



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02173

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. The substantiated allegations in the commander directed investigation (CDI) report of investigation (ROI) dated 17 Dec 20 be found unsubstantiated.
2. Her letter of reprimand (LOR) dated 6 Jan 21 and unfavorable information file (UIF) be removed from her records.
3. Her referral officer performance report (OPR) for the reporting period 28 Apr 20 to 9 Feb 21 be removed from her records.

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends her medical group commander (MDG/CC) removed her from command as the inpatient operations squadron commander (IPTS/CC), issued her a LOR and UIF based on the assertion she was derelict in the performance of her duties for failing to accord flight commanders respect and authority, which was premised on unsupported substantiation of a CDI. She was also denied a full and fair opportunity to respond to the allegations. The investigating officer (IO) failed to interview multiple key witnesses and the CDI includes multiple deficiencies.

On 5 Apr 21, the applicant filed an informal Article 138, Uniform Code of Military Justice (UCMJ) complaint. On 22 Jun 21, the numbered air force commander (NAF/CC) denied her the requested relief.

The issues in the IPTS existed prior to the applicant's arrival and her actions were supported by her prior chain of command. The fact is she ran all of her decisions through her chain of command and had their endorsement for such decisions. If she was derelict in her duties, there is no explanation why she received positive words from her prior raters. She received no counseling or any feedback she was not meeting standards. In a mere three months, her command posture negatively reversed 180 degrees during the midst of a group commander change and the height of COVID-19.

An independent review by the Board should find the facts present a material error and/or injustice occurred in the investigation, substantiation of the CDI and issuance of the LOR. Counsel notes that the IO failed to even interview one of her longest running superintendents.

The MDG/CC also improperly refused to address her claim of racially disparate discipline by returning her complaint without action and directing her to file a complaint with the Military Equal

AFBCMR Docket Number BC-2023-02173

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

Opportunity Office (MEO). The decision to issue the applicant an LOR/UIF and remove her from command ensures she must go through an officer grade determination (OGD). The punishment is too harsh under the circumstances and unwarranted for allegations of micromanagement or a disagreement with her leadership style, as alleged in the LOR.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

SAF/IGQ provides CDI ROI dated 17 Dec 20. The ROI shows a CDI was initiated based on six complainants. The applicant was alleged to have created a toxic and hostile work environment, failed to uphold ethical values, failed to command with fairness, caring and respect, failed to maintain a healthy command climate and her conduct was unbecoming an officer. On 31 Aug 20 an IO was appointed. The CDI ROI includes the following allegations and the IO's findings

Allegation 1: Whether the applicant knew of her duties between 1 Jul 19 and 25 Aug 20, was derelict in the performance of her duties in that she failed to establish and maintain a healthy command climate that ensured members were treated with dignity, respect and inclusion within the IPTS. Specifically, she failed to effectively lead people within her command, failed to maintain effective communication processes, failed to ensure unit members were well disciplined, trained and developed, and failed to lead by personal example and pay judicious attention to the welfare of her subordinates. **(SUBSTANTIATED)**. The IO concluded the multiple examples through signed/sworn witness testimony and written memorandums for record (MFR) showed the applicant failed to treat members with the dignity and respect afforded to their position. The sheer number of rotated leaders was cause for alarm and the failure stemmed from a lack of trust and an extreme tendency for micromanagement. Ultimately, the applicant did not trust her flight commanders, superintendent and staff. The environment created a communication breakdown since information was bottlenecked with the applicant who was overwhelmed and frequently late with taskers. There was also a few documented instances of racial undertones, to include that someone "not of her race" could feel they were slighted or less recognized by her.

Allegation 2: Whether the applicant was derelict in the performance of her duties from 1 Jul 19 and 25 Aug 20, in that she failed to uphold the primary ethical values within the IPTS. Specifically, she failed to command with fairness, caring and respect for personnel within her command. **(SUBSTANTIATED)**. The IO concluded several individuals indicated racial undertones throughout their comments. This was recognized by black, white and anonymous members of her squadron. An anonymous MFR stated she always touched the back of her hand and said, "people like us have to be careful." The statement was corroborated by [redacted] who stated the applicant only said this to people of her race. However, there was no evidence the applicant was systemically bias or provided favoritism. Evidence gathered throughout the investigation proved by a preponderance of the evidence the applicant failed to command the IPTS with care. There were multiple examples, witness testimony and written MFRs to show the applicant failed to command with fairness, caring (inconsistent leave and micromanagement) and respect between personnel within her command.

Allegation 3: Whether the applicant between 1 Jul 19 and 25 Aug 20 created a toxic work environment within the IPTS. Specifically, in that she failed to treat all airmen within her command with dignity, trust and respect and further intimidated, degraded and held ineffective meetings, engaged in poor communication and provided vague guidance, thus creating an atmosphere of toxic leadership. **(SUBSTANTIATED)**. Corroborated testimony from [redacted],

[redacted] and [redacted] painted a toxic environment, particularly for those holding senior leadership positions but also extended to lower levels to include not trusting company grades officers (CGO) or noncommissioned officers (NCO). This included distrust and unattainable expectations primarily due to last minute feedback that was often inadequate. Much of this was related to micromanagement, which was corroborated by nearly every person interviewed, even by those who did not find significant fault with the applicant.

Allegation 4: Whether the applicant between 1 Jul 19 and 25 Aug 20 created a hostile work environment within the IPTS. Specifically, she engaged in a series of actions which were so severe and pervasive as to alter the terms and conditions of employment within her squadron and that her conduct created a work environment that a reasonable person would consider intimidating, hostile or abusive. **(SUBSTANTIATED)**. The multiple examples, combined with the substantiated allegations showed the applicant engaged in a series of actions so severe and pervasive as to alter the terms and conditions of employment within the IPTS and/or that her conduct created a work environment that a reasonable person would consider intimidating or abusive. The applicant removed multiple superintendents during a one-year timeframe. Feedback from nearly all of them was a toxic and/or hostile work environment. The environment created fear amongst some to restrict what they did or said to the applicant, which can hold a safety risk in a hospital. This was exacerbated by a micromanaged environment since flight leaders wanted absolute clarity that their decisions were approved or would be supported.

Allegation 5: Whether the applicant between 1 Jul 19 and 25 Aug 20 engaged in activities that included toxic leadership, creating of a hostile work environment, failure to uphold the DoD Primary Ethical Values, failure to command with fairness, caring and respect and failure to maintain a healthy command climate within the IPTS, which conduct under the circumstances was unbecoming an officer, in violation of Article 133, UCMJ **(UNSUBSTANTIATED)**.

In a legal review dated 11 Dec 20, the wing judge advocate (WG/JA) non-concurred with the IO's assessment of Allegation 4. The WG/JA noted for a hostile work environment to amount to a violation per AFI 36-2710, *Equal Opportunity Program*, AFD 36-27, *Equal Opportunity*, and 5 U.S.C. § 2302, the environment must be created for a person because of the person's race, sex, color, religion, national origin, age, genetic information, disability or prior equal opportunity activity. While the IO documented the hostile work environment the applicant created within the squadron, there is no evidence she created an environment because of the protected class of any of her people. Without evidence of that link, it cannot be the case the applicant violated AFI 36-2710, AFD 36-27 and 5 U.S.C. § 2302.

On 17 Dec 20, the MDG/CC, nonconcurred with the IO's finding for Allegation 4 and determined the allegation to be **UNSUBSTANTIATED**. The MDG/CC approved the findings of the investigation as detailed in his 17 Dec 20 memorandum and considered the matter closed.

On 6 Jan 21, the applicant received a LOR. An investigation disclosed from 1 Jul 19 to 25 Aug 20 she was derelict in the performance of her duties as the IPTS/CC. She failed to accord flight commanders respect and authority to run their flights by micromanaging even the most mundane tasks, setting deadlines with unrealistic suspense dates and going behind their backs to gather information. Additionally, she failed to accord superintendents the respect and authority their positions deserved by excluding them from the decision-making process, even those decisions about enlisted matters which should squarely fall under the superintendents.

On 6 Jan 21, the applicant was relieved of command in accordance with AFI 51-509, *Appointment to and Assumption of Command*.

In a rebuttal response to the LOR dated 29 Jan 21, the applicant stated she was never derelict in the performance of her duties. She highlighted her command priorities and expectations to the squadron. She did not believe any of the information the MDG/CC provided to her from the CDI supported a LOR and removal of command. The applicant noted the most significant complaints came from a superintendent who only worked with her for 15 weeks, a first sergeant who was there a little over a month, a former flight commander who was a part of the squadron for three months and a flight chief who made his complaints following his own nonjudicial punishment (NJP). She stated the MDG/CC's lack of caring or empathy towards her was deafening. Further, she had not been briefed on the results of the CDI. She requested the LOR and UIF be removed, her OPR not be a referral and her removal from command be amended to show an early departure rather than a removal. The applicant also requested she be given an end of tour decoration.

The applicant received a referral OPR for the period ending 9 Feb 21. The referral OPR stated she received a LOR as a result of a CDI that found she was derelict in the performance of her duties as the IPTS/CC.

On 5 Apr 21, the applicant filed an informal Article 138 complaint. The applicant alleged the MDG/CC had already formed an adverse opinion of her which preceded his command. She was immediately placed under a CDI targeted at proving complaints rather than obtaining facts impartially. The applicant listed critical people not interviewed. She also contended she was denied the opportunity to obtain the full CDI, there was no evidence to support the IPTS was crippled under her leadership and the outcome highlighted racially disparate treatment of minorities being disciplined. The applicant requested the allegations in the CDI be unsubstantiated and the LOR/UIF be rescinded.

On 23 Apr 21, the MDG/CC denied the applicant's request for Article 138 redress. Additionally, the MDG/CC dismissed the portion of the complaint for relief based on racial disparity as being outside the scope of the Article 138 and directed the applicant file a complaint with the MEO office. The MEO program was a more appropriate forum for the complaint.

On 3 Jun 22, the applicant requested retirement effective 1 Jun 23.

On 16 Dec 22, the Air Force Personnel Board (AFPB) considered the applicant's mandatory OGD, which was required due to her LOR received since her promotion to the grade of O-6 on 1 Feb 19. The AFBP determined the applicant's overall service in the grade of O-6 was satisfactory and recommended she be retired in the higher grade of O-6. On 30 Dec 22, the Air Force Review Boards Agency Director, on behalf of the Secretary of the Air Force, determined the applicant served satisfactorily in the grade of O-6 within the meaning of 10 U.S.C. § 1370 and directed she be retired in the grade of O-6.

On 31 May 23, the applicant was honorably discharged in the grade of O-6 for the purpose of retirement in the grade of O-6, effective 1 Jun 23. She was credited 24 years, 4 months and 12 days of active duty service for the period and 6 years, 2 months and 1 day of prior active duty service.

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

APPLICABLE AUTHORITY/GUIDANCE

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, nonjudicial punishment (NJP) 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.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denial for removal of the LOR. The applicant was issued a LOR because of a substantiated CDI. Removal of adverse actions is dependent upon the status of the CDI. As long as the CDI remains substantiated, the adverse actions should remain a part of the applicant’s record. The LOR supplements the substantiated CDI and was filed in accordance with DAFI 36-2907.

The complete advisory opinion is at Exhibit E.

AF/JAJI recommends denial. In accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*, the applicant has the burden of providing evidence in support of their allegations of an error or injustice. AF/JAJI finds the applicant has not met the burden. The robust ROI includes numerous witness accounts and examples of the applicant’s conduct that supports the substantiated allegations. The applicant was afforded ample opportunity to respond to the allegations. The applicant alleges the commander refused to properly consider complaints but the commander’s disagreement with her contentions does not equate to a failure to consider them.

The applicant’s disagreement with the CDI’s conclusions are mere disagreements. In accordance with DAFMAN 1-101, *Commander Directed Investigation (CDI) Guide*, the standard of proof for a CDI is preponderance of the evidence. The 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. AF/JAJI carefully reviewed the ROI in its entirety, as well as the applicant’s application to the AFBCMR, and finds the IO correctly applied the standard of proof.

In the context of correcting military records, an unusually deferential application of the arbitrary and capricious standard is applied. The commander’s actions under this deferential standard was reviewed. Per DAFMAN 1-101, after consideration of the entire CDI file, to include the legal review, the initiating commander approves or disapproves the IO’s findings, conclusions and recommendations and takes appropriate corrective action. Here, the GP/CC was in the best position to assess the facts and circumstances underlying the substantiated allegations, and far from being arbitrary or capricious, he even disagreed with the IO’s substantiation of Allegation 4 and concluded it was unsubstantiated. AF/JAJI finds the actions were within the MDG/CC’s discretion, and not arbitrary, capricious or an abuse of authority.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 1 Apr 24 for comment. In a response dated 1 May 24, counsel contends the OGD reached the conclusion she served satisfactorily in the grade of O-6 and she has since retired in the grade of O-6. Nevertheless, she continues her pursuit to clear her name for the disciplinary actions improperly taken against her. She did not do what was alleged by a small subset within her command. Her requests for correction grant her no tangential benefits other than to clear her name.

The AFPC/DPMSSM advisory makes no comment on the merits of the applicant's contentions and basically adds nothing.

The AF/JAJI advisory makes some additional effort to address the merits of the applicant's contentions but falls short of addressing the errors and injustices raised by the applicant. She showed she was denied the opportunity to review the CDI, the longest running senior enlisted leaders were not interviewed in the complaint or were disregarded, and that the issues she was dealing with were inherited from a struggling squadron. Her leadership was aware and endorsed her handling of the issues. If she was the leader the disgruntled subordinates were making her out to be, there would not be any opposing comments such as the provided text message from a subordinate attending squadron officer school. The CDI was incomplete, one sided and ultimately acted on by the MDG/CC who had not even been in the position for a month.

AFI/JAJI's assertion it would be outside of the Board's scope of review to relitigate the CDI or to supplant the commander is flat out wrong. Congress gave the Board the authority under 10 U.S.C. § 1552 to be the final authority.

The applicant's complete response is at Exhibit H.

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 recommendations of AFPC/DPMSSM and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's LOR and referral OPR were issued because of the substantiated allegations in the CDI. While the applicant disagrees with the IO's findings; she has provided insufficient evidence of any wrongdoing by the MDG/CC or that the CDI was conducted improperly or in violation of DAFMAN 1-101. As pointed out by AF/JAJI, the standard of proof for a CDI is preponderance of the evidence and the IO correctly applied the standard of proof. The applicant also contends the MDG/CC discriminated against her on the basis of her race and issued the unfavorable personnel actions based on unsupported substantiated allegations in the CDI ROI. The Board conducted an independent review of the CDI ROI and finds no evidence the applicant was discriminated against on the basis of her race. Moreover, the applicant has not sustained her burden of proof that she did not fail to maintain a healthy command climate and ensure her squadron members were treated with dignity, respect and inclusion. The CDI ROI includes testimony from multiple complainants and multiple witnesses which affirm the veracity of the

substantiated allegations. The Board also notes, upon review of the CDI ROI, the MDG/CC unsubstantiated the allegation the applicant created a hostile work environment in violation of AFPD 36-27. In view of the substantiated allegations, the Board finds the applicant's LOR and referral OPR are required to be filed in her records per 10 U.S.C. § 615(a)(3), DoDI 1320.14, DAFFM 2020-36-03, DAFI 36-2907 and DAFI 36-2501. With respect to the applicant's request for removal of the UIF, the Board notes the applicant has since retired and her records no longer contain a UIF. 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-2023-02173 in Executive Session on 23 May 24 and 30 May 24:

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Panel Chair

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, 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 29 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: SAF/IG CDI, dated 17 Dec 20. (WITHDRAWN).
- Exhibit D: SAFPC Instrument, w/atchs, dated 30 Dec 22.
- Exhibit E: Advisory Opinion, AFPC/DPMSM, dated 11 Dec 23.
- Exhibit F: Advisory Opinion, AFPC/JAJI, dated 25 Mar 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Apr 24.
- Exhibit H: Applicant's Response, w/atchs, dated 1 May 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.

6/4/2024

X

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2023-02173

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