8.6.4. Commanders or other appropriate authorities shall initiate OGDs in the following manner:

8.6.4.3. *Notify the member.* If an OGD is required, the subject officer must be notified of the reason(s) for initiating the OGD and afforded an opportunity to respond within 10 business days in accordance with the rights identified in the notification memorandum (see Figure 8.1). (T-1) All information relevant and material to the determination of satisfactory service in each grade at issue must be forwarded to the subject officer to provide the officer an opportunity to respond. (T-1)

DAFI 36-2603, Chapter 2 – *Board Responsibilities:*

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. However, the Board may, in its discretion, hold a hearing or call for additional evidence or opinions in any case. Applicants may request a hearing; however, the decision to grant a hearing is at the sole discretion of the Board.

2.4.1. The administrative record in AFBCMR cases shall consist of the following:

2.4.1.1. Any decisional memoranda from the AFBCMR to the applicant.

2.4.1.2. The formal Record of Proceedings that records the decision of the AFBCMR on the applicant's case.

2.4.1.3. Any application, correspondence, and exhibits submitted by the applicant.

2.4.1.4. Any advisory opinions that the AFBCMR obtains in evaluating the case, along with any rebuttals and exhibits submitted by the applicant.

2.4.1.5. Any correspondence from any federal court which intervenes in an AFBCMR application (e.g., remand orders).

2.4.2. The AFBCMR has the sole discretion to determine if any other documents shall become part of the case record. The AFBCMR may, at its discretion, review DAF files to include the applicant's personnel record to determine if any additional files are relevant to its case review. It is otherwise incumbent upon the applicant to submit exhibits believed to be relevant to the AFBCMR's review.

5 USC § 706 – *Scope of Review*

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

AIR FORCE EVALUATION

SAF/MRBL found no evidence of error or impropriety. The ANG acted within their legal authority and SAFPC appropriately processed the OGD.

On 6 May 24, the applicant requested reconsideration of his request for his retired rank to be changed to lieutenant colonel. The applicant contended he was never made a subject of any substantiated adverse findings or conclusions from an officially documented investigation. Per the applicant, this is a mandatory DAFI requirement when initiating an OGD. He further contended the entire Security Forces Squadron (SFS) Summary Report should be thrown out because it is not an officially documented investigation that substantiated anything. The applicant also stated ANG leadership used this “worthless but legal document” to write an administrative LOR that required no standard of proof. However, the applicant contended this SFS Summary Report was not acceptable material to justify an OGD. He contended the standards of proof are much different. According to the applicant, the previous AFBCMR cases did not observe critically important evidence nor take into consideration the mandatory requirements contained in the DAFI and AFIs. With the inclusion of the congressional inquiry, it now clarifies his OGD recommendation was improperly handled by the ANG.

The applicant’s OGD was appropriately initiated under DAFI 36-3203, paragraphs 8.6.3.4 or 8.6.3.5. DAFI 36-3203, paragraph 8.6.3.5, notes an OGD is required when “[t]he officer, since the last promotion, has been the subject of any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation, proceeding, or inquiry conducted by competent military or civilian authorities (except minor traffic infractions), regardless of the command action taken against the officer (if any). The applicant promoted to lieutenant colonel on 30 Jan 19. Following his promotion, an SFS Report of Investigation (ROI), dated 24 Jul 19, provided the following in its synopsis section: “the investigation revealed [applicant] knowingly failed to obey a lawful regulation by repeatedly using his government email to flirt and send unprofessional communications with his co-workers. The investigation revealed during the investigative period of 1 Nov 12 to 30 Jul 18, [applicant] knowingly fraternized on multiple occasions with three enlisted and formerly enlisted personnel...revealed inconclusive evidence to

support the accusation of extramarital sexual conduct...[applicant] did forward a General Officer award package and personnel information...”

The SFS ROI was an officially documented investigation conducted by competent military authorities. The applicant only references the SFS Report; however, the official documentation is a 96-page ROI, published on 22 Jul 19. The ROI including interviews and signed, sworn statements on AF Forms 1168, *Statement of Suspect/Witness/Complainant*. The investigative steps taken, and the subsequent ROI Security Forces investigations, were conducted in accordance with federal law and regulations, and the reports produced in association with those investigations are official reports subject to applicable federal law. As with all law enforcement investigations, those conducted by Security Forces Investigators are aimed at collecting evidence to present to a decision authority, typically the commander of a military member. Although “substantiated finding” is not defined within DAFI 36-3203, there is a mention of OGDs in DAFI 90-301, *Inspector General Complaints Resolution*. DAFI 90-301, paragraph 4.19.1, states, “Substantiated: A substantiated finding results when a preponderance of the evidence supports the allegation of a wrong or violation of law, regulation, procedure, or Department of the Air Force policy or standard. The facts indicate a violation of standards occurred.” The investigation finished in 2019 shortly after the applicant’s Jan 19 promotion, so it was appropriate to hold an OGD for him in the grade of lieutenant colonel (O-5), at a minimum, pursuant to DAFI 36-3203, paragraph 8.6.3.5, when his leadership substantiated the findings. If the LOR had not been legally sufficient, this basis could be cited for initiating the OGD.

Furthermore, the LOR and subsequent actions are legally sufficient and formed an appropriate basis for initiating the OGD. DAFI 36-2907, paragraph 1.2.1, further states, “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 credible, the information must be resolved and supported by a preponderance of the evidence, the standard of proof for adverse administrative actions which is used to evaluate evidence and the wording in an LOR. DAFI 36-2907, paragraph 2.2.1, further states, a “preponderance of the evidence” means it is “more likely than not that a fact exists... [i]t is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses.” The then-Air National Guard Readiness Center Vice Commander (ANGRC/CV) substantiated the investigation’s findings. These facts and the evidence gathered were used as the cited underlying misconduct when ANGR/CV reprimanded the applicant through the LOR, dated 24 Sep 19. The LOR, not the Security Forces Report, was cited as the specific required basis for the OGD in the notification memo, with the OGD initiated pursuant to DAFI 36-3203, paragraph 8.6.3.4. The LOR only cited the misconduct the Report found as conclusive. SAFPC considered the LOR when boarding the case and making a recommendation to the Air Force Review Boards Agency (AFRBA).

Finally, command was authorized to initiate an OGD even in the absence of an LOR or substantiated allegation. Although the applicant focuses his contention on the legality of the LOR and investigation, there are other provisions permitting the processing of an OGD. DAFI 36-3203, paragraph 8.6.3.6, permits OGDs to be initiated, “[i]n any other case in which the commander or other appropriate authority believes an OGD is appropriate.” Therefore, a commander has wide discretion in initiating the OGD. There is no mention of standard of proof required for the commander to initiate the OGD, or any other constraints provided.

The complete advisory opinion is at Exhibit O.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 30 Oct 25 for comment (Exhibit P), and the applicant replied on 30 Oct 25. In his response, the applicant contended he requested a legal review of the evidence and the advisory opinion avoided this entirely and limited its analysis to process routing. Per the applicant, the admissibility, authentication, and legality of the material used against him remained unaddressed.

According to the applicant, DAFI 36-3203 requires adverse information to be substantiated, authenticated, documented, and available for rebuttal. None of this occurred. A preponderance of evidence standard cannot apply to unauthenticated, illegal, denied material. A congressional inquiry response signed by the 316 WG/CC confirms the investigation did not substantiate allegations, reach findings, or authenticate the referenced material. This contradicts SAFPC and must be addressed. The applicant additionally contended OGDs assess service in the current grade. The alleged conduct pre-dates his promotion and was unsubstantiated.

The applicant again requested a revised SAFPC advisory reflecting the official evidence and a legal review to address evidentiary admissibility. He also requested he be provided all advisory memoranda used in this case.

In a supplemental response to the advisory, the applicant contended the legal review avoided acknowledging that the material used to justify the LOR and OGD was never authenticated, no chain of custody exists, no metadata was reviewed or validated, the material was obtained from his personal device without knowledge or consent, and the Security Forces investigation did not substantiate any allegations or reach conclusions. Per the applicant, a legal review that declines to evaluate admissibility and authentication is legally insufficient.

The applicant further contended for over three years he has been denied access to the material used against him despite DAFI 36-3203, paragraph 8.6.4.3, requiring members be informed of and permitted to review adverse information.

Additionally, the applicant contended an OGD evaluates satisfactory service in grade and requested identification of one adverse finding, allegation, or disciplinary action that occurred while he served as a lieutenant colonel. Per the applicant, the SFS investigation was unsubstantiated, drew no conclusions, and did not authenticate any material, the LOR inclusive dates pre-date his promotion, the referral OPR only notes receipt of an LOR from a prior grade, and his GS-15 director recommended retirement in grade.

Finally, the applicant presented his concern regarding redaction and transparency contending prior advisory memoranda included names for reviewing attorneys and this one did not. Per the applicant, transparency is required in records correction proceedings.

In an additional supplemental response, the applicant objected to inclusion of the advisory in his case file contending it is procedurally flawed, materially biased, anonymous, and does not answer the two legal questions he submitted for review. Per the applicant, anonymous legal opinions lack accountability, cannot be scrutinized for conflicts of interest, and do not meet transparency requirements expected in administrative correction proceedings.

The applicant contended the advisory failed to address whether the photographs used as the basis for the LOR/OGD were authenticated, lawfully obtained, or admissible under the preponderance of evidence standard, failed to explain why the applicant and his legal counsel were denied access to material in violation of DAFI 36-3203, paragraph 8.6.4.3, and instead of evaluating admissibility or legality, the advisory cited unrelated paragraphs, incorrect authorities, and extraneous narrative that has no relevance to an OGD.

Furthermore, the applicant contended the ANGRC/CC cited fraternization as the sole basis for recommending an OGD and DAFI 36-3203, paragraph 8.6.3.6, is not cited. The advisory cited this without merit and appears to be alleging a post hoc justification that was never cited in the original OGD in violation of 5 USC § 706. Per the applicant, there is no correlation between the only derogatory document in his official record and the administrative LOR/OGD recommendation.

According to the applicant, the advisory language minimizes, rather than evaluates, the core issues, and because the advisory fails to answer the two questions presented, the applicant requested the advisory not be included as a basis for adjudication and a legally sufficient advisory be issued addressing only the authenticity, legality, and admissibility of evidence and the denial of access to that evidence.

Finally, the applicant requested the individual responsible for drafting narrative on his behalf in these advisories be removed from further involvement as their submissions are neither accurate nor objective, and they mischaracterize his requests. Per the applicant, prior summaries have been inaccurate, misleading, and prejudicial, and only his own written submission should be used for Board deliberation.

The applicant's complete response is at Exhibit Q.

AIR FORCE EVALUATION

FOA/JAJI found insufficient evidence to recommend relief on the basis of legal error.

The applicant requested removal of an LOR, dated 24 Sep 19, from his records and reversal of the decision of the OGD, dated 16 Nov 21, that retired him in the grade of major (O-4). This is the applicant's third reconsideration. FOA/JAJI adapts and concurs with the facts and analysis of the previous Record of Proceedings as well as the advisories provided to the Board and applicant, to include the SAF/MRBL advisory, dated 19 Sep 25.

The applicant demanded a legal review of the evidence. He contended the evidence is unauthenticated and inadmissible, that there was no investigation that substantiated allegations, and objects to the scope of the OGD. He requested the AFBCMR obtain a revised advisory from SAFPC, direct a legal review of the evidence, and provide all advisory memoranda used in the case. The applicant "has the burden of providing evidence in support of their allegation(s) of an error or injustice," (DAFI 36-2603, paragraphs 2.4, 3.4.4, 3.10.5 and 4.1) and the AFBCMR is bound to draw every reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the AFBCMR can reverse an arbitrary or capricious decision for an abuse of discretion. *Roberts v. United States*, 741 F.3d 152, 158 (D.C. Cir. 2014) (reviewing decision of a military corrections board under an "unusually deferential application of the 'arbitrary or capricious' standard"). The applicant demands the Board prove multiple items (including authentication of evidence, chain of custody, evidence obtained by witness and turned over to Security Forces, etc...); however, it is the applicant's burden to prove his contentions, not the other way around.

On 22 Jul 19, 11 SFS/S21 published an ROI concerning an investigation that the applicant failed to obey a lawful order or regulation, in violation of Article 92, Uniform Code of Military Justice (UCMJ), engaged in conduct unbecoming an officer and gentlemen, in violation of Article 133, UCMJ, and engaged in fraternization and extramarital conduct, both in violation of Article 134, UCMJ. The ROI was an officially documented investigation conducted by component authorities. Investigators interviewed witnesses, signed and sworn witness statements were collected, memoranda from witnesses were provided to the investigators, and a witness provided

photographs of the contents of the applicant's phone she took with her personal mobile phone prior to the initiation of the investigation. According to the ROI, the images provided clear faces, names and email information of the women detailed in the witness's statement. There is no evidence the witness accessed or copied the applicant's personal data at the behest of the government or its agents. As such, there is no prohibition against Security Forces using the information provided in their investigation or from command/SAFPC using it in the subsequent LOR and OGD processes.

The ROI was turned over to command for disposition. A commander may take no action, administrative action, impose nonjudicial punishment, or, for certain offenses, initiate court-martial proceedings. The applicant's commander elected to serve the applicant an LOR. After reviewing the applicant's response to the LOR, he upheld the LOR. It was within the commander's discretion to give the witness testimony and other evidence the credibility and weight they believe it deserved in determining whether by the preponderance of the evidence the applicant fraternized with various enlisted personnel on terms of military equality and violated the Privacy Act (which the applicant admits he did). A rational factfinder could conclude it more likely than not the alleged misconduct occurred under the preponderance of the evidence standard. (DAFI 36-2907, paragraph 2.2). Every reasonable inference from the evidence supports the decisions of the principals who resolved questions of fact and took the actions at issue. There is no evidence of an abuse of discretion.

As stated in the applicant's exhibit, "the commander was provided all evidence collected in the course of the investigation, including witness statements, documents, and photographs. Judge advocates reviewed and analyzed the evidence, and made recommendations as to potential courses of action to the commander. The commander then took appropriate action based upon the evidence and the advice of counsel." (Letter to [congressional representative], dated 22 Jan 24).

Chain of custody begins upon receipt of the evidence by Security Forces. The applicant has provided no evidence the chain of custody for the evidence gathered by Security Forces in the investigation in question was broken.

The applicant may submit a Freedom of Information Act/Privacy Act request for the Exhibits to the ROI. The applicant is correct that the ROI does not conclude any allegation was substantiated or for that matter not substantiated. (See DAFI 36-2907, paragraph 1.2.1.1). The commander concluded the applicant fraternized and violated the Privacy Act. The applicant is incorrect in his assertion that his OGD was triggered by being the subject of any substantiated adverse finding(s) or conclusions(s) from an officially documented investigation. His OGD was triggered, as stated in the Officer Grade Determination Notification, dated 11 May 21, by misconduct resulting in a LOR and a referral OPR.

The applicant received the LOR as a lieutenant colonel (O-5). An officer is subject to a mandatory OGD if they have received a LOR since their last promotion. (DAFI 36-3203, paragraph 8.6.3.4). Receipt of a referral OPR is not a mandatory trigger for an OGD; however, that does not preclude it from being a basis for an OGD. A commander may initiate an OGD in any case they deem appropriate. (*Id.* at paragraph 8.6.3.6). The LOR and OGD are addressed in the SAF/MRBL advisory and FOA/JAJI concurs with their analysis and conclusions. FOA/JAJI highlights that the secretary of a military department may retire military officers "in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily." [10 USC § 1370(a)(1)]. For officers "serving in a grade at or below the grade of major general," the "Secretary of the military department concerned" determines whether the officer served "satisfactorily" at his or her highest grade. [*Id.* § 1370(a)(2)]. If the Secretary determines that an officer committed misconduct at a certain grade, then the Secretary "may

deem the officer to have not served satisfactorily” at that grade, and any higher grades, and retire the officer at a lower grade. [*Id.* § 1370(a)(3)].

The applicant demands the Board obtain a second SAFPC advisory. It is within the Board’s discretion to request an advisory opinion. (DAFI 36-2603, paragraph 4.2.2). Finally, the applicant requests all advisory memoranda used in the case. In accordance with DAFI 36-2603, paragraph 4.3, “Applicants shall be given an opportunity to review and comment on all correspondence and communications (including advisory opinions) to or from the AFRBA and with an entity or person outside the AFRBA that pertain directly to the applicant’s case or may have a material effect thereon...This rule does not apply to classified information; release of information which is otherwise prohibited or privileged in accordance with the Privacy Act of 1974 authorized by DoDD 5400.11, *DoD Privacy Program*; any record previously provided to the applicant or known to be possessed by the applicant...”

The complete advisory opinion is at Exhibit R.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 Dec 25 for comment (Exhibit S), and the applicant replied on 22 Dec 25. In his response, the applicant contended there is material conflict between the two legal advisories currently associated with his case. Per the applicant, the SAF/MRBL advisory, dated 19 Sep 25, explicitly asserts the Security Forces investigation produced substantiated findings and the ANG leadership substantiated the findings, forming the legal basis for both the LOR and initiation of his OGD.

The applicant contended, by contrast, the subsequent AF/JAJI advisory conceded that Security Forces investigations do not substantiate allegations, do not make findings or conclusions, and merely collect information for a commander to assess.

According to the applicant, these positions are irreconcilable. Both cannot be true, yet both appear to remain in his AFBMCR record without reconciliation or correction. The applicant contended this contradiction is outcome-determinative under DAFI 36-3203, paragraph 8.6.3.5, which requires substantiated adverse findings to support an OGD. The applicant requested the Board confirm how it intends to resolve this conflict and whether a corrected or superseding advisory will be obtained.

In multiple supplemental responses, the applicant reiterated his original and subsequent contentions regarding the LOR, OGD, and advisory opinions, in detail. The applicant again requested the Board solicit new advisory opinions from SAFPC and ANG, and/or direct SAFPC and ANG to update/withdraw advisory language regarding substantiated findings and key evidence being unauthenticated, and/or direct materially inaccurate advisory content be annotated or excluded from the case file, and/or provide the applicant with rationale for retaining uncorrected advisory material before proceeding with adjudication.

The applicant’s complete response is at Exhibit T.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, to include the applicant’s multiple rebuttal responses, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The applicant’s

repeated arguments, previously adjudicated by this Board and found insufficient to support his requests, are not compelling, and this Board finds no reason to overturn the previous Boards' decisions. Furthermore, this Board adopts the findings and conclusions of the previous Boards, finding their deliberation of the case to be thorough, and the subsequent denial of the applicant's requests to be well developed, fully justified, and supported by the evidence presented.

Additionally, the Board concurs with the rationales of SAF/MRBL and FOA/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant demanded the Board conduct a legal review of the evidence used to support the LOR and OGD, contending it was unauthenticated and inadmissible, and he was denied access to the evidence in violation of DAFI 36-3203. The applicant also contested chain of custody of that evidence by the SFS but provided no evidence the chain of custody in the investigation in question was broken. Regardless, in accordance with DAFI 36-2603, the Board is not an investigative body; therefore, the applicant bears the burden of providing evidence of an error or injustice. The applicant may submit a Freedom of Information Act/Privacy Act request for the exhibits to the SFS ROI.

The applicant further contended his OGD was triggered by being the subject of substantiated adverse findings or conclusions from an officially documented investigation; however, his OGD was triggered, as stated in the Officer Grade Determination Notification, dated 11 May 21, by misconduct resulting in a LOR and a referral OPR. An officer is subject to a mandatory OGD if they have received a LOR since their last promotion in accordance with DAFI 36-3203, paragraph 8.6.3.4. Receipt of a referral OPR is not a mandatory trigger for an OGD; however, that does not preclude it from being a basis for an OGD. Moreover, the OGD was conducted in accordance with DAFI 36-3203, 10 USC § 1370, and 10 USC § 1370a. It is wholly within Secretary of the Air Force's authority to determine satisfactory service in any grade equal to or higher than the grade in which misconduct occurred.

The applicant's rebuttal responses demanding a revised SAFPC advisory addressing the 316 WG/CC congressional inquiry response, dated 22 Jan 24, were noted by the Board; however, calls for additional evidence or opinions in any case are within the discretion of the Board, in accordance with DAFI 36-2603. In the instant case, the Board again found the 316 WG/CC congressional response clearly states neither criminal investigators nor reports of criminal investigation substantiate allegations or make conclusions, rather attorneys review and analyze evidence and commanders decide final action. The applicant was the subject of a criminal investigation. The standard of proof utilized to support the applicant's LOR, and his commander's authority to issue the LOR, were both in compliance with AFI 36-2907.

The Board also noted the applicant's contentions that the SAF/MRBL and FOA/JAJI advisory opinions are in conflict regarding whether the SFS investigation substantiated any findings. The Board disagrees. Both advisory opinions conclude law enforcement investigations, such as the investigation which resulted in the SFS ROI in question, are aimed at collecting evidence to present to a decision authority, typically the commander of a military member. As stated in the 316 WG/CC congressional response, "the commander was provided all evidence collected in the course of the investigation, including witness statements, documents, and photographs. Judge advocates reviewed and analyzed the evidence and made recommendations as to potential courses of action to the commander. The commander then took appropriate action based upon the evidence and the advice of counsel."

Finally, in a supplemental response, the applicant contested redaction of the FOA/JAJI advisory opinion author's signature block contending it undermines transparency and accountability; however, redaction was authorized in accordance with DAFI 36-2603. The applicant also contended the FOA/JAJI advisory opinion erroneously asserts he admitted to a Privacy Act violation; however, this contention is contradicted by the applicant's LOR response, dated 3 Oct

19, provided by the applicant, in which he specifically accepts responsibility for this action. 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-2022-02637 in Executive Session on 23 Mar 26:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit M: Record of Proceedings, w/Exhibits A-L, 30 Apr 25.
Exhibit N: Email in lieu of DD Form 214, 23 Jul 25, including supplemental documents.
Exhibit O: Advisory Opinion, SAF/MRBL, dated 19 Sep 25.
Exhibit P: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Oct 25.
Exhibit Q: Applicant's Response, dated 30 Oct 25.
Exhibit R: Advisory Opinion, FOA/JAJI, dated 19 Dec 25.
Exhibit S: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Dec 25.
Exhibit T: Applicant's Response, dated 22 Dec 25, including supplemental documents.

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.

X

Board Operations Manager, AFBCMR