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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02148

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He requests the following based on an allegation of reprisal pursuant to DoDD 7050.06, *Military Whistleblower Protection*, and 10 U.S.C. § 1034.

1. His 20 Feb 23 relief of command "for cause" be changed to "without cause."
2. His letter of reprimand (LOR) dated 21 Apr 23 be removed from his records.
3. He be awarded a permanent change of station (PCS) decoration.
4. He be reconsidered for assignment to senior developmental education (SDE) at the National Institute of Defense Studies, Tokyo, Japan.

APPLICANT'S CONTENTIONS

In Feb 23, he was unexpectedly relieved of squadron command by his operations group commander (OG/CC). His OG/CC abused his position and engaged in unlawful reprisal toward him to promote and protect his own career. His decision was capricious and influenced by personal feelings. He was on leave and two months from his change of command when he was relieved of command. He received no derogatory paperwork or any counseling prior to being relieved. His OG/CC took offense when he used his Article 31 rights to remain silent during an investigation. He berated him in public and in front of his peers and relieved him of command knowing he would lose his SDE slot.

The OG/CC used the fact he established an innovative method to allow squadron family members to accompany their active duty sponsor during a four month temporary duty (TDY) from Andersen AFB, Guam to Yokota AB, Japan as the main reason for relieving him of command. The OG/CC held a personal grudge against him. The OG/CC violated 10 U.S.C. § 1034, which protects members from retaliation for making protected communication. On 26 May 23, he filed a complaint under Article 138, Uniform Code of Military Justice (UCMJ) against the OG/CC for the arbitrary and capricious decision to relieve him from command.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force lieutenant colonel (O-5).

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Per the applicant's TDY orders dated 2 May 22 and the Defense Travel System (DTS) printout dated 30 Nov 22, the applicant's TDY from Andersen AFB to Yokota AB was from 11 May 22 to 15 Oct 22.

In an email dated 6 Jun 22, the applicant informed the OG/CC that he believed they had cracked the code for dependent travel to Yokota AB during the unit's deployment and advised the OG/CC of the plan. The email states unless directed otherwise they would proceed with the numbered air force's (NAF) approved process. The TDY proceed dates and TDY length varied for unit members.

In an email dated 29 Sep 22, the applicant provided the OG/CC with the process they used to get family members to Japan. He stated the process was provided by the NAF Deputy Director for Manpower, Personnel and Services (NAF/A1). The applicant wrote that at no time in the last five months did anyone address concerns the process constituted abuse or was illegal and no leader of any kind approached him with questions or concerns. This included in person meetings with the NAF Vice Commander (NAF/CV), the United States Forces Japan, Deputy Commander (USFJ/CD) and wing personnel. At no time did the USFJ Staff Judge Advocate (USFJ/SJA) ever contact him, his command team or anyone with any letter to cease and desist. The applicant also stated that Japan was opening its borders on 11 Oct 22 to pre-pandemic general foreign travel procedures and the issue would be moot in 10 days.

SAF/IG provides the Commander Directed Report of Investigation (ROI) Concerning Dereliction of Duty and Misuse of Government Resources dated 7 Feb 23. On 23 Nov 22 an investigating officer (IO) was appointed. The case involves two allegations. During the timeframe between 11 May 22 and 12 Oct 22, members of the applicant's squadron improperly used DTS to facilitate dependent travel from Andersen AFB to Yokota AB during the unit's deployment in connection with government sponsored orders. The improper use of DTS for unit members' dependents to travel subverted established Status of Forces Agreements (SOFA) and COVID-19 tourist restrictions. The allegations addressed the use of government resources by squadron members and their dependents for personal gain. The ROI includes the following allegations and findings:

Allegation 1: The applicant, who knew or should have known of his duties, at or near Yokota AB, between 11 May 22 and 12 Oct 22, was derelict in the performance of those duties in that he negligently failed to comply with the Joint Travel Regulation (JTR) and DTS, as it was his duty to do by directing nonofficial dependent travel to Japan using DTS generated orders. **(SUBSTANTIATED).**

Allegation 2: Members of the squadron did, at or near Yokota AB between 11 May 22 and 12 Oct 22, misuse government resources for private gain by allowing dependent members to utilize government vehicles and contingency dormitories for nonofficial purposes, in violation of 5 CFR 2635.704 and Section 2-301(b) of the Joint Ethics Regulation. **(SUBSTANTIATED).**

The CDI ROI includes a redacted memorandum for record (MFR) from the assistant SJA dated 3 Mar 23, which states the applicant first contacted the legal office in Aug 22 regarding initiating a CDI explaining that a plane was lost due to the actions of [redacted]. In a phone conversation, the applicant informed the legal office that [redacted] had filed an inspector general (IG) complaint against him which had been closed out as unsubstantiated. During the course of the conversation, the applicant stated he "wanted to get this guy" or words to that effect. Following a second conversation, the assistant SJA felt the applicant was initiating the CDI as a reprisal action and the assistant SJA recused himself from the CDI.

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The notice of relief of command memorandum dated 20 Feb 23 is not in the applicant's automated records management system (ARMS) record; however, the applicant provided it in his AFBCMR submission. It states he was relieved of command for cause in accordance with DAFI 51-509, *Appointment to and Assumption of Command*, effective 22 Feb 23. The reason cited was lost confidence in the applicant's judgment and command temperament. His commander concluded the relief of command was good for the organization. It also stated the notice of relief of command memorandum would be filed in his officer selection record (OSR) in accordance with DAFI 36-2907, *Adverse Administrative Actions*. It is unknown why the relief of command memorandum is not filed in the applicant's ARMS/OSR records.

In a memorandum dated 1 Apr 23, the AF/A1 approved the applicant's wing commander's (WG/CC) request the applicant be removed from DE designation for cause. It stated a copy of the removal letter would be filed in the applicant's OSR and in accordance with DAFI 36-2670, *Total Force Development*, the applicant would no longer be eligible for future in-residence DE. The removal from DE memorandum is included in the applicant's ARMS/OSR records.

The applicant's LOR dated 21 Apr 23 is not in the applicant's ARMS record; however, the applicant provided it in his AFBCMR submission. The LOR states an investigation disclosed that during his squadron's deployment to Yokota AB, he directed the use of official resources to enable leisure travel under the SOFA. The manipulation of DTS was not supported by USFJ/JA and it violated DTS and the JTR. The applicant had ample notice of legal and ethical concerns and chose to proceed anyway. The disparity in travel opportunities between the applicant's squadron's dependents and others was the latest in a long trend of allowing relationships to deteriorate, leading to multiple complaints. The applicant earned a reputation for being difficult to work with and berated others for which he was repeatedly counseled. The OG/CC was also alarmed a noncommissioned officer (NCO) from the applicant's squadron who was recommended for nonjudicial punishment (NJP) had previously filed an IG complaint against the applicant. The NCO alleged he was being targeted although there were ample signs of failures by many personnel. The OG/CC had learned that the legal office expressed the same concerns and that the applicant reluctantly added another airman to the scope of the allegations to be investigated. Although the OG/CC could see the difficulty of holding a member who previously made protected communications accountable, the applicant's insistence on targeting the NCO who made a protected communication about him made a strong appearance of reprisal. The applicant's insistence of proceeding in the face of repeated concerns about reprisal demonstrated poor decision making and would not be tolerated.

On 21 Apr 23, the OG/CC informed the applicant the CDI ROI substantiated the two allegations, and the findings and conclusions were found to be legally sufficient. The OG/CC approved the findings and conclusions and the matter was closed.

In a rebuttal to the LOR dated 4 May 23, counsel, on the applicant's behalf, contended that while on deployment, the applicant's actions became the target of jealousy by less innovative commanders who chose to complain to their superiors about the applicant. His team acted with due care to ensure that no unreasonable cost to the government would result through the initiative. The IO was incorrect in finding the applicant violated the SOFA, DTS and the JTR. While the IO chided the applicant on violating rules, the IO never asked what the OG/CC should have known or why he did not stop a subordinate commander from executing a plan so offensive as to warrant his relief from command. His leadership never recoiled at his plan or directed an immediate halt. The OG/CC had the opportunity on 6 Jun 22 when the applicant presented his plan. The applicant did not execute his plan in darkness. The allegations of poor relationships and poor treatment of his airmen are also false and unsupported by any evidence. The applicant was relieved of command at the end of his tour and just short of a successful end to his tour. Also, his shortcomings were

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not documented in any feedback. With regard to the allegations that the applicant's actions regarding a CDI pertaining to an NCO's actions gave the appearance of reprisal, counsel stated the applicant elevated the matter to the OG/CC to avoid serving as the disposition officer. He also did not shape the investigation. Further, the IG unsubstantiated the NCO's allegations against the applicant. Counsel requested the LOR be rescinded. On 12 May 23, the OG/CC sustained the LOR. It is unknown why the LOR is not filed in the applicant's ARMS/OSR as required per DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, and DAFI 36-2907.

On 26 May 23, the applicant's counsel, on his behalf, filed an Article 138, UCMJ complaint requesting redress from the relief of command. The counsel asked that the relief of command be found in error and an MFR be issued showing the relief of command was "not for cause." The OG/CC in a response dated 6 Jun 23 informed the applicant in accordance with AFI 51-505, *Complaints of Wrongs Under Article 138, Uniform Code of Military Justice*, paragraph 3.2, the request must be filed within 90 days of discovery of the alleged wrong. The applicant filed his complaint on 26 May 23, more than 90 days after his removal from command on 22 Feb 23. The applicant stated in his Article 138, UCMJ complaint he did not know the rationale for his removal from command until 21 Apr 23 when he received the approved CDI. The OG/CC did not find the reason as a basis to grant an extension of the 90 day timeline because the CDI findings he disputed were not the basis for his removal from command.

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

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.

DAFI 51-509, *Appointment to and Assumption of Command*, 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. Paragraph 14.1. Not for cause. If an officer is relieved of command as an assignment action only and not for cause, then the relief of command may not be used as a basis to support any adverse action. Paragraph 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.

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 Jan 21. 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 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, NJP

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pursuant to Article 15, LOR, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. 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.

DAFMAN 36-2806, *Military Awards: Criteria and Procedures*, paragraph 2.12.1, Recommendations (including reconsiderations and upgrades) are entered into official channels within three years and awarded within five years of the act, achievement or service performed. Paragraph 2.12.2., Service members currently serving, may request a time waiver through the chain of command the member was assigned to during the period of the act, achievement or service being recognized.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denial. The LOR was not provided nor is it in the applicant's ARMS record.

In accordance with DAFPM 2021-36-3, adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. All adverse information an officer receives will be filed in the OSR and will be considered by promotion selection, special selection, federal recognition and selective continuation boards to the grade of O-4 and above. All adverse information as defined by this policy will be permanently placed in the applicant's master personnel records group (MPerRGp) and may only be removed pursuant to an AFBCMR recommendation.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Sep 23 for comment (Exhibit E). The applicant provides his LOR dated 21 Apr 23, counsel's response to the LOR dated 4 May 23 and the notification of the CDI findings memorandum dated 21 Apr 23.

The applicant's complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION

AF/JAJI recommends denial. There is insufficient evidence to demonstrate a material error or injustice.

On 23 Nov 22, the OG/CC initiated a CDI into the applicant's squadron. The IO was charged to investigate two allegations. On 20 Feb 23, the applicant was relieved of command because the OG/CC lost confidence in his judgment and command temperament. The OG/CC concluded the removal from command was for the good of the organization. On 24 Feb 23, the OG/CC met with the applicant's area defense counsel (ADC) to discuss the specific details to what led to his loss of confidence. The OG/CC made it clear the ongoing CDI was not a basis for the removal and he provided specific details of what led to his loss of confidence as the applicant's judgment and command temperament. AFI 51-509, paragraph 14.2 permits removal from command for cause when a superior competent authority has lost confidence in the officer's ability to command due to misconduct, poor judgement, inability to complete assigned duties, the interests of good order and discipline, morale, the good of the organization or other similar reasons.

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DAFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 3.4.4, provides that the applicant has the burden of providing evidence in support of their allegations of an error or injustice. As this is not a *de novo* review, the scope is limited to determining whether there was an error or injustice. AF/JAJI finds no error or injustice and defers to the fact finder. However, deference to the fact finder is not blind deference, as findings of fact can be evaluated for arbitrariness and capriciousness. Nevertheless, in the context of correcting military records, an “unusually deferential” application of the arbitrary or capricious standard is applied. Under this deferential standard, the applicant’s claims are no more than a disagreement with the OG/CC’s actions and AF/JAJI finds the OG/CC was in the best position to evaluate the information available to him to support the removal from command, CDI substantiation and LOR. The OG/CC detailed many situations that raised concern about the applicant’s ability to effectively command his squadron. Additionally, an independent IO conducted a thorough investigation into the CDI allegations, leading to the substantiation of the allegations. It is reasonable to conclude the OG/CC and the WG/CC’s actions were supported by the evidence.

The complete advisory opinion is at Exhibit G.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 24 Oct 23 for comment (Exhibit H). In a response dated 15 Nov 23, the applicant contends the advisory position fails to address the conflict of interest and bad acts of his OG/CC.

He was abruptly relieved of command based on a CDI initiated by the OG/CC for a course of action his squadron took that he had approved. He researched the plan for squadron family members to travel TDY with his squadron on a four month deployment with the NAF and Yokota AB authorities. The evidence his OG/CC approved the plan is in his LOR rebuttal dated 4 May 23. His initiation of the CDI was to cover his actions, which later became unpopular after less creative commanders complained out of jealousy or malice. The OG/CC’s actions paint a picture of hiding from due process behind tyranny and a callous disregard for his own responsibility. There is no evidence corroborating the OG/CC’s claim regarding his temperament. Prior to this LOR, he had never been issued progressive disciplinary paperwork.

The violation of 10 U.S.C. § 1034 is clear. On 6 Jun 22, he briefed the OG/CC on a creative plan to legally bring family members to Japan while deployed as a morale and welfare boon during a period featuring harsh COVID-19 related travel restrictions, which had placed serious stress on his squadron’s families. In multiple conversations, the OG/CC approved his plan and he was briefed every step of the way. The plan was protected communication under 10 U.S.C. § 1034, as members of a military member’s chain of command are considered a protected audience. By using the plan that he approved as the basis for a CDI directed at him and then removing him from command is a violation of the Whistleblower Act and an abuse of authority.

The charge that he created reprisal is absurd. A below average NCO in his squadron with a pattern of substandard work made an abusive and racist complaint against him after he presented himself with a bad attitude and violently shouted at him during a meeting. He was also caught with a disheveled beard and an expired beard waiver. When this NCO was later derelict in his duty and caused a major aircraft accident, he launched an investigation directed at his section. As a part of his defense, he claimed he was the victim of reprisal, even though he was not aware he had filed an IG complaint against him. The lawyers who filed affidavits alleging he was targeting this NCO did not accurately represent their conversations and fabricated what they wrote or what they wanted to believe. The OG/CC did not corroborate their claims but instead used his duty bound

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submission of the NCO's proven misconduct, which caused an aircraft accident, as another reason to relieve him.

The decision to cancel his SDE assignment was extremely capricious and done improperly. He was entitled to a copy of the MFR which removed him from SDE. He was not given an opportunity to respond and only recently the SDE removal memorandum was placed in his OSR with no prior notification to him. His SDE assignment should be returned. He was the victim of toxic and capricious leadership. There is absolutely no connection between the allegations for which he was relieved and the reasoning to remove his SDE assignment.

He was stratified with a numbered rank by his leadership and given a push for SDE by the WG/CC on his 2022 officer performance report (OPR). This means he was performing at an extremely strong level as a squadron commander. It does not make sense he would be given this recognition if he was guilty of temperament issues, which supposedly plagued his entire command and was cited as the main reason for relief. The accusations are a smokescreen drummed up by his leadership embarrassed at having approved an action per his request to bring their families to Japan, which proved to be unpopular with their peers. The clear perception is he was punished to save their reputation.

Neither Air Force culture or law permits relief of a commander just because a leader does not like them, and certainly not to protect their own reputation at the sacrifice of another's career, which is the case here. The decision to remove him from command and cancel his SDE was unproportional to the alleged offenses. He violated no leadership standards and his unit's Defense Organizational Climate Survey (DEOCS) reflected a 70 percent approval rating for him by his troops in both years of his command. His performance as a commander and an officer was top notch, and the infractions for which he has been accused of do not warrant complete dismissal and cancellation of his career and future.

In an additional response received on 16 Jan 24, the applicant provided character statements in his behalf to include from the Andersen AFB WG/CC dated 28 Feb 23. He states given his knowledge of the applicant's character and critical skill set, he asked an alternate disposition other than career ending negative paperwork or cancellation of his next assignment be considered.

The applicant's complete response is at Exhibit I.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant did not exhaust all available non-judicial relief for award of a PCS decoration 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 recommendations of AFPC/DPMSSM and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant contends he was the victim of reprisal in violation of 10 U.S.C. § 1034 and the actions of his OG/CC were arbitrary and capricious and in his own self-interest. The Board conducted an independent review of the evidence and the CDI dated 7 Feb 23 and finds no evidence the applicant was the victim of reprisal in violation of 10 U.S.C. § 1034. Based on the evidence, it appears the IO conducted a thorough investigation leading to the substantiation of the two allegations. In view of the totality of the evidence, the Board finds the actions of his commanders were supported by the evidence and the relief of command, issuance of

the LOR dated 21 Apr 23 and removal from SDE were within their authority and discretion and not unduly harsh or disproportionate. The Board also notes under the presumption of regularity, military administrators, to include commanders, are presumed to act lawfully and in good faith and are entitled to substantial deference in the governance of its affairs. In this respect, while it is clear the applicant disagrees with his commanders decisions to relieve him of command, issue an LOR and remove him from SDE, the Board does not find his disagreements persuasive and find he has not sustained his burden of proof to warrant granting the requested relief. The Board also does not know why the applicant's relief of command letter and LOR are not in his records as required per 10 U.S.C. § 615(a)(3), DoDI 1320.14, DAFPM 2020-36-03, DAFI 36-2907 and DAFI 36-2501; however, the removal from SDE for cause is also required to be filed in the applicant's records. With respect to the request for a PCS decoration, the applicant provided no evidence he was recommended or approved for award of a PCS decoration. Further, the applicant did not exhaust the available administrative remedy in DAFMAN 36-2806 for award of a PCS decoration before submitting his request to the AFBCMR. Therefore, the Board recommends against correcting the applicant's records.

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-2023-02148 in Executive Session on 8 Feb 24 and 8 Mar 24:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 24 Jun 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: SAF/IGQ CDI ROI, dated 7 Feb 23 (WITHDRAWN).
- Exhibit D: Advisory Opinion, AFPC/DPMSSM, dated 15 Sep 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Sep 23.
- Exhibit F: Applicant's Response, w/atchs, undated.
- Exhibit G: Advisory Opinion, AF/JAJI, dated 20 Oct 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 23.
- Exhibit I: Applicant's Response, w/atchs, dated 15 Nov 23.

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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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Board Operations Manager, AFBCMR
Signed by: USAF

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