



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01467

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His 6 May 20, removal from command be recharacterized to reflect "Not For Cause" and the corresponding change of command date be backdated to the original change of command date of 18 Jun 20.

APPLICANT'S CONTENTIONS

On 6 May 20, the Work-Product Air Logistics Complex Commander (OO-ALC/CC) removed him from group command with the corresponding characterization of "For Cause." Prior to his removal, on 4 May 20, the OO-ALC/CC initiated a Commander Directed Investigation (CDI) which focused on the command climate within his group and his alleged temporary duty (TDY) travel voucher discrepancies. He would later learn that he was also considered a subject in an ongoing Office of Special Investigations (OSI) investigation that was initiated in Jun 20.

His removal from command was not based on facts or evidence. Following his removal from command and receipt of the CDI findings, he submitted a request to the OO-ALC/CC to have his removal recharacterized from "For Cause" be changed to "Not For Cause," but his request was denied. He then submitted his request to the Air Force Sustainment Center Commander (AFSC/CC) and then to the Air Force Material Command Commander (AFMC/CC) who subsequently denied his request.

He believes the OO-ALC/CC's decision to remove him from command was made in error and created an injustice for the following reasons:

- a. The OO-ALC/CC did not provide derogatory or corrective feedback.
- b. The CDI Investigation Official failed to acknowledge facts that refuted substantiated findings.
- c. The OSI investigation never revealed any appreciable findings.
- d. The OO-ALC/CC and OSI failed to follow proper procedures.
- e. He received #1 Ranking from OO-ALC/CC following his removal from command.

The information he provides paints a clear picture of the incurred injustices as at no time did either the OSI, CDI, or any other entity provide appreciable information worthy of command removal. Although the OO-ALC/CC's unsupported rationale as to why he was removed from command and

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their unwillingness to look at the facts was unjust and unfair, their continued insistence of maintaining a negative narrative against him and declining his recharacterization request is the greater injustice. Finally, the decision to remove him from command negated his opportunity to command the Air Base Wing, negated his possibility of being promoted to brigadier general, and tarnished his 24 years of impeccable service. Therefore, he respectfully requests that the Board grant his request and recharacterize his removal as “Not For Cause” and adjust his command inclusive dated to coincide with his original change of command date of 18 Jun 20.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force colonel (O-6).

On 17 Mar 20, according to AF Form 724, *Airman Comprehensive Assessment Worksheet (2 Lt thru Col)*, document provided by the applicant, section VI, *Performance Feedback*, reflects his rater, the OO-ALC/CC, marked all subsections “Clearly Exceeds” and provided the following comments in subsection 2, *Leadership Skills*, “Good here – Relationships matter in AFMC, you’re in it for the long haul... .”

On 30 Apr 20, according to memorandum, *Notification of OSI Investigation involving <applicant> Case Number* [Work-Product] Air Force Office of Special Investigation (AFOSI) informed OO-ALC/CC there is an on-going AFOSI investigation involving the applicant.

On 5 May 20, according to memorandum, Appointment of Investigating Officer, the OO-ALC/CC appointed an investigation officer (IO) to conduct a commander-directed investigation (CDI) surrounding allegations of misconduct by the applicant.

On 6 May 20, according to memorandum, *Relief of Command*, the OO-ALC/CC informed the applicant of their decision to remove him from command for cause.

On 13 May 20, according to AF Form 707, *Officer Performance Report*, Section IV, *Rater Overall Comments*, reflects the following statement by the OO-ALC/CC, “#1/7GP/CCs/CLs! Crushed every challenge...75ABW/CC selection on the spot! Destin’d for MAJCOM A/4 & ALC/CC!”

In Jun 20, according to the *Report of Investigation* (ROI), provided the following findings regarding the CDI allegations:

- a. **Allegation 1.** Between on or about 1 Jan 18 and on or about 1 May 20 the <applicant> improperly submitted TDY travel vouchers that failed to comply with the Joint Travel Regulations, or other Federal travel regulations or law.
Finding: **SUBSTANTIATED**
- b. **Allegation 2.** Between on or about 1 Jan 18 and on or about 1 May 20 the <applicant> improperly used his government travel card.
Finding: **NOT SUBSTANTIATED.**
- c. **Allegation 3.** Between on or about 1 Jan 18 and on or about 1 Jun 19 the <applicant> abused his authority by improperly removing or influencing the removal of <redacted> from their position as Executive Assistant after they disagreed on travel entitlements and travel voucher processes. Finding: **NOT SUBSTANTIATED.**

- d. **Allegation 4.** Between on or about 1 Jan 18 and on or about 1 Apr 20 the <applicant> failed to maintain a healthy command climate, where members are treated with dignity, respect, and inclusion, in violation of AFI 1-2 by being openly disrespectful to member of his Maintenance Group, including the Executive Assistant, the Group Business Operations Chief, the Labor Relations Liaison officer, and the Maintenance Squadron Director, whenever he (<applicant>) disagreed with them on processes or business rules.
Finding: **SUBSTANTIATED.**

On 3 Jun 20, according to memorandum addressed to the IO, <applicant's Written Response to CDI Allegations>, the applicant provided a written response to the CDI allegations.

On 22 Jun 20, according to the memorandum addressed to OO-ALC/CC, *Legal Review – Commander Directed Investigation Involving <applicant>*, the 75 Air Base Wing Judge Advocate (75 ABW/JAC), found the CDI legally sufficient.

On 10 Jul 20, according to memorandum, Appointing Authority Approval, the OO-ALC/CC concurred with the findings and conclusions of the investigating officer.

On 31 Jul 20, according to *Retirement Commander Coordination, Step 4, Officer Grade Determination (OGD) Requirements*, the OO-ALC/CC responded the applicant was subject to an OGD determination with the following recommendation: <applicant> “was the subject of a Commander Directed Investigation that resulted in substantiated findings for failing to maintain a healthy command climate and for travel voucher discrepancy. Despite this short lapse, his record as an officer, and as a Colonel over an extended time demonstrate honorable service. It is my recommendation that he be retired in the grade of O-6, rank of Colonel.”

On 28 Feb 21, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant retired in the grade of Colonel and was credited with 23 years, 9 months, and 3 days of active service.

On 6 Jul 21, according to email traffic, *Request for Relief re:<applicant>* document provided by the applicant, the applicant through representative requested the AFMC/CC reconsider and change the OO-ALC/CC's removal decision from “For Cause” to “Not for Cause.” The AFMC/CC replied they cannot take direct action on the request and recommended the applicant seek relief through the AFBMCR.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction 51-509, *Appointment To and Assumption Of Command*, 23 Dec 23, Paragraph 14, *Relief of Command*. Command is a privilege, not a right. As such, a superior competent authority may relieve an officer of command for any reason not prohibited by law or policy.

14.1. Not for cause. If an officer is relieved of command as an assignment action only and not for cause, then the officer's relief of command may not be used as a basis to support any adverse action or collateral administrative documentation against the officer. This prohibition does not limit raters' ability to provide appropriate comments in the officer's next performance report regarding the officer's performance or potential. However, the comments may not reference the relief of command assignment action.

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.

14.2.1. A superior competent authority's decision to relieve a commander for cause must not be arbitrary and capricious.

14.2.1.2. If a specified cause for relief of command is later discovered, or determined by superior competent authority, to have been in error, the officer is not returned to command. The superior competent authority may initiate, or the officer may request that the superior competent authority issue, a memorandum for record recharacterizing the relief of command from "for cause" (paragraph 14.2) to "relief of command not for cause" (paragraph 14.1) or to a suspension (paragraph 14.3.). The officer relieved in error may then use the memorandum in any appropriate forum (e.g., Evaluation Report Appeals Board, Air Force Board for the Correction of Military Records) as support in seeking corrections to his/her personnel records.

Department of the Air Force Manual (DAFMAN) 1-101, *Commander Directed Investigations*, 9 Apr 21, Chapter 3, *General Considerations*, 1.3. *CDI Purpose*. The CDI is a tool to gather, analyze and record relevant information about matters of primary interest to those in command. The CDI is an extension of the commander's authority to investigate and to correct problems within the command. As such, the CDI is internal to the command concerned. There are two reasons a commander may want to conduct a CDI: to investigate systemic (or procedural) problems or to look into matters regarding individual conduct or responsibility. CDIs are administrative investigations.

1.4. Standard of Proof. The standard of proof for a CDI is preponderance of the evidence. A preponderance of the evidence is defined as the greater weight of credible evidence. When the greater weight of credible evidence supports the alleged events, it means the events as alleged are more likely than not to have occurred and the investigating officer (IO) may consider the events proven. While the amount of evidence is something to consider, less credible evidence will not trump a smaller amount of more credible evidence. Some additional things to consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events. At all times, IOs must use their own common sense, life experiences, and knowledge of the ways of the world to assess the credibility of witnesses they interview and the evidence gathered in the investigation.

AIR FORCE EVALUATION

AF/JAJI recommends denying the request. The applicant was relieved from command in accordance with AFI 51-509, paragraph 14.2. According to the applicant, before his relief from command, a CDI substantiated allegations he failed to use a contract carrier, failed to obtain a letter of lodging non-availability on four occasions, failed to retain and file hotel receipts on five occasions, and finally, failed to maintain a healthy command climate. However, the applicant contends his relief from command was erroneous because:

1. He received a favorable review from OO-ALC/CC after they relieved him from command
2. He was "never given derogatory or corrective feedback."
3. The CDI "failed to acknowledge facts refuting substantiated findings."

4. An investigation by the OSI “never revealed any appreciable findings.”
5. OO-ALC/CC and OSI agents “failed to follow proper procedures.”

The grounds for losing confidence are broad and OO-ALC/CC’s determination she lost confidence in his ability to command is given deference. Accordingly, his contentions that (1) he received a favorable review and (2) he was not given corrective feedback, do not demonstrate a violation of AFI 51-509. Regarding his contention (3), the CDI “failed to acknowledge facts refuting substantiated findings,” he submitted lodging receipts that supposedly prove the CDI was incorrect regarding one of the two substantiated allegations. However, assuming these receipts supported his contention, it would not be dispositive of error in the command action because there is no evidence the OO-ALC/CC acted solely on the travel vouchers issue. On the contrary, the CDI finding that he failed to maintain a healthy command climate suggests the OO-ALC/CC did consider matters other than his deficient travel voucher. Furthermore, instead of providing evidence in support of contentions (3), (4), and (5), he has submitted arguments, including memoranda and emails from his former Area Defense Counsel, that merely disagree with the CDI’s findings. Therefore, AF/JAJI finds no error or injustice.

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 29 Jan 24 for comment (Exhibit D), but has received no response.

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 recognizes that Command is a privilege, not a right and the grounds for a commander losing confidence in a subordinate commander are broad. As such, the Board determines his commander’s decision to remove him for cause was neither arbitrary nor capricious. Accordingly, his contentions he received a favorable review and was not given corrective feedback prior to his relief does not demonstrate a violation of this precept. Further, contrary to his contentions the command directed investigation failed to acknowledge facts refuting substantiated findings; his commander and OSI investigators failed to follow proper procedures; and the OSI investigation never revealed any appreciable findings, the Board finds he merely presented arguments that disagree with the findings of the command directed investigation. Finally, the Board determines the finding of failing to maintain a healthy command climate in of itself justifies the decision to relieve him of command. 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-2023-01467 in Executive Session on 29 Feb 24 and 14 May 24:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member
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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 2 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 18 Jan 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Jan 24.

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.

7/7/2024

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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