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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00511

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Her letter of admonishment (LOA) dated 19 Jan 21 be removed from her records.
2. She be promoted to the rank of colonel (O-6).

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends she was on active duty orders from 26 Sep 17 to 25 Mar 21 when a commander directed investigation (CDI) was initiated in late 2020 after complaints by civilian employees. On 19 Jan 21, she received a letter of reprimand (LOR) for creating an intimidating, hostile, offensive work environment and using profanity. The evidence to support the LOR was provided to the applicant in a heavily redacted CDI. The applicant was denied a copy of an unredacted version of the CDI.

On 3 Feb 21, she provided a rebuttal response to the LOR and on 2 Mar 21, the LOR was downgraded to an LOA. On 12 Mar 21, the major command inspector general (MAJCOM/IG) informed the applicant to address the issues with the CDI via an Article 138, Uniform Code of Military Justice (UCMJ) complaint, followed by an appeal to the AFBCMR. On 6 May 21, the applicant submitted a request to rescind the LOA. On 28 May 21, she submitted an informal complaint pursuant to Article 138. On 29 Jun 21, the applicant's Article 138 complaint was dismissed. On 29 Jul 21, the applicant filed a formal Article 138 complaint. On 2 Dec 21, the applicant's formal Article 138 complaint was dismissed and the request to rescind the LOA was denied. On 31 Oct 22, per the applicant's Freedom of Information Act (FOIA) request, she received an almost entirely redacted CDI.

The decision to uphold the LOA was an abuse of discretion because the allegations were unsupported by the evidence and was based on sexism, gender discrimination and an inequitable application of different standards to different genders. The Air Force also acted in an unjust manner in depriving the applicant an ability to defend herself by a blatant refusal to provide her with the evidence on which her punishment was based. The decision to uphold the LOA was the reason she was not promoted to the rank of colonel (O-6) in 2022.

Her commander did not have sufficient evidence to substantiate the CDI findings or impose an LOA. The investigating officer (IO) failed to perform his duties by avoiding interviewing key witnesses, violating her due process rights and demonstrated his bias against the applicant. The IO engaged in a bizarre analysis of the applicant's personality. The IO never spoke to her but

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claimed she was a narcissist. He never read her Article 31 rights, failed to analyze the complainants' motives to fabricate and dismissed the applicant's concerns about their substandard behavior. Witnesses corroborated and provided letters of support attesting she never used any form of verbal abuse. The next two female officers who served in the applicant's position also experienced a climate of discrimination. Her command fostered a toxic environment of gender bias and discrimination and the applicant was the first victim of that culture. The observations are not merely personal observations but are supported by data in the Sep 21 Air Force Inspector General Disparity Review. In response to the survey, 38 percent of women said they had to conform and behave more like their male peers to succeed. The IG found these were Department-wide concerns that required correction.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a lieutenant colonel (O-5) in the Air Force Reserve.

The applicant performed a period of active duty from 25 Sep 17 to 25 Mar 21. She was honorably released from active duty for completion of required active service.

On 8 Jan 21, the applicant was provided a copy of an excerpt of the redacted CDI in accordance with DAFI 36-2907, *Adverse Administrative Actions*. The redacted CDI shows the following:

Allegation 1. Between 1 Jul 20 and 5 Oct 20, the applicant engaged in harassment by creating an intimidating, hostile and/or offensive work environment. **(SUBSTANTIATED)**. The preponderance of the evidence showed the applicant engaged in harassment by creating an intimidating, hostile and offensive work environment.

Allegation 2. Between 1 Jul 20 and 5 Oct 20, the applicant engaged in bullying through the oral berating of subordinates with the purpose of belittling or humiliating those subordinates. The IO concluded credible witnesses provided testimony, not just about singular events, but pervasive actions, in even small daily occurrences, which substantiate the allegation of bullying. **(SUBSTANTIATED)**. It was reasonable to believe the applicant performed acts of aggression with the intent of doing psychological harm, which served no proper military or governmental purpose.

At the request of the applicant, a list of character witnesses was included in the mandatory witness list. Two character witnesses had negative assessments of the applicant's behavior and their testimonies contributed to the substantiation of the harassment allegation. Complainants expressed a fear of retaliation and reprisal.

On 19 Jan 21, the applicant received a LOR. An investigation disclosed the applicant between 1 Jul 20 and 5 Oct 20 engaged in oral berating of subordinates, thereby creating an intimidating, hostile, and/or offensive work environment in violation of DODI 1020.03, *Harassment Prevention and Response in the Armed Forces*. The investigation further disclosed she engaged in misconduct in violation of Article 133, UCMJ, Conduct Unbecoming an Officer and a Gentleman, in the presence of her staff by making a profanity laced comment. On 3 Feb 21, the applicant submitted a rebuttal response. She stated she understood her interactions, directness and assertiveness were perceived as harsh and aggressive by some teammates. She was wrong to use profanity and apologized. She stated the mistakes she made did not warrant the severity of the disciplinary action

and requested the LOR be downgraded to a letter of counseling (LOC) with no unfavorable information file (UIF) or referral officer performance report (OPR). On 2 Mar 21, the LOR was downgraded to an LOA. In an undated response, the Vice Chief of Space Operations for United Space Force denied the applicant's request to rescind the LOA and determined the LOA would remain in her records.

On 28 May 21, the applicant filed an informal complaint under Article 138 alleging her commander committed wrongs against her via the CDI. She stated the CDI in her case was executed with a foregone conclusion and bias. The investigation and subsequent substantiated allegations were in violation of laws and regulations and was arbitrary and an abuse of discretion. She alleged the IO did not thoroughly gather all facts and failed to perform his duty by limiting the scope of witnesses when there were other relevant witnesses. The IO committed bias by referring to her as a suspect and not advising her of her rights. He attributed her statement to "gaslighting" and disregarded the bias and motive against the applicant.

On 29 Jun 21, her commander dismissed her complaint as untimely in accordance with AFI 51-505, *Complaints of Wrongs Under Article 138, Uniform Code of Military Justice*. She was provided a properly redacted copy of the CDI on 8 Jan 21. Her commander also found no evidence her Article 31 rights were violated and found the evidence in the CDI met the burden of proof.

On 26 Jul 21, the applicant filed a formal Article 138 complaint. She alleged the CDI against her was executed with a discriminating foregone conclusion and bias. In accordance with AFI 51-501, an informal complaint must be filed within 90 days of discovery of the wrong. Informal complaints found to be untimely should be dismissed without a decision on the merits. The date of discovery for the wrong was 9 Mar 21. Additionally, the DAFPM 2021-3603 requiring adverse information in any substantiating finding or conclusion from a documented investigation be filed in an officer's record was not published until 26 Feb 21. Regardless of the date of discovery, any delay should be excused in the interest of justice because of the flagrant violations of laws and regulations and shocking negligence, verging on maliciousness of the IO to warrant relief for the applicant.

On 2 Dec 21, the MAJCOM commander (MAJCOM/CC) concluded relief was not warranted and denied the applicant's complaint. The complaint was denied because it was untimely and there was no good cause to waive the time requirement.

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

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 officer selection record (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, LOA, relief of command for cause, removal from developmental education for cause, and LOC. 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.

The Department of the Air Force Inspector General Report of Inquiry, Independent Racial Disparity Review, dated Dec 20 confirmed racial disparity exists for Black Service members. The review was not chartered to review gender bias. It includes reference to the 2019, Government Accountability Office (GAO) report, Military Justice: DOD and the Coast Guard Need to Improve their Capabilities to Assess Racial and Gender Disparities. The GAO study found racial and gender disparities exist in investigations, disciplinary actions, and punishment of service members in the military justice system. The Sep 21, Assessment Report of the Independent Racial Disparity Review Six-Month Assessment dated Sep 21, states the scope was expanded to include other minority groups and a second survey and data collection effort was launched to look at potential disparities across gender and ethnicity lines.

10 U.S.C. § 624. When the report of a selection board is approved by the President, the Secretary of the Military Department concerned shall place the names of all officers on a promotion list. This Board, which serves on behalf of the Secretary of the Air Force in the correction of military records, is without authority to grant the applicant a direct promotion to the rank of colonel. However, in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, the Board may recommend an applicant be considered for promotion by a special selection board (SSB).

AIR FORCE EVALUATION

AF/JAJI recommends denial. The applicant alleges the CDI improperly substantiated the allegations against her and the LOA was an abuse of discretion. The facts do not support a finding of an abuse of discretion. The applicant's claims are no more than a disagreement with the interpretation of the evidence. Her commander's conclusion were far from being arbitrary or capricious and based on many witness statements. He concluded a preponderance of the evidence demonstrated the applicant committed the misconduct and did not find the applicant's arguments to the contrary to be compelling. There is no evidence showing an abuse of discretion in the decisions. The applicant has failed to show there is a material error or injustice. The applicant's record properly documents the adverse actions. The proper procedures were followed and there was no abuse of discretion. LOAs issued to officers are authorized under DAFI 36-2907 and is intended to be an administrative censure for violations more severe than a record of individual counseling and LOC.

On 8 Oct 20, an IO was appointed to investigate an allegation involving the applicant for allegedly engaging in harassment in violation of DODI 1020.03. The CDI was intended to investigate events the applicant created an intimidating, hostile and/or offensive work environment and the applicant engaging in bullying. After a thorough investigation, the IO concluded by a preponderance of the evidence the allegation was substantiated. Numerous witnesses testified to the applicant's prolific use of profanity and stated they never knew if it was directed at them personally or the topic discussed. The applicant had been previously counseled regarding her vulgarity so she could become a more effective leader. Witnesses also testified to the applicant's routine public shaming, where she yelled, screamed and used profanity. Witnesses stated interactions were frightful and

intimidating and some testified they dreaded coming to work. There were countless examples and experiences that enabled the IO to conclude the applicant engaged in harassment, thereby creating an intimidating, hostile and/or offensive work environment, and she engaged in bullying through oral berating of subordinates for the purpose of belittling or humiliating them. The applicant initially received a LOR for her misconduct. After careful consideration of her response, her commander lined through some of the language in the LOR and downgraded the LOR to an LOA.

Per DAFI 36-2603, *Air Force Board for Correction of Military Records*, the applicant has the burden of providing evidence in support of their allegation of an error or injustice. Here, the applicant has offered no such evidence. There is no evidence to indicate her commander's decision to issue an LOA was arbitrary or capricious. Additionally, there is no evidence the LOA was upheld based on sexism or gender discrimination.

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 12 Jun 23 for comment (Exhibit E), and the applicant replied on 11 Jul 23. Counsel contends her commander did not make any separate findings of fact and the investigation must be analyzed. The applicant provided multiple witness statements to corroborate she was receiving disparate treatment, including a threat from a general officer that she would be punched. The statements confirmed the misconduct of the civilian complainants and corroborate what the applicant provided in her response.

There is direct evidence of sexism and discrimination. The applicant was forced to hold a team accountable in the face of daily male-oriented pressure from the top. [Redacted] highlighted the male toxicity and the good old boy environment she was subjected to. Leaders from all levels testified the applicant was dealt a biased and unfair hand in a command climate that worshiped male leadership and tore down females.

Since the applicant's submission, a male colonel was removed for toxic leadership and discrimination towards his female staff members. He was issued a letter of counseling (LOC) the day before he promoted. He simply moved and will be retiring. This is an issue known for years. This information was gained through people who were there; however, none are willing to speak up due to ramifications to their career for doing so. Counsel requests the Board critically review evidence presented by both sides and not simply defer to the IO. The case is an example of a woman who tried to be part of the men's club through mimicking the exact language and conduct those leaders portrayed and she was punished by those in power for it.

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 AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board

conducted an independent review of the applicant’s case and finds no evidence to sustain the applicant’s contentions she was the victim of disparate treatment, sexism, gender discrimination and a toxic environment. To the contrary, it appears the applicant created a toxic work environment where she used profanity and berated subordinates. The Board finds no evidence the IO was biased against her during the course of the investigation and finds the CDI ROI includes sufficient evidence to substantiate the allegations the applicant engaged in harassment, created a hostile environment and engaged in bullying. While the applicant contends the same behavior was condoned from male colleagues while she was issued a LOR, downgraded to an LOA, the Board finds no evidence the applicant was discriminated against on the basis of her gender. Moreover, the applicant in her response to the LOA acknowledged she was wrong and apologized for her use of profanity in the workplace. She also stated she recognized how her tone and interactions were perceived as harsh and that she had taken steps to improve. The applicant also cites the Air Force IG Reports on Racial Disparity dated Dec 21 and the Sep 21 Assessment Report as evidence she was the victim of gender discrimination. The Board acknowledges these IG Reports reveal there is racial and gender bias and disparities in the Air Force. However, the applicant has not provided evidence she was the victim of any gender discrimination. Based on the evidence, the Board finds the applicant failed to treat her subordinates with dignity and respect and her behavior was contrary to the decorum and professionalism expected from Air Force officers and supervisors. In view of the above, the Board finds the LOA meets the criteria for adverse information and it should remain in the applicant’s records per 10 U.S.C. § 615(a)(3), DoDI 1320.14 and DAFI 36-2907. The applicant also requests she receive a direct promotion to the rank of colonel; however, this Board, which serves on behalf of the Secretary of the Air Force in the correction of military records, is without authority to promote an officer to the rank of colonel. 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-2023-00511 in Executive Session on 15 Aug 23:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 30 May 23.
- Exhibit D: SAF/IG Independent Reports on Racial Disparity, dated Dec 20 and Sep 21.

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Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jun 23.
Exhibit F: Applicant's Response, dated 11 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.

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