

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03003

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

She requests her 2021 promotion recommendation form (PRF) and 2021 officer performance report (OPR) be corrected based on allegations of reprisal and abuse of authority pursuant to DODD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034.

APPLICANT'S CONTENTIONS

Her PRF and OPR should be corrected to reflect her productivity as an officer, provider and leader. Her productivity was deliberately downgraded. She is a mental health provider, supervisor to five civilian personnel and a project manager with an immensely high workload in comparison to her colleagues. One officer colleague did not have any mental health patients and another was not a supervisor and yet they were promoted to the rank of major (O-4).

She submitted her OPR and PRF information correctly reflecting her productivity; however, her PRF and OPR were degraded before they were submitted to the board. In addition to multitasking within her duties, she held leadership roles with the company grade officers (CGO) organization and civil air patrol (CAP). She won CGO of the quarter and year, was lauded by two wing commanders and coined by one and was selected as a clinical hero prior to her 2021 promotion board. This was all while going through a divorce and as a single parent to a special needs child.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

The applicant's OPR for the period ending 2 Jul 21 shows she received a "Meets Standards" OPR. The OPR does not include some of the accomplishments she lists in her *DD Form 149, Application for Correction of Military Record*.

The applicant's automated records management system (ARMS) record does not include any Article 15, letter of reprimand (LOR) or letter of admonishment (LOA). However, they are addressed and included in the report of investigation (ROI) dated 18 Jul 21.

The Board reviewed the SAF/IG provided ROI dated 18 Jul 21, which shows an investigation was conducted into the applicant's allegations of reprisal by the operational medical readiness squadron (OMRS) chain of command. The applicant alleged on four occasions between 12 Nov 20 to 30 Mar 21 the OMRS Mental Health Flight Commander (OMRS MHF/CC) restricted the applicant from contacting a member of Congress or the inspector general (IG) and reprised against the applicant for making protected communication. She also made 27 allegations of reprisal ranging from adverse personnel actions taken against her or favorable actions withheld from her between 1 Apr 20 to 31 Jul 21 by her commander (OMRS/CC) and the medical group (MDG) chief of staff.

All 31 allegations of restriction or reprisal were not substantiated. However, in accordance with AFI 90-301, *Inspector General Complaints Resolution*, the allegations were further analyzed for abuse of authority and 10 allegations were substantiated for abuse of authority.

The Background of the ROI shows the applicant is older than her peer group. She originated from the Russian Federation and became a naturalized American citizen and entered the Air Force via direct appointment as a clinical social worker. The investigating officer (IO) wrote that the applicant provided a significant amount of documentation to support her testimony and allegations; however, her conclusions were at times inaccurate due to the lack of background or knowledge into the workings of the chain of command. Overall, the IO found the applicant provided credible testimony to the key allegations when supported with documentation or corroborated by testimony. The ROI states the OMRS/CC was concerned with the applicant's performance reported through a variety of sources in a short period of time

On 8 Apr 21, the OMRS/CC issued the applicant a LOR for several infractions. It stated the applicant failed to follow the flight commander's instructions to complete medical documentation in a timely manner and effectively manage her staff. She did not complete the patient encounters prior to the virtual training on 4 Mar 21 and modified the dates and completion times in a manner not in accordance with mental health standards of practice. On 1 Mar 21, her supervisor advised her of the importance of ensuring on site family advocacy program (FAP) office coverage while absent; however, no FAP staff was on site on 1 and 8 Mar 21, during her planned absence. Finally, on 16 Mar 21, she provided inaccurate information regarding who initiated a patient encounter with an intent to shift blame to other staff. The LOR was downgraded to an LOA. The applicant's automated records management system (ARMS) record does not include any LOR or LOA.

In an email dated 23 Apr 21, the OMRS/CC informed the Mental Health Flight Chief that upon her return from temporary duty (TDY) to take steps to remove the applicant from the FAP program management.

On 29 Apr 21, the ORMS/CC informed the Health Insurance Portability and Accountability Act (HIPAA) Office of a likely HIPAA violation. It stated the applicant in her rebuttal to her LOR included printed information from the Military Health Services (MHS) Genesis system. The first sergeant sent the information to the wing legal office and on 23 Apr 21, the legal office contacted her that the information included unredacted or incompletely redacted patient information. DD Form 2959, *Breach of Personally Identifiable Information (PII) Report* dated 15 Apr 21 shows the applicant, OMRS/CC and the first sergeant would be assigned remedial HIPAA training due to the violation.

AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officer)*, dated 13 May 21, shows the applicant's commander initiated an Article 15 for the following: (1) Dereliction in the performance of her duties from 14 Jan 21 to 21 Apr 21 by failing to maintain adequate communication with a partner organization; (2) On 29 Apr 21, she was derelict in the performance of her duties by failing to refrain from disclosing Central Registry Board (CRB) confidential information; and (3) On 15 Apr 21, with intent to deceive, made a false official statement that the Mental Health Flight Chief offered to set up a trainee in order to separate him administratively, which was false and known to the applicant to be false. On 31 May 21, the wing commander (WG/CC) determined the Article 15 was not appropriate or the applicant did not commit the offense(s) alleged and terminated the proceedings. There is no record of an Article 15 in the applicant's ARMS record.

In a memorandum for record (MFR) dated 29 Sep 22, the United States Space Force Inspector General Complaints, Resolutions and Oversight Office (USSF/IGQ) reviewed the ROI in accordance with AFI 90-301. On 4 Aug 22, the suspects were provided a Tentative Conclusion Letter (TCL) outlining the abuse of authority allegations substantiated against them. On 1 Sep 22

the final suspect TCL response was received. After a thorough review (appointing authority and legal office), USSF/IG determined Allegations 11, 15 and 16 to be **NOT SUBSTANTIATED**. The Judge Advocate nonconcurred with the IO's substantiation of allegation 27. However, USSF/IGQ nonconcurred with the determination. Otherwise, USSF/IGQ concurred.

In a memorandum dated 8 Nov 22, the USSF/IG informed the applicant of the completed investigation into her complaints of reprisal under 10 U.S.C. § 1034 and that the DOD reviewed the investigation and approved their findings as follows:

The applicant's former OMRS/CC, the responsible management official (RMO), did not reprise against the applicant for her protected communication when she influenced her OPR and PRF, issued a letter of reprimand (LOR), reduced to a letter of admonishment (LOA), downgraded her duty position and influenced the commander to offer her an Article 15, initiated an unfavorable information file (UIF) and placed a record of individual counseling (RIC) and LOA into her UIF. The preponderance of the evidence did not establish any actions of reprisal. Therefore, the complaints of reprisal were **NOT SUBSTANTIATED**.

However, the OMRS/CC's action was inconsistent and excessive when she influenced the writing of her OPR, issued her the LOR (downgraded to LOA), influenced the commander to offer her an Article 15, initiated a UIF and placed the LOA and RIC into the UIF. Therefore, the allegations of abuse of authority were **SUBSTANTIATED**.

The mental health flight chief commander did not restrict the applicant from contacting a member of Congress or the IG's office on two occasions and did not reprise against the applicant for her protected communications when he weakened the verbiage on her PRF and OPR, he influenced the former OMRS/CC to administer a LOR, influence the OMRS/CC to offer her an Article 15, downgrade her duty position and non-recommend her for a decoration. The preponderance of the evidence did not establish any acts of restriction and reprisal. Therefore, the complaints of restriction and reprisal were **NOT SUBSTANTIATED**.

However, the mental health flight chief did abuse his authority when he restricted the applicant on one occasion from utilizing the chain of command and the action, he took against the applicant was inconsistent and excessive when he weakened the verbiage on her OPR and nonrecommended her for a decoration. **SUBSTANTIATED**.

The mental health flight chief did not restrict the applicant from making protected communication on two occasions, weaken the verbiage on her PRF and OPR and did not include the OMRS/CC to administer a LOR, downgrade her duty position, influence the OMRS/CC to recommend an Article 15 and establish a UIF. The USSF/IG also concluded she did not threaten the applicant with a referral OPR, cancelation of her assignment, nor did she influence the MDG Chief of Medical Staff to annotate derogatory information in her clinical record or influence the mental health flight chief to nonrecommend her for a decoration. The preponderance of evidence did not establish any actions of reprisal. Therefore, the complaints of restriction or reprisal were **NOT SUBSTANTIATED**.

However, she abused her authority when she restricted the applicant on one occasion from utilizing the chain of command. Therefore, the allegation of abuse of authority was **SUBSTANTIATED**.

The preponderance of evidence did not establish any actions of reprisal by the former MDG chief of staff when she entered her assessment of her duty performance into the clinical provider record, nor did she influence the OMRS/CC to administer her a LOR. Therefore, the complaints of reprisal were **NOT SUBSTANTIATED**.

The MDG chief of staff acted within the scope of her authority when she annotated her duty performance in her clinical record and that she did not influence the OMRS/CC to administer her a LOR. Therefore, the allegations of abuse of authority were **NOT SUBSTANTIATED**.

The USSF/IG provided the applicant with a redacted copy of the ROI and informed the applicant of her right to petition the AFBCMR for correction of the adverse personnel actions.

On 12 Jan 22, the applicant was informed she was considered but not selected for promotion by the CY21C Major (BSC) P0421C Central Selection Board (CSB).

On 7 Jul 22, the evaluation reports appeal board (ERAB) returned the applicant's request without action. The case did not include supporting documentation for the ERAB to review the case.

The applicant is projected for separation on 28 Feb 23 due to her second promotion deferral for the rank of major.

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

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 1034 and AFI 90-301, *Inspector General Complaints Resolution*, reprisal and abuse of authority against military members for making protected disclosures is prohibited.

DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, Paragraph 10.2.4, Prohibited Requests. The evaluation reports appeal board (ERAB) will not consider nor approve requests to 10.2.4.1. Void an evaluation when the error or injustice can be corrected administratively. 10.2.4.2. Void an evaluation while keeping attachments to that evaluation. 10.2.4.3. Void an evaluator's section while keeping comments or ratings of subsequent evaluators. 10.2.4.4. Void an evaluator's comments but keep the ratings (or vice versa). 10.2.4.5. Delete required information or add unauthorized information to an evaluation. 10.2.4.6. Change (except for deletions) an evaluator's ratings or comments if the evaluator does not support the change. When an evaluator supports changing ratings, all subsequent evaluators must also agree to the changes (including the commander on EPRs, the reviewer on OPRs, and the Management Level Review Board President on PRFs). (T-1). Justification is required from the original evaluators. See Attachment 2, paragraph A2.3. 10.2.4.7. Re-accomplish an evaluation without the applicant furnishing the new evaluation.

AFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph 6.2, SSB Approval Authority, the AFBCMR or a federal court can direct an officer for consideration by SSB.

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. As evidenced by the ROI provided by SAF/IG and the substantiated allegations for abuse of authority, the applicant was the victim of retribution for making protected communication in violation of 10 U.S.C. § 1034 and AFI 90-301. While the ERAB returned the applicant's request for correction of the contested OPR without action due to lack of documentation, the Board finds the requested corrections are outside the purview of the ERAB per AFI 36-2406; therefore, the Board finds her application is ripe for adjudication by the Board. The applicant requests her PRF for the CY21C Major (BSC) P0421C CSB and OPR for the reporting period ending 2 Jul 21 be reaccomplished to accurately document her performance. Based on the substantiated allegations

of abuse of authority and evidence provided by the applicant, the Board finds sufficient evidence to conclude her chain of command deliberately weakened her PRF and OPR, which was detrimental to her. Accordingly, the Board recommends her PRF for CY21C Major (BSC) P0421C Central Selection Board (CSB) be reaccomplished and the rater and additional rater rewrite the AF Form 707, Section IV. *Rater Overall Assessment*, and Section V. *Additional Rater Overall Assessment*, to include significant accomplishments, any appropriate stratification and recommendations for assignment or command the applicant would have received had it not been for the substantiated allegations of abuse of authority. Upon correction of her PRF and OPR, the Board further recommends the applicant be considered by a SSB for the CY21C Major (BSC) P0421C CSB. Since the applicant's mandatory separation for promotion deferral is 28 Feb 23, the Board further recommends the applicant be provided an opportunity to return to active duty should she desire if selected for promotion by the SSB. 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 her:

a. AF Form 707, *Officer Performance Report (Lt thru Col)*, Section IV, *Rater Overall Assessment*, and Section V, *Additional Rater Overall Assessment*, for reporting period 3 Jul 20 to 2 Jul 21, be revised by the rater and additional rater to include any significant performance accomplishments, stratification statements and recommendations for assignment or command.

b. AF Form 709, *Promotion Recommendation Form*, for the CY21C Major (BSC) P0421C CSB be reaccomplished.

c. She be considered by a SSB for the CY21C Major (BSC) P0421C CSB.

d. She be provided the opportunity to return to active duty should she be selected for promotion by the SSB for the CY21C Major (BSC) P0421C CSB.

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-2022-03003 in Executive Session on 7 Feb 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 9 Nov 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: IG ROI, dated 18 Jul 21 (WITHDRAWN).

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.