

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02797

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He requests the following be removed from his records based on the substantiated findings in the commander directed investigation (CDI) report of investigation (ROI) dated 31 Mar 21:

1. Letter of reprimand (LOR), dated 11 Jan 21.
2. Relief of command memorandum, dated 29 Jan 21.
3. Unfavorable information file (UIF), dated 8 Feb 21.

APPLICANT'S CONTENTIONS

The LOR was not valid based on the CDI and the findings in the CDI ROI. As such, the standard of proof of AFI 36-2907, *Adverse Actions*, was not met.

At the time of the LOR, he filed an inspector general (IG) complaint that his group commander (GP/CC) for various reasons treated him and his unit unfairly. The CDI ROI proved the GP/CC failed to maintain a healthy command climate and made false accusations against him. The adverse actions should be set aside as they are not supported by a preponderance of the evidence.

He also filed a subsequent IG complaint against the GP/CC and the wing commander (WG/CC) for failing to consider the relevant facts and information when determining their course of action to remove him from command and issue a referral OPR. The OPR is not yet concluded and the investigation is entering its second year. The wing has repeatedly denied his request for information per his Freedom of Information Act (FOIA) request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a lieutenant colonel (O-5) in the Air Force, with date of rank (DOR) and effective date of promotion of 14 Dec 20.

On 11 Jan 21, the applicant received a LOR. Between mid Nov 20 and 13 Dec 20, he held himself out as a lieutenant colonel prior to his promotion effective date, even after the GP/CC instructed him his promotion was not approved by the Senate or official and directed him to stop wearing the rank or referring himself to lieutenant colonel. On 3 Dec 20, the GP/CC learned he had taken it upon himself to prematurely attempt to assume a higher grade, contrary to their earlier conversation. The GP/CC had called him from his temporary duty (TDY) location to correct his behavior and that he must immediately cease wearing the higher grade insignia. The applicant was reminded he was a major (O-4) until the Senate approved the promotion list, which did not occur until 14 Dec 20. He stated he clearly understood he was still a major (O-4). The applicant was also reminded in Nov by the force support squadron commander (FSS/CC) he was not authorized to wear the rank of lieutenant colonel. Rather than complying, he engaged in a campaign of deception and selectively chose to identify himself on phone calls and emails depending on the audience. The LOR stated his behavior was tantamount to impersonating a superior commissioned officer (Article 106) and wearing unauthorized insignia (Article 106a), disobeying a superior commissioned officer (Article 90) and false official statement (Article 107). The LOR stated, in addition to the misconduct, he resisted alignment with the wing and group priorities and undermined the authority of the WG/CC. The WG/CC assigned specific personnel to the multi-capable airman (MCA) functions and he attempted to replace one of the assigned senior noncommissioned officers (SNCO) and stated to inform the WG/CC that his training staff could not afford to be full time MCA employees. While he could respectfully disagree with his leadership in conversation, once lawful direction is given it was his obligation to follow it.

In a response to the LOR dated 15 Jan 21, he stated the date and time where the DOR was confused was eight calendar days. He received the promotion line number and increments and his DOR was indicated as 1 Dec 20, which customarily would warrant a promotion ceremony the day prior on 30 Nov 20. At no time prior to 30 Nov 20 did he refer to himself as a lieutenant colonel. The first time he and the GP/CC discussed the issues with the Senate was during the 3 Dec 20 phone call. By this time, precedent was set over the Senate confusion where another officer was promoted and there were jokes about the "frocking" that was taking place. On 3 Dec 20, he received a phone call from a friend in the wing who told him that guidance was out from the legal office that they could no longer wear the rank until confirmed. He mentioned he was ordered to take it off and that he expected he too would receive the same order. By this time, he had been wearing the rank for three days following an impromptu promotion party the evening of 30 Nov 20 at his squadron. From this date, through 10 Dec 20, there were ongoing and good natured jokes about his demotion. His failure to update his automatic signature blocks resulted in email correspondence from 4 to 10 Dec 20 showing the lieutenant colonel rank. He did not deceptively or selectively determine with whom he would use the rank or title. On 11 Dec 20, the FSS/CC asked him why he had not changed the email signatures. He stated he had changed some of his emails manually but that he had not changed the automatic signature function. He was told to fix them and he immediately did so following the meeting. On 15 Dec 20, he checked "Congress.gov" and told the FSS/CC if there was any confusion, they had heard it first ahead of AFPC. He never willfully intended to deceive anyone. He in no way attempted to undermine any WG/CC directive. He felt his SNCOs being appointed by the WG/CC, without the SQ/CC or chief enlisted manager (CEM) awareness was a gross error in communication and indirect contrast to empowerment of the squadron commander (SQ/CC). The LOR was placed in the applicant's officer selection records (OSR).

On 29 Jan 21, the WG/CC relieved the applicant of command for cause due to a lack of integrity and poor judgment which resulted in the loss of trust and confidence in his ability to serve as the SQ/CC in accordance with AFI 51-509, *Appointment to and Assumption of Command*. The applicant was immediately reassigned to new duties with a new Duty Air Force Specialty Code (DAFSC), duty title and rater. The applicant was to make contact and report to his new place of duty on 1 Feb 21.

AF Form 1058, *Unfavorable Information File (UIF) Summary*, dated 4 Mar 21 shows the applicant's LOR dated 11 Jan 21 and the relief of command memorandum dated 29 Jan 21 were placed in a UIF. The UIF Summary stated the applicant between mid-Nov and 13 Dec 20 impersonated a superior commissioned officer, wore unauthorized insignia, disobeyed a superior commissioned officer and provided a false statement. The final disposition date of the UIF was 10 Feb 23. The military personnel data system (MilPDS) does not show the applicant has a UIF on file.

Per the SAF/IG provided CDI ROI dated 31 Mar 21, the applicant filed an IG complaint on 11 Jan 21, with five allegations of wrongdoing on the part of the GP/CC regarding unprofessional relationships, adverse command climate and bullying. On 2 Feb 21, the WG/CC appointed an IO. During the investigation, the allegations were expanded to 10 more specific allegations. The ROI shows the following:

Allegation 1: Between 3 and 16 Nov 20, the GP/CC verbally accused the applicant on multiple occasions of inciting a breach of trust as the SQ/CC by secretly and maliciously communicating the details of his whereabouts and activities to the vice wing commander (WG/CV). The GP/CC was advised by the WG/CV to not conduct law enforcement after events in which the GP/CC pulled over a contractor driving a POV in his own POV and other events. The GP/CC referred to the events saying it resulted in his loss of trust in the applicant and that he was holding it against him as a professional trust and relationship issue. On 13 Nov 20, the GP/CC was agitated during a mission assurance working group (MAWG) meeting and threw a power point slide deck at the applicant. The investigation showed the GP/CC's involvement in the law enforcement events were reported to the WG/CV by the wing staff agency and not the applicant. The applicant was frustrated with the numerous times his integrity was called into question and that the GP/CC refused to work towards bringing resolution to the situation. The allegations about informing the WG/CV and trust issues were baseless. **SUBSTANTIATED.**

Allegation 2: On three occasions between Aug and Nov 20, the GP/CC told the applicant he felt a uniformed family photo on his biography taken during his time at the Army Command and General Staff College was a subtle way of saying where his priorities were placed, in violation of AFI 36-2909, *Air Force Professional Relationships and Conduct*. The IO concluded that while the squadron priorities were being worked, the GP/CC had valid concerns about how the applicant was addressing the GP/CC and WG/CC priorities. **(NOT SUBSTANTIATED).**

Allegation 3: On 28 Aug 20, the GP/CC presented himself unprofessionally to the applicant's squadron staff members during a briefing by belittling the intellect and competency of a SNCO in front of other members. The evidence showed the GP/CC belittled the SNCO in a public setting and the applicant in later meetings. The conduct may constitute bullying in

accordance with DODI 1020.03, *Harassment, Prevention and Response*. The GP/CC's behavior toward the SNCO was not befitting of his grade or position and was not conducive to an environment of mutual dignity and respect. **(SUBSTANTIATED)**.

Allegation 4: On 30 Sep 20, the GP/CC during a group staff meeting vocally admonished and reproached the GP deputy (GP/CD) in front of the SQ/CCs and staff leadership. Additionally, many staff meetings were conducted in this manner, characterized by capricious, emotional outbursts and dramatic expressions of disdain. There was also reference to allegations of an unprofessional relationship between the FSS/CC and the GP/CC. The IO concluded the GP/CCs behavior and actions in front of the squadron commanders and their senior enlisted advisors and with the GP/CD behind closed doors were in violation of AFI 1-1, *Air Force Standards*, and AFI 1-2, *Commander's Responsibilities*. **(SUBSTANTIATED)**.

Allegation 5: The GP/CC consistently denied the applicant access to the installation commander in violation of AFI 10-245, *Antiterrorism*, AFI 31-101, *Integrated Defense*, and DODI 2000.16, *Antiterrorism*, which specifically states the security forces commander (SFS/CC) is the primary advisor and installation antiterrorism officer. Additional testimony also supported violations of AFI 1-1, paragraph 2.2., *Professional Relations* and, AFI 1-1, paragraph 3.3, *Lead People*, and paragraph 3.3, *Manage Resources*, and paragraph 4.1, *Commander's Intent*, AFI 36-2909, *Air Force Professional Relationships and Conduct*, paragraph 2.2., *Unprofessional Relationships*, DODI 1020.3, *Types of Harassment and Retaliation*, paragraph 3.1, *Harassment*, and G.21, *Bullying*, and Article 133, UCMJ, paragraph c(3), *Conduct Unbecoming an Officer*. **(SUBSTANTIATED)**.

Allegation 6: From Aug 20 to Jan 21, the GP/CC directly contacted subordinate airmen and NCOs, issued instructions to report to his office, called patrols off post and required reporting once relieved from shift. This was all done without contact or awareness of the squadron leadership. Testimony showed the GP/CC only went around the leadership of the applicant's squadron and not the other squadrons. **(SUBSTANTIATED)**.

Allegation 7: On 13 Nov 20 and 6 Jan 21, the GP/CC made direct comments to other field grade officers (FGO) in the group about the applicant that were insulting and disparaging. The GP/CC expressed frustration about the applicant to one of his peer commanders without having ever brought the matter to his attention. In Dec 20, the Defense Organizational Climate Survey (DEOCS) results were released for each squadron. Testimony confirmed the GP/CC reviewed each DEOCS with the respective commander, with the exception of the applicant. The evidence showed the GP/CC was discriminatory in how he dealt with the DEOCS. Further, he alleged directly to the GP/CD that the applicant's squadron's DEOCS was tainted by the applicant who influenced unit members. Two other SQ/CCs, one who was very loyal to the GP/CC and another who was fearful the testimony would reach back to the GP/CC, stated the GP/CC complained to them about the applicant. The IO noted the evidence of a poor command climate and the GP/CC's conduct toward the applicant was belittling or humiliating in nature. **(SUBSTANTIATED)**.

Allegation 8: On or about mid Jul 20, the GP/CC modified a portion of official law enforcement paperwork that had been previously endorsed by the prior GP/CC, by physically cutting the signature block portion off and adding a new page portion of his own, changing the

legal recommendation, in violation of Article 107, UCMJ falsifying official statements. **(NOT SUBSTANTIATED)**.

Allegation 9: From Nov 20 through Jan 21, the GP/CC failed to establish and maintain a healthy command climate. Race and medical disability discrimination and sexual harassment were alleged and supported by sworn testimony. The overall testimony covered the spectrum from minor occurrences to unadmitted discrimination and harassment. Unprofessional behavior and favoritism were corroborated. **(SUBSTANTIATED)**.

Allegation 10: From Nov 20 to Jan 21, the GP/CC consistently stated to group members he was a "very successful commander." The GP/CC had served in four previous command assignments. The GP/CC stated in a private meeting he had dealt directly with manipulation and backstabbing. The applicant attempted several times during the meeting to address and fix the trust issues; however, the GP/CC stated he did not want to address any solution and that it was too late. Given the evidence from the GP/CC and other witnesses, the IO surmised the GP/CC had instances previous to his current assignment in which his actions and professionalism had been called into question, to the extent in which those who worked with him felt the need to warn others. Additionally, the recent verbal comments from the GP/CC suggest immature bragging. **(SUBSTANTIATED)**.

On 3 Jun 22, the applicant in a response to filing of the notice of relief of command in the OSR, stated there was no evidence to support the allegations made in the LOR. There were no documents or investigations or inquiries, formal complaints, command inquiry or CDI to document any of his alleged misconduct. To date, no OPR has been completed to document the relief of command. The LOR and relief of command notice should not have been filed into his OSR until due process was completed and all relevant facts and information were reviewed in accordance with DAFI 36-2907.

In response to the applicant's Congressional Inquiry, the applicant's WG/CC on 29 Jun 22 informed his Congressman the applicant submitted a FOIA request on 29 Jun 21. Based on the Wing Judge Advocate's (WG/JA) recommendation, the FOIA manager redacted the ROI and prepared a release memorandum. However, the WG/JA requested a second legal review based on privacy concerns. On 28 Dec 21, the WG/JA completed the second legal review. On 6 Jan 22, the WG/CC recused himself from acting on the matter and requested the numbered air force commander (NAF/CC) serve as the release authority. On 2 Feb 22, the NAF/JA requested the records. On 27 Jun 22, the WG/JA provided the documents to the NAF/JA. As of 29 Jun 22, the FOIA request was pending legal review by the NAF/JA and action by the NAF/CC. The FOIA manager would inform the applicant of the decision and provide the response documents, if there are any.

On 5 Aug 22, the WG/CV informed the applicant his request for the CDI ROI and attachments per his FOIA request was denied in full under the Federal Exemption (b)(5) which allows the Air Force to exempt inter and intra agency records that could be withheld under the Federal Rules of Civil Procedure in civil litigation. FOIA Exemption (b)(6) protects information contained in personnel files, medical files and similar personal information in other files, which broadly includes information about particular individuals.

The applicant does not have a referral OPR for his LOR or relief of command.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 51-509, *Appointment to and Assumption of Command*, paragraph 14.2. For cause. An officer may be relieved of command for cause, including instances where the superior competent authority has lost confidence in the officer's ability to command due to misconduct, poor judgment, the subordinate's inability to complete assigned duties, the interests of good order and discipline, morale, the good of the organization, or other similar reasons. Paragraph 14.2.1., A superior competent authority's decision to relieve a commander for cause must not be arbitrary and capricious.

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information"). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an AFBCMR recommendation.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denial for removal of the LOR. The applicant's commander issued a LOR based on the preponderance of evidence in accordance with AFI 36-2907. In accordance with 10 U.S.C. § 615(a)(3), the LOR meets the requirements of adverse information. The applicant mentions a lack of preponderance of evidence. However, this is not quantifiable and it is the commander's discretion. There is no proof that the commander did not believe there was a preponderance of evidence prior to the issuance of the LOR. They are unable to provide input on the applicant's allegations the LOR and UIF were unjust and recommends AFPC/JA provide an advisory.

The complete advisory opinion is at Exhibit D.

AF/JA recommends granting the request for removal of the LOR and UIF and denial for the request for removal of the relief from command memorandum. However, the Board is recommended to consider factors regarding an injustice as to the relief from command.

This case is unique because the applicant's alleged misconduct is primarily against his GP/CC. Hence it is appropriate to examine the GP/CC's conduct and not simply the evidence against the applicant. After careful review, AF/JA finds evidence of an error that would undermine the LOR and resulting UIF. The robust and thorough CDI ROI substantiated 8 out of the 10 allegations against the GP/CC and it is clear the GP/CC's leadership was questionable and his conduct towards the applicant was fueled by a mistaken belief of an offense, that was likely precipitated by his own poor judgment. Based on the CDI ROI, there is a picture of a GP/CC who failed as a leader and whose objectivity towards the applicant can easily be called into questions. As a result, AF/JA concludes there is substantial evidence of capriciousness and error in the LOR and UIF.

As for the relief from command, the decision is supported by evidence. The applicant was relieved of command from the WG/CC, not the GP/CC. Unlike the CDI IO's pointed findings against the GP/CC, there is no similar evidence to challenge the WG/CC's motivations or conclusions. AFI 51-509, paragraph 14.2., states that a decision to relieve an officer of command includes instances where the superior competent authority has lost confidence in the officer's ability to command due to among other reasons, the good of the organization or other similar reasons. The WG/CC letter states he was relieved for cause due to lack of integrity and poor judgement which resulted in the loss of trust and confidence. There is evidence in the CDI ROI to support the WG/CC's conclusions. The IO reported the applicant allowed his frustration to shape an email in which he was disrespectful to the WG/CC, and for which in part he received the LOR. The IO also reported several witnesses testified the applicant did not follow certain orders from the GP/CC because he felt the actions were not pertinent to mission accomplishment. Furthermore, the WG/CC's loss of confidence does not have to result from the applicant's misconduct. In this case, the conflict between the GP/CC and the applicant may have required a removal from command for the good of the organization. Regardless of who is more culpable in the failed relationship, the CDI ROI shows that the applicant contributed to the toxic relationship with his superior officer. To find a legal error is a high bar to overcome.

The advisory is limited in scope to the question of legal error. There remains the related question of an injustice, which requires the Board to make factual determinations. It is recommended the Board consider the following:

- a. Whether it was unjust for the WG/CC to relieve the applicant for lack of integrity and poor judgment when the WG/CC was unaware but should have known his GP/CC created a toxic command climate.
- b. Whether the WG/CC relieved the applicant from command on 29 Jan 21 after he made an independent determination or did he merely adopt the GP/CC's determination. If the latter, then this could be evidence of error and an injustice since the GP/CC's decisions were capricious and legally erroneous.
- c. If the WG/CC had seen the CDI ROI, would he still have relieved the applicant of command. The CDI was initiated on 2 Feb 21, four days after the applicant was relieved of command, and completed on 31 Mar 21.
- d. Is the applicant entitled to a finding of an injustice as compensation for the wrongs

against him. The spreading of rumors and the use of derogatory language against the applicant was corroborated by witnesses, include two SQ/CCs.

e. The applicant's stellar OPRs be considered. Even the OPR covering the period of 1 Feb 21 to 30 Sep 21, immediately following his relief from command, states "1 of 2 FGOs" and recommends he be assigned back to command.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 16 Feb 23 for comment (Exhibit F) and the applicant replied on 22 Feb 23. As of 10 Feb 23, he served the full two year disposition period of his active UIF, along with the career implications it brought. These included no senior rater stratifications, inability to apply or compete for special duty assignments or boards and an untimely cross-country permanent change of station (PCS) assignment. He has accepted the repercussions and continues to work toward overcoming the impacts and only appeals for restitution to allow him to continue to serve without encumbrances brought about by the adverse actions.

The AFPC/DPMSSM advisory states that preponderance of evidence is not quantifiable. It does not appear his rebuttal to the LOR rebuttal was provided for their review. He asks the Board to consider the LOR rebuttal and the substantiated allegations in the CDI ROI.

In an attempt to advise his new leadership and supervisors, he actively sought further information regarding the ROI and the findings through a FOIA request. This process resulted in 14 months of consistent engagement culminating in a Congressional request for assistance, only to be denied. The letters and email exchanges illustrate the deliberate withholding of information essential to moving his career forward. The WG/CC's command expectations show how he emphasized both trust and alignment with his priorities. The document was never disseminated to him and he only received it from another SQ/CC. The former Group Superintendent's comments illustrate the depth of toxicity that came to permeate the WG and the deference the WG/CC placed in the GP/CC's decisions.

The applicant's complete response, with attachments, is at Exhibit G.

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 the victim of an error or injustice. The Board notes the recommendation of AFPC/DPMSSM for denial of the removal of the LOR; however, the Board concurs with the rationale and recommendation of AF/JA and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the

Board finds the substantiated allegations in the CDI ROI dated 31 Mar 21 finding the applicant's GP/CC's treatment of the applicant was not conducive to an environment of dignity and respect sufficient to justify granting the applicant's request for removal of his LOR dated 11 Jan 21. With respect to the request for removal of the UIF, the Board finds the disposition date of the UIF was 10 Feb 23. Accordingly, there is no UIF for the Board to remove. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. As pointed out by AF/JA, AFI 51-509 states a decision to relieve an officer of command includes instances where there is a loss of confidence or for the good of the organization. The WG/CC letter dated 29 Jan 21 clearly indicates the applicant was relieved for cause due to lack of integrity and poor judgment which resulted in the loss of trust and confidence. The CDI ROI also did not substantiate any wrongdoing by the WG/CC, nor did the applicant provide any evidence the relief of command was arbitrary or capricious. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show his letter of reprimand (LOR) dated 11 Jan 21 be removed from his records.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-02797 in Executive Session on 11 Apr 23:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 27 Oct 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: CDI ROI, dated 31 Mar 21 (WITHDRAWN).
Exhibit D: Advisory opinion, AFPC/DPMSSM, dated 17 Jan 23.
Exhibit E: Advisory opinion, AF/JA, dated 16 Feb 23
Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 22 Feb 23.
Exhibit G: Applicant's response, w/atchs, dated 13 Mar 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR