

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00401

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His enlisted performance report (EPR) for the period ending 30 Sep 21 be removed from his records based on allegations of reprisal pursuant to DODD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034.

APPLICANT'S CONTENTIONS

The EPR does not reflect his performance during the period and has caused damage to his career. It was not until he filed his initial inspector general (IG) complaint in Jul 21 when his chain of command stopped communicating with him and determined to improperly rate him on his EPR. His rater who signed the EPR was on bedrest and maternity leave for half of the reporting period and did not witness his performance. Further, his rater and the squadron commander (SQ/CC) were removed from their positions due to loss of confidence. The hostile work environment he identified changed the squadron for the better due to the removal of the squadron leadership.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a master sergeant (E-7) in the Regular Air Force.

SAF/IG provides the applicant's IG complaint dated 12 Jul 21 (FRNO 2021-10853). The applicant alleged his rater, the military personnel flight (MPF) chief, violated the squadron physical training (PT) policy and her micromanagement created a hostile work environment for the applicant and his Airmen. His rater was out on bed rest and maternity leave but was still working and requiring everything to go through her. The IG complaint includes a record of individual counseling (RIC) the applicant received on 2 Mar 21 for failure to communicate and hold airmen accountable. The applicant's rater discovered he had not engaged a subordinate with any type of counseling for their failure to pay their government travel card in a timely manner. The applicant's IG complaint includes memorandums for record (MFR) documenting verbal counselings and interactions with his rater.

In a memorandum dated 11 Aug 21, the applicant's SQ/CC informed the applicant he looked into his allegations his rater created a toxic work environment. The SQ/CC stated he intended to address the issues with her, a member of his team would interview the witnesses he identified in his complaint and he would update the squadron on the PT policy.

The applicant's EPR for the period ending 30 Sep 21 reflects he received an overall performance assessment rating of "Exceeded some, but not all expectations."

On 7 Oct 21, the applicant's SQ/CC informed the wing IG (WG/IG) he conducted an inquiry into the applicant's allegations. He determined the applicant's rater/MPF chief did not violate the

squadron PT policy. His rater also did not prohibit the applicant from communicating with them. He found no evidence suggesting his rater treated the applicant differently due to his gender or race. She was consistent in addressing and providing feedback. However, the evidence from the interviews were concerning as there were four witnesses who stated the flight had an unhealthy work environment, there was unequal treatment, a lack of trust, low morale and poor connection and disrespect by the MPF chief. He addressed the allegations with her and she understood it would require a continual effort to ensure the culture was mended and improved.

On 12 May 22, the applicant filed a second IG complaint naming his rater/MPF chief, the squadron deputy and the SQ/CC for violating squadron PT policy, unfair treatment and a toxic work environment. He contended his allegation his rater created a toxic work environment was substantiated in his first IG complaint. Following the substantiated allegation and in reprisal, he received an EPR that was marked down. He also did not receive a decoration for his permanent change of station (PCS). His rater no longer leads the flight and now works in the equal opportunity (EO) office. He was told he needed to appeal the IG complaint to the major command IG (MAJCOM/IG) who just told him he needed to go back to the WG/IG.

In a memorandum dated 29 Sep 22, the applicant's group commander (GP/CC) informed the applicant she reviewed the commander directed investigation (CDI) and found no corroboration of unfair treatment. The investigating officer (IO) identified personality conflicts, communication issues and micromanagement that strained the work environment but that it did not constitute a toxic environment. The GP/CC concurred with the conclusion. The GP/CC also concluded reprisal did not occur with respect to the EPR. With respect to the allegation of a lack of transparency, the GP/CC stated information pertaining to an investigation was kept within command channels and only released if requested through the Freedom of Information Act (FOIA). The GP/CC stated there was turnover in the flight and an in-depth investigation was not warranted. There is no indication in the GP/CC's response the allegation of reprisal was forwarded to SAF/IGQ or DOD IG for review.

The applicant provides the wing commander (WG/CC) memorandum to AFPC/DP3AM dated 14 Nov 22. It states the SQ/CC was relieved from command for cause effective 14 Nov 22 due to a loss of trust and confidence in his ability to command and failure to establish and maintain good order and discipline.

On 30 Jan 23, the evaluation report appeals board (ERAB) denied the applicant's request for removal of his EPR ending 30 Sep 21. The request for supplemental promotion consideration for promotion to senior master sergeant (E-8) was also denied. The ERAB noted the GP/CC assessed the applicant's complaint and determined there was no unfair treatment, no toxic work environment and no reprisal during the period of the EPR.

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

APPLICABLE AUTHORITY/GUIDANCE

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

AFI 90-301, paragraph 5.3.1. Military Members. Air Force IGs must advise military members alleging reprisal of the provisions of 10 U. S. C. § 1034 and DODD 7050.66 and of the rights afforded. In accordance with DODD 7050.06, the DOD IG must be notified through SAF/IGQ within 10 days from the date an IG receives documentation from a complainant to determine if prima facie reprisal elements have been met.

AIR FORCE EVALUATION

AFPC/DP3SP recommends denial. The applicant has not provided evidence from an uninterested third party substantiating his claims the rater reprised against him for initiating an IG complaint. The applicant filed a reprisal IG complaint in May 22 but did not attach the referenced substantiated complaint to their request for relief. Absent the results of the complaint which substantiate any claims, the report is presumed an accurate and objective assessment of performance during the rating period.

The applicant filed an ERAB on 13 Jan 23 and provided evidence the draft evaluation submitted to the rater was altered to diminish the impacts of the statements. The rater and unit commander who signed the contested evaluation are no longer in leadership positions within the organization, the unit commander was relieved of command in Nov 22. On 30 Jan 23, the ERAB denied the request due to the lack of convincing evidence an error or injustice occurred rendering the evaluation inaccurate.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 21 Jun 23 for comment (Exhibit E), and the applicant replied on 7 Jul 23. His original IG complaint was forwarded to the WG/IG office in 2021. The case was referred to the SQ/CC. The SQ/CC's memorandum substantiates his allegations as there would not have been any reason to discuss the issues with his rater if the allegations were not substantiated. He resubmitted the IG complaint in 2022. The IG advised his next step was to appeal the complaint to the GP/CC. The GP/CC was involved in the original discussion in 2021 and did not view the claim through a different lens.

He provides letters of support and MFRs from uninterested parties who validate the EPR did not accurately reflect his work performance. It was not until he filed his IG complaint that the squadron leadership decided to retaliate against him with his EPR. The acting MPF chief during his rater's absence was his day to day supervisor for over three months while his rater was out on bedrest and maternity leave and she viewed his work performance and leadership differently. When he asked her for support regarding his EPR, she informed him that she was told to "stay out of it" by the SQ/CC. He tried to utilize his chain of command and nothing was resolved. The removal of command validates his claim. The report in his records is an injustice. He was penalized by a rater and commander who were not able to effectively lead and refused to listen when there were issues.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant filed IG complaints alleging reprisal in violation of 10 U.S.C. § 1034. While the WG/IG, GP/CC, and SQ/CC reviewed the applicant's complaints and provided a response, there is no evidence to indicate the SAF/IG and DOD IG reviewed the conclusions per AFI 90-301. Nonetheless, the Board finds the applicant has provided insufficient evidence to warrant

overturning the decision of the ERAB. In this respect, the applicant has provided insufficient evidence to conclude his 30 Sep 21 EPR is not correct as reflected or that it was in reprisal in violation of 10 U.S.C. § 1034. The Board notes there is evidence the applicant was counseled on his duty performance and he received an RIC on 30 Mar 21 prior to his filing an IG complaint on 12 Jul 21 and the 30 Sep 21 closeout of his EPR. The applicant also contends his allegations of reprisal were substantiated in his first IG complaint; however, the Board does not find the SQ/CC's response dated 11 Aug 21 to the applicant advising he intended to address the applicant's allegations with his rater, that witnesses would be interviewed and he would brief the squadron on the PT policy as finding the applicant's allegations of reprisal were substantiated. Although the SQ/CC did state he found the witness statements there was a toxic work environment in the flight troubling, this is also insufficient to conclude the applicant was the victim of reprisal in violation of 10 U.S.C. § 1034. Moreover, the Board notes the MPF Chief and SQ/CC were subsequently removed from their positions; however, there is no evidence their removal was due to any reprisal against the applicant. 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-2023-00401 in Executive Session on 17 Aug 23:

, Panel Chair
, 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 30 Jan 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: SAF/IG Provided IG Documents, FRNO 2021-10853. (WITHDRAWN).
Exhibit D: Advisory Opinion, AFPC/DP3SP, dated 12 Jun 23.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jun 23.
Exhibit F: Applicant's Response, w/atchs, dated 7 Jul 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