



Work-Product

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01357

Work-Product

COUNSEL Work-Product

HEARING REQUESTED: NO

APPLICANT’S REQUEST

1. His referral officer performance report (OPR) for the period 7 May 17 through 6 May 18 be amended replacing the referred bullet in Section IV with “Braved retaliation & committed all to uphold standard; reported racism and sexism--instilled core values in Det 370”; the ratings in Sections III and IX be changed to “meets standards”; and the referral comments removed from Section IX or,
2. In the alternative, his referral OPR be voided and removed from his record.

APPLICANT’S CONTENTIONS

Through counsel, the applicant contends his referral OPR was issued to him in retaliation for a documented whistleblower protected communication he made on 16 Apr 18 to his congressional representative for reporting racism, sexism, and homophobia issues within his Air Force Reserve Officer Training Corps (AFROTC) Detachment. He notified the Detachment Commander (Det/CC) of the protected communication. Soon thereafter, he notified the Air Force Holm Center Inspector General (IG) office, the installation Equal Opportunity (EO) office, and the University’s Equal Opportunity and Diversity (EO&D) office. On 7 May 18, his Det/CC retaliated against him by issuing him a referral OPR and again on 8 May 18 by assigning him the menial task of asbestos removal and copying non-commissioned officers on the tasking e-mail. The University substantiated the allegations against his Det/CC, both for his inappropriate comments and for retaliation against the applicant, and the Air Force substantiated the allegations of inappropriate comments. On 3 Jun 20, the Secretary of the Air Force (SECAF) released a memorandum to the force on the importance of equality and fair treatment for all and highlighted the need to eradicate racism and discrimination from the “military leader development system.” The principles highlighted in this memorandum are the same principles he was upholding when he stopped blatant racism and sexism in the workplace against and about cadets.

The applicant provided a copy of a Letter of Reprimand (LOR), dated 24 Jul 17, and his rebuttal to the LOR, dated 1 Aug 17. The LOR was issued by his Det/CC after the applicant took a series of actions to secure his release from Leadership Evaluation and Development (LEAD) Air Expeditionary Force 2 (AEF 2), which demonstrated an unwillingness to follow orders and a blatant disregard for the mission. He was reprimanded for misrepresenting facts and the infraction, combined with his two previous counselings, indicated a negative behavioral trend. In response to the rebuttal, the LOR was reduced to a Letter of Admonishment (LOA) and an Unfavorable Information File (UIF) was established.

Work-Product

Work-Product

The applicant also provided a copy of email correspondence with the University's EO&D office, dated 31 May 18, where he filed an informal complaint against his Det/CC for discriminatory and retaliatory behaviors. On the same day, the University EO&D office informed the Det/CC of the complaint, and he was to refrain from any retaliatory behavior. On 19 Sep 18, the University EO&D office notified the applicant they were satisfied with the outcome and recommendations of the Air Force regarding the applicant's complaint against the Det/CC and acknowledged the applicant's satisfaction with the outcome.

Additionally, the applicant provided copies of the following documents as evidence: 1) Referral OPR for the period 7 May 17 through 6 May 18; 2) Memorandum, dated 29 Jun 17, with his request to be withdrawn from AEF 2 and approved by the AEF 2/CC; 3) Email to his congressional representative, dated 16 Apr 18, asking to be contacted regarding racism, sexism, and homophobia issues within his detachment at the University; 4) Email correspondence with the Holm Center IG, dated in May 18, alleging his referral OPR was an act of reprisal and he intended to file an Article 138; 5) SECAF Memorandum, dated 3 Jun 20, concerning equality and fair treatment for all; 6) Mental health record, dated 23 May 18; 7) Department of Veterans Affairs rated disabilities; 8) Evaluation Reports Appeal Board (ERAB) results indicating his request to remove his 2018 OPR from his record was denied; and 9) Promotion history.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5) awaiting retired pay at age 60.

On 7 May 18, the applicant was issued a referral OPR from his Det/CC for the period 7 May 17 thru 6 May 18 for "Does not meet standards" and comment, "Indifferent to tng, slept through PT, and misled field Training CC about reason to leave early--received a LOA/UIF."

On 4 Jun 18, the applicant provided a response to the referral OPR and disputed the referral comments as being factually incorrect. He admitted he had not performed up to his personal standards due to undergoing a family crisis and he believed his protected communications were other reasons for the factually incorrect claims. On 7 Jun 18, the additional rater considered the comments and concurred with the referral OPR.

On 1 Oct 19, according to Reserve Order RO *Work-Product*, the applicant was promoted to O-5.

In a letter dated, 29 Apr 20, the applicant was notified he had been assigned to the Individual Ready Reserve (IRR) in the Non-obligated Non-participating Ready Personnel Section (NNRPS) for one and a half years and would be administratively discharged from his commission in the Air Force Reserve in approximately 6 months. No other discharge paperwork is filed in his official military personnel record.

On 29 Nov 21, the applicant was notified he completed the required years of service and was entitled to retired pay upon turning 60 years of age (22 Mar 30).

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, E, and H.

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 1034 and AFI 90-301 reprisal against military members for making protected disclosures is prohibited.

10 U.S.C. § 1034(g)(2), Correction of Records When Prohibited Action Taken. In resolving an application for which there is a report of the IG, the AFBCMR shall review the report of the IG.

10 U.S.C. § 1034(h), Review by the Secretary of Defense (SECDEF). Upon the completion of all administrative review, the member or former member who made the allegation, if not satisfied with the disposition of the matter, may submit the matter to the SECDEF. The SECDEF shall decide to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

On 25 Jul 18, the Under Secretary of Defense issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 8 Aug 24, the Board staff provided the applicant a copy of the Under Secretary of Defense guidance (Exhibit J).

AIR FORCE EVALUATIONS

ARPC/DPTSP recommends denying the application. The applicant submitted a request to remove his contested OPR from his records to the ARPC ERAB in May 22 and it was denied. Based on the documentation provided by the applicant, and an analysis of the facts, ARPC/DPTSP stands by the original decision of the ERAB.

A supplemental advisory opinion was provided by ARPC/DPTSP with further clarification of their recommendation to deny the application. In accordance with DAFI 36-2406, *Officer and Enlisted Evaluations System*, paragraph 10.2.3, the “board members review applications and make recommendations to the ERAB President”, who “reviews the member’s request, considers each board members’ recommendations, and makes the final decision for the appeal.” Paragraph 10.2.1.3, “Evaluations that have become a matter of record are presumed to be accurate and objective. Applicants filing an appeal must provide evidence that clearly demonstrate an error or injustice was made.” Attachment 2, paragraph A2.5.13, “Provide factual, specific, and substantiated information that is from credible officials and is based on firsthand observation or knowledge. Avoid submitting unsubstantiated statements or opinions about motives.”

The ERAB reviewed all justification provided, consisting of memos from the applicant and his lawyer, emails with the IG, and disciplinary actions in Jul 22. Through this review, the ERAB determined the evidence was insufficient in supporting allegations of an unjust or bias report.

The complete advisory opinions are at Exhibits C and E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 7 Sep 23 and 21 Feb 24 for comment (Exhibits D and F), and the applicant replied on 22 Feb 24. On behalf of the applicant, counsel contends the advisory opinion is of no value to the Board based on not discussing or knowing whether the ERAB considered the same or different argument that has been presented to the AFBCMR, nor does it make any effort to show it read or considered the issues in the appeal, which is concerning since ARPC made a recommendation based on the ERAB results. Counsel asserted the purpose of the AFBCMR in this case is to review the ERAB decision *de novo* and make an independent determination of whether relief is warranted and adopting the ERAB decision would be an arbitrary and capricious abuse of discretion in violation of the Administrative Procedure Act.

The applicant's complete response is at Exhibit G.

ADDITIONAL AIR FORCE EVALUATION

SAF/IGQ does not provide a recommendation rather an analysis of the applicant's complaints in accordance with (IAW) AFI 90-301, *Inspector General Complaints Resolution*, and DoDD 7050.06, *Military Whistleblower Protection*. The applicant submitted four IG complaints involving abuse of authority and reprisal.

FRNO **Work-Product**: Open: 12 Jul 17; Closed: 20 Oct 17. The applicant submitted an IG complaint – Reprisal/Abuse of Authority against his Det/CC and the AEF 2/CC. The applicant believed he was reprimed against after the Det/CC initiated an investigation on him regarding his attempt to leave his temporary duty assignment at AEF 2 early. The applicant believed the investigation was reprisal because he had told the AEF 2 leadership team he witnessed wrongdoing at AEF 2, specifically insubordination and mal training. The applicant was issued an LOR for unprofessional behavior. The applicant provided a rebuttal, and the LOR was lowered to an LOA. On 9 Aug 17, the applicant requested the Holm Center IG withdraw his complaint against his Det/CC, and on 14 Aug 17, he requested the reprisal allegations against the AEF 2/CC be withdrawn but the abuse of authority complaint remain open (FRNO **Work-Product**). IAW DoD-IG/WRI Memorandum, *Delegation of Responsibility for Certain Case Closures*, SAF/IGQ notified DoD/IG who honored the request to withdraw the complaint and determined the preponderance of evidence did not support independent AF IG action regarding the applicant's reprisal allegations. The complaint against the applicant's Det/CC and reprisal allegations against the AEF 2/CC were **DISMISSED**.

FRNO **Work-Product**: Open: 12 Jul 17; Closed: 12 Nov 17. The applicant's allegations of abuse of authority by the AEF 2/CC were **NOT SUBSTANTIATED**.

FRNO-**Work-Product**: Open: 14 May 18; Closed: 14 May 18. On 10 May 18, the applicant claimed his Det/CC posted all of his evaluations, non-promotion files, sensitive records of his former spouse accusations of domestic violence against him, and his daughter's medical records on a shared drive for all of his subordinates to see. SAF/IGQ advised the applicant both HIPPA and Privacy Act allegations would be addressed by the appropriate agency and closed the case as an **ASSIST**.

FRNO **Work-Product**: Open: 15 May 18 Closed: 15 Mar 18 (sic). The applicant asserted his supervisor posted his sensitive disciplinary records and daughter's personal health information

onto a work center shared drive. SAF/IGQ advised the applicant both HIPPA and Privacy Act allegations would be addressed by the appropriate agency and closed the case as an **ASSIST**.

The applicant requests his contested OPR be removed entirely from his record as it is untrue and unjust and now contends the adverse OPR was issued in retaliation for documented whistleblower protected communication. The applicant appears to have had an email conversation with the IG during May 18 regarding possible reprisal and his 2018 OPR, but the email discussion ends with the applicant stating he was going to pursue an Article 138 against the Det/CC as well as an EO complaint. At that time, the IG office rightfully did not create an IG reprisal case based on this communication. Therefore, the IG has no case addressing matters of the 2018 OPR. A comprehensive review of IG case history shows no IG evidence that prior command administrative actions against the applicant were wrongfully taken.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Aug 24, for comment (Exhibit I), and the applicant replied on 8 Sep 24. Through counsel, the applicant contends the DAF/IG advisory opinion validates numerous facts he asserted and used in support of his request for relief. The validation shows his commander confirmed no additional adverse actions would be taken and the matter was resolved in Aug 17, his commander discovered he made a protected communication in early 2018 and took additional adverse action against him in a reversal of what was said in Aug 17, based on the protected communication. The greater weight of the evidence weighs in his favor and warrants relief in the form of removal of the subject OPR.

The applicant's complete response is at Exhibit K.

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, to include the applicant's complete submission, the advisory opinions, and the applicant's responses thereto, the Board concludes the applicant is not the victim of an error or injustice. The applicant contends the referral OPR covering the period 7 May 17 through 6 May 18 was issued in reprisal for protective communications made under 10 U.S.C. § 1034. He asserts that after reporting allegations of racism, sexism, and homophobia within his detachment to his congressional representative and various military and civilian EO offices his Det/CC retaliated against him by issuing the contested OPR and assigning him to menial duties. The Board acknowledges the seriousness of the applicant's allegations and carefully considered the extensive supporting documentation, including IG case files, advisory opinions, University communications, and relevant policy guidance. In accordance with 10 U.S.C. § 1034, the Board considered all relevant IG reports (FRNO-*Work-Product*, FRNO-*Work-Product*, FRNO-*Work-Product*, and FRNO-*Work-Product*) and determined no IG investigation or substantiated finding supports the applicant's claim that the contested OPR was issued in reprisal. Although the applicant raised concerns to the IG and EO offices, the IG did not open a formal reprisal investigation regarding the OPR, and prior IG complaints involving the applicant's Det/CC were dismissed or not substantiated.

Further, the Board reviewed the evaluation in question under the standards set forth in DAFI 36-2406, which presumes OPRs to be administratively correct and objective unless clearly shown otherwise. The ERAB reviewed this matter and concluded the evidence was insufficient to support the applicant’s request for removal. The Board finds no evidence of bias, factual inaccuracy, or procedural error in the processing of the referral OPR. The applicant has not presented compelling, credible evidence from disinterested or firsthand sources that demonstrate the ratings or comments were the product of reprisal or were otherwise unjust.

In accordance with the supplemental guidance issued by the USD P&R, dated 25 Jul 18 (Wilkie Memo), the board carefully considered the applicant’s request for relief on the basis of equity, injustice, or clemency whenever there is insufficient evidence to warrant relief for an error or impropriety. The Wilkie Memo authorizes corrections boards to grant relief to ensure fundamental fairness, even in the absence of legal error. While the Board acknowledges the applicant’s belief that he was upholding the Air Force’s core values in reporting alleged misconduct, the record does not establish that the issuance of the OPR was fundamentally unfair, or that it constitutes an injustice requiring correction. The applicant ultimately achieved the grade of lieutenant colonel and was transferred to the Retired Reserve in good standing, eligible for retired pay. The Board finds these outcomes reflect due recognition of his service and do not support an equitable or clemency-based correction of the record. Therefore, in the absence of persuasive evidence to the contrary, the Board does not find the applicant has been the victim of reprisal pursuant to 10 U.S.C. § 1034.

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-2023-01357 in Executive Session on 29 Aug 24 and 27 Feb 25:

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 18 Jul 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTSP, dated 23 Aug 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Sep 23.
- Exhibit E: Advisory Opinion, ARPC/DPTSP, dated 20 Feb 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Feb 24.
- Exhibit G: Applicant’s Response to Advisory Opinions, dated 22 Feb 24.
- Exhibit H: Advisory Opinion, SAF/IGQ, dated 7 Aug 24.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Aug 24.
- Exhibit J: Notification of Supplemental Guidance (Wilkie Memo), dated 8 Aug 24.
- Exhibit K: Applicant’s Response w/atchs, dated 8 Sep 24

Work-Product

Exhibit L: IG Case Files, various dates, WITHDRAWN.

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.

8/1/2025

X

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

Work-Product