

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02757

XXXXXXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The adverse information in his master personnel records group (MPerGP) and officer selection record (OSR) pertaining to the 5 Jan 20 terrorist attack on the Cooperative Security Location (CSL), Manday Bay, Kenya be removed from his records.

APPLICANT'S CONTENTIONS

He requests relief from DPAFM 2021-03603, *Adverse Information for Total Force Officer Selections Boards*, requiring the filing of an Adverse Information Summary (AIS) in the MPerGp and OSR. Specifically, he requests the substantiated investigation memorandum pertaining to the Army Regulation 15-6 (AR 15-6) Report of Investigation (ROI) and the follow-on Independent Review (IR) directed by the Secretary of Defense (SecDef) and the Secretary of the Army be removed.

The AR 15-6 investigation and the IR did not follow procedures for an official investigation. The allegations were vague and generalized and lacked specificity on how he was negligent. The allegations shifted at each phase and the finalized IR introduced a new substantiated allegation that was not provided to him for comment, in violation of regulations and his due process rights. The new allegations in the IR included factual errors, leaps of facts and misinterpretation of duty responsibilities which were ultimately used in the AIS and is now a part of his permanent records.

He was issued a letter of counseling (LOC) by the Consolidated Disposition Authority (CDA) upon the Air Force's receipt of the AR 15-6 ROI and IR. Upon review of his response to the LOC, the CDA determined he did not engage in the alleged conduct and the LOC was withdrawn. It was determined no action would be taken against him. Nevertheless, the substantiated findings drove an AIS to be filed in his records in accordance with the Secretary of the Air Force (SecAF) policy in DPAFM 2021-36-03. He previously attempted to correct the injustices of the AIS by filing an informal Article 138 complaint against his commander. Unfortunately, his efforts to seek relief were unsuccessful.

The Air Force blueprint for investigations is DAFMAN 1-101, *Commander Directed Investigations (CDI)*. It states the first steps are to provide an investigating officer (IO) with "framed allegations." It also warns against vague or poorly worded alleged conduct that does not amount to wrongdoing in violation of any law, regulation or policy. On 9 Sep 21, he received a redacted AR 15-6 ROI and the preliminary IR. The preliminary IR stated he was "negligent in the performance of certain duties in a period prior to the attack." However, the finding lacked any specificity regarding which specific duties he was negligent in performing. Most importantly, no specific duty responsibilities were identified to put him on notice for how to respond. This was a violation of his Constitutional right to due process and a violation of his statutory rights as an Airman under DAFMAN 1-101. He still does not know which specific duties he was alleged to have been negligent in performing. Had he been afforded the opportunity to respond, the allegation may have been unsubstantiated.

The first portion of the IR allegation states he was negligent in his duties to assess threats and develop risk mitigation. However, this statement is problematic because assessing threats to installations is a larger function of the force protection threat working group in accordance with DODI 2000.16V1-DAFI 31-145-0, *Anti-terrorism (AT) Program*. These were shared responsibilities and were not his exclusively as implied by the IR. Liberties were taken within the IR with regard to positional duty responsibilities. He also takes issue with the charge he failed to provide higher leadership and relevant commanders with sufficient recommendations to mitigate force protection deficiencies.

The investigations were not conducted in accordance with his rights. While investigations conducted by another service component do not have to meet Air Force standards, they should at least meet the Air Force's minimum requirements for the protection of an Airman's due process rights. He hopes the Board will see a violation of his due process rights by another service component is not okay, regardless of the high profile nature of the incident. If substantiated investigations by other branches of service are included within the AIS requirement, the investigations should meet minimum standards outlined in DAFMAN 1-101.

He accepts full responsibility for his actions and or inactions that allegedly contributed to the outcome of the attack. It was a tragic event that resulted in death. He will have held his current rank longer than any other rank and stands by his belief his service has been honorable, satisfactory and credible. It is important to him he finish his career with an unblemished record. He is not promotable and will be retiring with 30 years of service in Oct 23. He has no aspirations to ever work for the government again and simply wishes to correct his records before he retires.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a colonel (O-6) in the Air Force.

On 5 Jan 20, an enemy force of 30 to 40 Al Shabaab fighters attacked U.S. forces and assets at the Manday Bay CSL and killed three U.S. citizens, wounded three U.S. citizens and destroyed U.S. and Kenyan aircraft and other property before they were engaged and forced to withdraw. At the time, the applicant was the Chief, Security Forces Division, United States Air Forces in Europe-Air Forces Africa (USAFE-AFAF).

On 6 Jan 20, an IO was appointed. The ROI dated 29 Dec 20 and the Executive Summary and Action on Findings of the AR 15-6 Investigation dated 31 Dec 20 shows the IO led a diverse, joint service team of subject matter experts (SME). The Commander, United States Africa Command concurred with the IO that four broad factors (force protection, understanding the threat, security forces preparation and mission command) contributed to the outcome of the attack and the resultant loss of lives, aircraft, equipment and injuries. It was determined the loss of life or damage to property were not the direct result of any misconduct or criminal negligence by any U.S. personnel. There was no single point of failure that resulted in the loss of life or damage to property. However, failures and inactions by the leaders of the Expeditionary Air Base Squadron (EABS) and lack of oversight by commanders and staff officers at the group, wing, AFAF and USAFRICOM contributed to the loss and damage to property in excess of \$90 million. The approach to force protection was characterized by a general culture of complacency which permeated every echelon and existed for several years. The security forces lacked basic tactical fundamentals for defending the terrain and their training did not include collective level training or a mission rehearsal exercise to ensure the force was adequately prepared to provide force protection. The overall sense of complacency and an acceptance of the status quo displayed by the EABS and the base defense force (BDF) leadership resulted in the airfield being highly

vulnerable to an attack. These commanders should have ensured nighttime weapon qualification and proper maintenance of ammunition. The IO noted there were mitigating factors to include each leader had a sizable scope of duties that spanned a broad area. However, they were aware of the physical force protection shortfalls but it was commonly believed it was not a likely location for a terrorist attack.

On 13 Jan 21, the completed investigation was forwarded to the Acting SecDef. On 29 Nov 21, in accordance with the direction of the SecDef an IR was conducted into the investigation. The investigation found every successive leader that visited the CSL contributed to the successful attack by tolerating complacency. Further, local commanders did not enforce a commensurate force protection mindset. The Security Forces organization, preparation, training, and defensive plans were inadequate to counter the threat. The posture, capability, and performance weaknesses of the Air Force Security Forces contributed to the vulnerabilities and made it more susceptible to an enemy decision to attack the airfield. The Air Force Security Forces were assigned to the BDF, which was a part of the EABS. The lack of effective oversight of the EABS leadership of the BDF was evident based on the deficiencies within the Security Forces and the lack of involvement on a day to day basis.

In a memorandum for record (MFR), Addendum to Executive Summary and Actions on Findings, AR 15-6 Investigation, dated 20 Jan 22, the Commander, Africa Command stated he approved the findings without accounting for the inconsistent statements regarding the purchase of concertina wire. The contradictory statements should not have made it into the final report. What remained clear was that the concertina wire fence was not installed prior to the attack on 5 Jan 20. The finding was changed to read the wing commander (WG/CC) ordered the squadron and group to have the concertina wire around the airfield installed no later than 31 Jan 20. The IR found the investigation was thorough and accurate and provided reasonable and appropriate findings and recommendations. The IR agreed with the investigation's conclusion Security Forces were unprepared to respond to the attack. Certain senior officers above the O-5 level contributed to the inadequate force protection posture and to some extent allowed a climate of complacency and a poor understanding of the threat.

On 4 Feb 22, the applicant received an LOC. It stated that an investigation disclosed he was negligent in his duties by failing to provide adequate leadership focus on potential threats and force protection at the CSL. He did not provide sufficient operational level leader oversight of the CSL and did not accomplish sufficient leader oversight of subordinate units to ensure adequate force protection of the airfield, resulting in a general culture of complacency. The negligence made the airfield a more vulnerable target than it otherwise would have been with more aggressive force protection measures in place.

In a response to the LOC dated 10 Feb 22, he stated he understood the need for accountability given the severity of the situation and the subsequent loss of life at the CSL. He accepted the accountability required. He is no stranger to accountability and that acceptance of responsibility for the actions of those under your command is the essence of the burden of command. However, this situation was very different because the positional authorities and responsibilities between commanders and staff officers are not the same. He addressed the generalized statements in the LOC, to include a small staff of 31 was insufficient to support two combat commands simultaneously and manpower was further cut when USAFE assumed command. Force protection dollars were insufficient to account for the new mission growth. He did not have the resources necessary to meet the expectations set forth in the ROI and in the LOC. He did the very best with what he had and senior leadership was fully aware of the limitations. He asked if the institution was simultaneously accountable for failing to provide sufficient antiterrorism and force protection funding to properly support two high ops tempo commands. He also asked about the direction from his command that told him to focus the efforts in Africa on building out the super base and not to worry about other CSLs because they would be departing the locations. He is not shifting

blame but suggests shared accountability if he is to be held to the standard. The applicant provided witness statements and character statements on his behalf.

On 16 Feb 22, upon review of the applicant's response to the LOC, the CDA determined the applicant did not engage in the conduct in the LOC and determined the counseling would be withdrawn and no action would be taken. The document would not be placed in an unfavorable information file (UIF) and OSR.

SAF/IGQ provides AFIMSC/IG memorandum, Notification of Administrative Adverse Action Against an Officer (FRNO 2022-09672) dated 6 Jun 22. It provided a synopsis of the AR 15-6 investigation. The IR concluded the applicant was negligent in his duties to assess threats to installations and operating locations and develop risk mitigation options for AFAF and oversee all planning, programming and sustainment strategies for security related facilities, equipment and manpower force protection at the CSL. He failed to provide higher leadership and relevant commanders with sufficient recommendations to mitigate force protection deficiencies. After the ROI was forwarded to the CDA, the applicant was issued an LOC dated 4 Feb 22. However, after the applicant provided a response to the LOC on 16 Feb 22, the CDA found the applicant did not engage in the conduct noted in the AR 15-6 investigation and the IR and decided the LOC would be withdrawn.

The applicant's automated records management system (ARMS) includes the following adverse information documents.

a. Adverse Information Summary (AIS). The AIS states it was alleged he did not adequately perform his duties as the AFAF Chief, Security Forces Division. The findings included: (1) The AR 15-6 investigation found the lack of oversight and that commanders contributed to the 5 Jan 20 attack. (2) The IR found the applicant was negligent in his duties to assess threats to installations and operating locations and develop risk mitigation options for AFAF and oversee planning, programming and sustainment strategies for security related facilities, equipment and manpower force protection at CSL. He failed to provide AFAF higher leadership and relevant commanders with sufficient recommendations to mitigate force protection deficiencies at CSL. His negligence was not the direct or proximate cause of the losses suffered in the attack. The SecDef withheld disciplinary authority and established a CDA to consider disciplinary actions resulting from the terrorist attack. On 16 Feb 22, the CDA decided the applicant did not engage in the conduct noted in the AR 15-6 investigation and the IR. No disciplinary action was taken against the applicant.

b. Substantiated Investigation Without Written Command Action memorandum dated 21 Mar 22. The AIS was referred to the applicant before it was filed in his MPerGp and OSR per DAFPM 2020-36-03. On 21 Mar 22, the applicant acknowledged the memorandum and provided a response on 23 Mar 22. The applicant stated neither the AR 15-6 investigation nor the IR met the threshold for an officially documented investigation or inquiry as specified in DAFMAN 1-101. Both reports failed to properly frame the allegations of negligence he was accused of. Neither met the basic structural requirements of an official investigation or inquiry and should not be filed in his MPerGp or OSR as required by DAFPM 2021-036-03. In response to the IR and the LOC, he provided documentation to refute the credibility of the reports and the unframed allegations of negligence. He stated the Army held him to a different standard than his own service component, given the ultimate withdrawal of all administrative actions. Further, the allegation in the IR stating he was negligent in his duties was a brand new allegation that he had not seen before and he was never given an opportunity to respond as it was his right to do so.

c. Applicant's Response to Tentative Findings of Negligence to the IR dated 1 Oct 21. He disagreed with the conclusion he was negligent in the performance of his duties, which was based on the AR 15-6 ROI. The applicant addressed the inaccurate statements regarding the staff

disposition, what he knew about the force protection expectation, lack of host nation responsibilities, Air Force policy guidance and force protection level requirements. There were inaccurate statements regarding what he knew about the force protection expectation. There were also inaccuracies regarding his positional authority. He did not serve as the director or even force protection director. He served as the Chief, Security Forces Division under the Director of Logistics, Engineering and Force Protection. One of his specific duties was as the “Senior Force Protection Advisor.” To the best of his knowledge and recollection, AFRICOM never communicated any additional expectations for an aggressive force protection posture. Further, AFRICOM also pushed back on several force protection recommendations, especially when host nation considerations existed. AFRICOM was unsupportive of their efforts to fully meet force protection requirements.

e. Defense Counsel Memorandum dated 4 Oct 21. His counsel noted the review covered an immense universe of actors and events. The scope led to a breakdown in basic structural requirements of an official investigation. Without an appropriately framed allegation and application of the evidence, the review overlooked the lack of a specific duty and lacks any specific act or omission that could constitute a dereliction. The applicant exhibited a degree of care which a reasonably prudent person would have exercised; his track record and witness statements showed a degree of care beyond that. As such, he was not negligent. It was requested the allegation of negligence be unsubstantiated.

f. The LOC dated 4 Feb 22, rebuttal to the LOC dated 10 Feb 22 and the character and witness statements.

On 2 Jun 22, the applicant filed an informal Article 138, UCMJ complaint. On 27 Jun 22, his commander informed the applicant he believed he had no discretion on whether to insert an AIS in his OSR due to two substantiated adverse findings made against the applicant. The OSR entry was required by a policy signed by the SecAF and various Air Force instructions. Accordingly, his informal Article 138 complaint was dismissed. His commander further stated that while the CDA was within his authority to issue and remove the LOC, the substantiated adverse findings against him remained. The SecAF policy makes it clear that an OSR entry is required in a case such as his when there is “any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature.”

On 13 Apr 23, his AFBCMR case was administratively closed per his 13 Apr 23 request for additional time to obtain counsel and to respond to the DAF/JA advisory opinion.

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

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, DAFI 36-2907, *Adverse Administrative Actions*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have “extraordinary adverse information”). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated

finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an AFBCMR recommendation.

DAFI 36-2501, paragraph 14.3.1. In the event an officially documented investigation or inquiry concludes with a substantiated finding and a commander (or equivalent) decides not to issue written command action, the findings and the commander's decision must still be documented and filed in the master personnel records group (MPerGP) and OSR via a memorandum for record and AIS Summary. Paragraph A14.3.2., The subject officer will be provided a copy of the MFR and AIS and will be afforded an opportunity to submit written comments in response to the documents before they are filed in the OSR. The MFR and the officer's comments will be sent to SAF/IGQ, in accordance with AFI 90-30, *Inspector General Complaints Resolution*, and to the member's military personnel flight (MPF), commander support staff (CSS) or equivalent personnel support function for inclusion in the MPerGP and OSR.

AFI 36-3203, *Service Retirements*, Paragraph 8.6.3, Initiating an officer grade determination (OGD). The unit commander or other appropriate authority must initiate an OGD when: Paragraph 8.6.3.5., The officer, since the last promotion has been the subject of any substantiated adverse finding or conclusion 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). Examples of officially documented investigations, proceedings or inquiries include but are not limited to CDIs, Inspector General (IG) investigations and Equal Opportunity investigations. The applicant's records, as of this date, do not reflect he has applied for retirement or that an OGD has been initiated.

DAFI 36-2603, *Air Force Board for Correction of Military Records*, 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

DAF/JA recommends denial. The resulting AR 15-6 investigation and IR were directed by the highest levels of the U.S. military. As such, they received intense scrutiny and survived multiple levels of legal review. Despite the applicant's parsing of minor details, the investigations' larger conclusions about his negligence remain substantiated.

It was alleged the applicant did not perform his duties as the USAFE-AFAF, Chief, Security Forces Division. An AR 15-6 investigation was conducted and found multiple points of negligence. A 13 Jan 21 letter of transmittal for the AR 15-6 investigation to the Secretary of Defense summarized broad factors contributing to the success of the 5 Jan 20 attack, to include inadequate Security Force organization, preparation, training and defensive plans to counter the threat. Subsequently, on 29 Mar 21, the SecDef, directed the Secretary of the Army to conduct an IR. The IR was completed on 29 Nov 21 and his findings were that the applicant was negligent in his duties to assess threats to installations and operating locations and to develop risk mitigation options for AFAF. He also failed to provide AFAF higher leadership and relevant commanders with sufficient recommendations to mitigate force protection deficiencies at the CSL but his negligence was not the direct or proximate cause of the losses suffered in the attack.

The applicant's contention the CDA determined he did not engage in the conduct alleged in the LOC is a misrepresentation of the LOC withdrawal. The LOC withdrawal was a boilerplate action memorandum to document action on an LOC appeal. Hence when he crossed out "engaged" and

circled “did not engage,” he was merely choosing between two pre-printed options. Accordingly, DAF/JA finds the LOC withdrawal was not a determination on the AR 15-6 investigation or the IR, nor did it mean the applicant did not engage in negligence as the two investigations substantiated. As a result, the LOC withdrawal has no impact on the AIS or any other record that references the AR 15-6 investigation or the IR.

The applicant’s argument the AR 15-6 investigation and the IR failed to meet Air Force standards to be considered as an officially documented investigation lacks merit. The AR 15-6 investigation was directed by AFRICOM and the IR was directed by the SecDef; they were indeed officially documented investigations. DAF/JA finds no law, regulation or policy that states only Air Force or DAFMAN compliant investigations are considered officially documented. To find otherwise would undermine the ability to hold airmen accountable in joint service missions.

The applicant argues that the allegations shifted at each phase of the process. He argues since the allegations are different, it undermines the credibility of the proceedings and the validity of the process. This allegation lacks merit, there is no law, regulation or policy that states the allegations for the actions must remain the same. There is also no evidence the IR included new allegations. DAF/JA does not find it was a new allegation, nor do they find it was required to be provided to him. Further, the U.S. Constitution’s Fifth Amendment due process requirement is inapplicable to an administrative process such as this. Furthermore, on 1 Oct 21, the applicant received an advance copy of the IR and the findings of negligence. In response, he submitted a detailed, 12-page response. Upon reviewing the response, the IR found the applicant had been negligent. As a result, when viewed in context, the “new allegation” even if true did not lead to an error.

The AR 15-6 investigation and the IR are not Air Force records so they cannot be corrected even if they were somehow erroneous, which they are not. The LOC was already withdrawn. The applicant parses and counters specific language from the IR; however, none of them rise to the level of an error or injustice. The IR and AR 15-6 investigation remain officially documented investigations with substantiated findings of the applicant’s misconduct. As such, the AIS was entered in his OSR correctly and under a non-discretionary requirement.

The complete advisory opinion is at Exhibit E.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Mar 23 for comment (Exhibit F). In a response dated 6 Jun 23, he states his counsel reviewed his case. The CDA’s determination regarding the LOC was that he did not engage in the conduct alleged and he decided the counseling would be withdrawn and no action taken. The AIS states on 16 Feb 22, the CDA decided he did not engage in the conduct noted in the AR 15-6 and no disciplinary action would be taken against him. Despite DAF/JA’s attempt to explain it away as simply a “two pre-printed options, which was one of three actions,” words matter. If the words contained within the LOC withdrawal and AIS are inaccurate, then the AIS should be withdrawn.

Despite DAF/JA’s opinion that introducing a new allegation at the late stage is acceptable, he asks how fair was it for a completely new allegation to be introduced into the final version of the IR based on information deliberately withheld from him, information he never saw until he reviewed the AIS.

He finds DAF/JA’s conclusions regarding institutional accountability disturbing. He was not attempting to shift blame nor suggest he should not be held accountable for his actions or inactions. He is merely saying that institutional decision making played a bigger role in setting the conditions for the Manda Bay attack. The issue was largely ignored by the AR 15-6 and the IR. Should not

the institution be accountable for setting the conditions necessary for mission success and protect its people when it fails to do so.

To this date, he still does not know the totality of what the IR says about him. What he received was so heavily redacted, it was near impossible to follow. Without a doubt the information withheld affected his defense and affects his ability to provide information to the AFBCMR, which is unfair and frustrating.

Pending finalization of the required OGD and subsequent formal approval to retire. He will retire with 30 years of commissioned service on 1 Oct 23. He will have held the rank of colonel longer than any other rank, just one month shy of nine years. His record was 100 percent clean until the AIS was introduced. He very much wants it to be clean so he can retire in peace. If there are any doubts as to the accuracy, fairness, and/or justice of the totality of the proceedings, the culmination of which drove the AIS to be placed in his records, then he asks that the Board rule in his favor.

Counsel asserts the AR 15-6 and the IR, upon which the AIS is based, were legally deficient. The processes in administering the LOC and AIS were also legally deficient because the report provided to him was overly redacted through the misuse of the "classified information" FOIA exemption. Then the AIS introduced an entirely new allegation with no evidentiary support in any materials provided to him. The overly redacted IR impaired the applicant's ability to defend himself.

There is a lack of due process. The advisory opinion claiming the IR did not expand in scope and that the applicant was not prejudiced is incorrect. The advisory should be disregarded. The DAF/JA advisory opinion references multiple legal reviews conducted at multiple levels, suggesting the prior legal reviews cleared the results of the investigation and the legal reviews should be "good enough" to satisfy the Board.

The IR was not a review but instead was an additional investigation considering additional information. Considering a supplemental investigation was conducted, the applicant should have been given the opportunity to participate in that supplementary investigative process, including the chance to respond to the new evidence. Because the AIS is based on the legally deficient IR, the AIS does not meet the requirements of DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*. This renders the AIS an injustice and it should be removed from his record.

The preponderance of the evidence standard is not met and the matter must be resolved in his favor. As noted in the applicant's responses, the evidence showed the applicant did not have a duty, or that he acted as a "reasonably prudent person" under the circumstances he was given. The applicant and witness statements show that AFRICOM and USAFE AFAFRICA leadership required them to focus on building up another installation at the expense of Manda Bay and other CSLs.

The applicant was not set up for mission success. He was set up for failure by being under resourced in personnel, money, and time. The applicant had 20 to 30 permanent staff and 6 to 8 temporary staff members who rotated every six months. He had at least three trips scheduled to visit Manda Bay but all were canceled. One was canceled during the government shutdown due to lack of funding and his superior ordered him in 2018 to stop going on temporary duty (TDY) so often and to cancel non-essential trips. A person can do more with less for only a short amount of time before something breaks. Such was the case with Manda Bay.

The delays in erecting a perimeter fence were not the applicant's fault. Delays were caused by the command's failure or inability to obtain a memorandum of understanding (MOU) with Kenyan officials until 2019 to allow construction to begin. Further, items of archeological significance

were discovered at the local site where construction was to occur, causing further delays. The applicant had no control over Kenyan or State Department officials. Sensors could not be placed as an interim measure because of wildlife and because they required a steady platform. The applicant was improperly judged using Army customs and standards, essentially that Air Force Security Forces were responsible for protecting all of Manda Bay, to include the airfield which was under the exclusive authority of Kenyan Defense Forces. The judgment was not reasonable.

The applicant did not accept the command staff's recommendation for a reduction in personnel at Manda Bay. Therefore, if this recommendation is determined to be negligent, the negligence is not the applicants but is negligence by his superiors. Politically driven biases appear to have affected the decision for an IR. The findings against the applicant appear to be driven by a desire to appease Senators in order to obtain Senate confirmation of promotions for several individuals. As a result, the applicant was offered up as a scapegoat.

The applicant's complete response is at Exhibit I.

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 DAF/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends the AR 15-6 investigation and the IR did not follow proper procedures, the allegations were not framed in accordance with regulations, did not specify what misconduct he was alleged to have committed and he was denied due process. However, the Board finds the applicant has not sustained his burden of proof to substantiate the AR 15-6 investigation and the IR violated any rules or regulations. The applicant also contends the IR was an additional investigation and the applicant should have been afforded the opportunity to participate in the new investigation. However, the Board does not find the IR was an additional investigation but a review ordered by the SecDef. Moreover, the Board finds the IR concurred with the findings of the AR 15-6 that the posture and weaknesses of the Air Force Security Forces contributed to the vulnerabilities of the airfield and made it more susceptible to an enemy attack. In this respect, the AR 15-6 and the IR concluded the applicant did not provide sufficient operational level leader oversight to the CSL while serving as the Chief, Security Forces Division USAFE-AFAF. Further, as pointed out by DAF/JA, this Board, which serves on behalf of the Secretary of the Air Force, in the correction of military records, is without authority to alter an investigation conducted by the Department of Defense or another branch of military service. Nevertheless, the Board finds no error or injustice in the IO's actions in conducting the investigation or the findings and conclusions, which were reviewed by multiple levels of commands. The applicant also states he accepts full responsibility for his actions or inactions but contends institutional leadership is also accountable. In accordance with DAFI 36-2603, this Board is not an investigative body; however, notes the AR 15-16 and IR also stated the EABS and lack of oversight by commanders and staff officers at the group, wing AFAF and USAFRICOM contributed to the loss of life and damage to property. Accordingly, the Board does not agree with the applicant he was made the scapegoat for the incident. The Board also notes the CDA removed the LOC finding the applicant did not commit misconduct; however, this does not negate the substantiated allegations in the AR 15-6 ROI and IR. The retention of AIS in an officer's OSR is required when there is a substantiated finding or conclusion from an officially documented investigation or inquiry regardless of whether any command action was or was not taken. Accordingly, the Board finds the AIS in the applicant's record is proper, required and in accordance with 10 U.S.C. § 615(a)(3), DoDI 1320.14, DAFI 36-2907, DAFI 36-2501 and

DPAFM 2021-03603. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02757 in Executive Session on 6 Jul 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 Oct 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Executive summary and Actions on CSL, dated 5 Jan 20 and 29 Nov 21.
Exhibit D: SAF/IG Documents, FRNO 2022-09672 (WITHDRAWN).
Exhibit E: Advisory Opinion, DAF/JA, dated 28 Mar 23.
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Mar 23.
Exhibit G: Applicant's Admin Close Requested, date 13 Apr 23.
Exhibit H: Notification of Admin Close, SAF/MRBC to Applicant, dated 13 Apr 23.
Exhibit I Applicant's response, w/atchs, dated 6 Jun 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.

X

Board Operations Manager, AFBCMR