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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03417

Work-Product

COUNSEL:

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HEARING REQUESTED: YES

APPLICANT'S REQUEST

The remaining allegation of a substantiated Command Directed Investigation (CDI) and the subsequent Letter of Counseling (LOC), dated 28 Sept 21, be removed from her military records.

APPLICANT'S CONTENTIONS

The applicant, through counsel argues she was a victim of bias and an incompetent CDI that never should have occurred. As background, counsel explains the Major Command (MAJCOM) Deputy Commander (CD) initiated the CDI on the applicant, who was the Air Base Wing Commander (ABW/CC) at the time, based on a complaint from a tenant unit Fighter Wing Commander (FW/CC). However, at that time, it was well known throughout the command there was friction between the applicant and the tenant FW/CC from a prior incident. Counsel explains that in 2020 during the height of the COVID-19 pandemic, the applicant had informed her fellow Wing Commander (WG/CC) he was not authorized to have Thanksgiving parties and had to elevate the issue to the MAJCOM to get the event canceled. As a result, the relationship between the two commanders was forever damaged and she believes underpins the reason the tenant FW/CC initiated a complaint against her.

The applicant's counsel goes onto explain the CDI was initiated because the applicant followed a dependent spouse after she ran a stop sign on base and then informed the spouse and her husband that dangerous driving would not be tolerated. As such, the applicant believes the CDI was unnecessary and her actions as the Installation Commander were normal and expected of her position to help ensure the safety of all base personnel.

The applicant has received partial corrective action based on the submission of a Uniform Code of Military Justice (UCMJ) Article 138, *Request for Redress*, complaint, which reversed the substantiation of one of the allegations and redacted the corresponding language on the LOC. However, the allegation for abuse of authority remains, but is based on the nonsensical analysis of the Investigating Officer (IO). Furthermore, it lacks evidence or analysis of how pulling drivers over when they have violated safety traffic laws was "arbitrary and capricious." According to DAFMAN 1-101, *Commander Directed Investigations*, the following questions are used to determine if abuse of authority has occurred:

1. Did the responsible management official's (RMO's) actions:
 - a. Adversely affect, or have potential to adversely affect, any person; or
 - b. Result in personal gain or advantage to the responsible management official (RMO), or other preferred persons (for example, demotion, extra duty)?

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2. Did the RMO:

- a. act within the authority granted under applicable regulations, law or policy; or
- b. act based on relevant data and factors; or
- c. act in a manner rationally related to the relevant data and factors?

In analyzing whether there was an abuse of authority, the IO correctly realizes no potential gain to the applicant and recognizes there were relevant data and factors (i.e. seeing the traffic violation) on which to base her actions and she was not arbitrary or capricious in who she pulled over. Yet, the IO still found her actions were an abuse of authority and failed to address the fact she acted on relevant data and her actions were rationally related to that data. It is clear the IO did not know how to do a proper analysis. While it may not be listed clearly in DAFMAN 1-101, it is clear by reading that if the answer to question 2 is “yes” then it is not an abuse of authority.

Finally, the applicant’s counsel states after the incident she was not removed from command and the adverse actions in her otherwise unblemished record are unnecessary. As such, there is no harm if this investigation is rendered “unsubstantiated” and the LOC is removed. If the status quo is maintained the applicant loses any chance at promotion, and the Air Force loses the enthusiasm and potential of a decorated female minority leader. In addition, according to current regulations, when she applies for retirement, she will be forced to undergo and respond to an Officer Grade Determination because of the substantiated allegation. Therefore, the removal of these adverse actions will allow the applicant to retire with dignity and correct the error that began when the investigation was initiated.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 1 Jun 21, according to a CDI Appointment memorandum the MAJCOM/CD appointed an IO to conduct an investigation into all aspects of the facts and circumstances concerning a traffic incident at an Air Force Base on 20 May 21, as well as the Air Base Wing (ABW) command climate and the allegations involving the applicant. The investigation was conducted from 10 Jun 21 to 12 Jul 21. The IO conducted an analysis of the evidence, and determined not all allegations were substantiated:

Allegation 1: On or about 20 May 21, the applicant abused her authority by directing Security Forces (SFS) personnel to revoke the driving privileges of an active duty Air Force spouse, following a traffic incident between the spouse and the applicant in their privately owned vehicles, in violation of AFI 1-2, *Commander’s Responsibilities*, paragraph 3.

Finding: **Substantiated.**

Allegation 2: On or about 24 May 21, the applicant with intent to deceive, made to the tenant unit FW/CC and the MAJCOM/CC an official statement indicating she did not direct SFS personnel to revoke the driving privileges of an active duty Air Force spouse, which statement was totally false, and was then known by the applicant to be so false, in violation of Article 107, UCMJ.

Finding: **Not Substantiated.**

Allegation 3: Between on or about 1 Jul 20 and on or about 25 May 21, the applicant abused her authority by pulling over drivers on an Air Force Base and by improperly directing SFS personnel to do so, in violation of AFI 1-2, paragraph 3.

Finding: **Substantiated.**

Allegation 4: Between on or about 1 Jul 20 and on or about 25 May 21, the applicant failed to maintain a healthy command climate by making inappropriate statements to her subordinates, including, but not limited to “<<tenant unit>> FW is a bunch of white privileged fighter jocks” and “I am tired of white privilege.” This failure to maintain a healthy command climate is in violation of AFI 1-2, paragraph 3.

Finding: **Not Substantiated.**

Allegation 5: Between on or about 1 Jul 20 and on or about 25 May 21, the applicant created a hostile work environment based on race by regularly demeaning the ABW personnel simply for being white males, which was so pervasive that personnel feared being fired, in violation of AFI 36-2710, *Equal Opportunity Program*, paragraph 2.4, and AFI 1-2, paragraph 4.1.2.

Finding: **Not Substantiated.**

Allegation 6: Between on or about 1 Jul 20 and on or about 25 May 21, the applicant failed to display exemplary conduct by making insubordinate statements about her chain of command, including, but not limited to “nobody wants to hear from old white men,” and by referring to the MAJCOM Commander and other members of her chain of command as “old white men.” The failure to display exemplary conduct is in violation of AFI 1-2, paragraph 2.

Finding: **Not Substantiated.**

On 9 Aug 21, according to a “Legal Review of CDI – AFB Traffic Incident of 20 May 21 and [ABW] Command Climate” memorandum, the MAJCOM Staff Judge Advocate (SJA) reviewed the ROI, found it legally sufficient and concurred with the IOs findings and conclusions that Allegations 1 and 3 were substantiated.

On 28 Sep 21, the MAJCOM/CD issued the applicant an LOC after an investigation revealed she abused her authority as the ABW commander. Specifically, on or about 20 May 21, she abused her authority by directing SFS personnel to revoke the driving privileges of an active duty Air Force spouse following a traffic incident in her privately owned vehicle. Furthermore, between on or about 1 Jul 20 and 25 May 21, she abused her authority by pulling over drivers on an Air Force Base and by improperly directing SFS personnel to do the same. As such, her actions violated AFI 1-2, paragraph 3.

On 5 Oct 21, the applicant submitted a response to the LOC and requested the LOC be rescinded and the allegation rendered be unfounded. In her statement, the applicant indicates there was no intent of abusing her authority and as the Installation Commander she believes she acted appropriately and fully within the authorities laid out in the Code of Federal Regulations (CFR) Title 32 to protect personnel and property while maintaining order on the installation.

On 17 Nov 22, according to an “Action of Article 138, UCMJ Formal Complaint” memorandum provided by the applicant, the Secretary of the Air Force (SecAF) reviewed the applicant’s request for redress and granted partial remedial relief. Specifically, he overturned the CDI finding on Allegation 1 as the preponderance of the evidence did not support the finding. As a result, he

further directed the portions of Allegation 1 contained in the resulting LOC issued on 28 Sept 21 be redacted.

For the period of service 2 Mar 21 through 1 Mar 22, AF Form 707, *Officer Performance Report (Lt thru Col)*, reflects the applicant "Meets Standards."

On 15 Mar 24, Special Order Number **Work-Product** was issued and shows the applicant will be relieved from active duty, organization and station of assignment on 30 Apr 24 and retired effective 1 May 24 in accordance with AFI 36-3203, *Service Retirements*, in the grade of Colonel. She will be credited with 37 years and 1 month of active service for retirement.

For more information, see the excerpt of the applicant's record at Exhibit B, the report of investigation at Exhibit G, and the advisories at Exhibits C and D.

APPLICABLE AUTHORITY/GUIDANCE

AFI 1-2, Commander's Responsibilities

3.1. Execute the Mission. Commanders hold the authority and responsibility to act and to lead their units to accomplish the mission. Air Force commanders have threefold mission execution responsibilities: primary mission, Air Expeditionary Force (AEF) readiness, and mission assurance command and control. Commanders must apply good risk management, accept risk and manage resources to adjust the timing, quality, and quantity of their support to meet the requirements of the supported commander.

3.1.1. Primary Mission Execution. This is the mission described in the Mission Directive, Designed Operational Capability statement, or specified by order of a superior commander. This may be a day-to-day, in-garrison mission, or it may be an expeditionary, deployed mission. Commanders must ensure their unit is able to execute its primary mission at any time.

3.1.2. AEF Readiness. The AEF model provides an adaptable, agile force, able to respond to dynamic worldwide events. Commanders must train and develop their Airmen to support AEF taskings.

3.1.3. Mission Assurance Command and Control. Within the scope of their authority, commanders must, at all times, maintain the ability to command and control their units against all relevant threats and hazards to assure mission success.

CFR Title 32, § 809a.2 *Military responsibility and authority.*

(a) Air Force installation commanders are responsible for protecting personnel and property under their jurisdiction and for maintaining order on installations, to ensure the uninterrupted and successful accomplishment of the Air Force mission.

(b) Each commander is authorized to grant or deny access to their installations, and to exclude or remove persons whose presence is unauthorized. In excluding or removing persons from the installation, the installation commander must not act in an arbitrary or capricious manner. Their action must be reasonable in relation to their responsibility to protect and to preserve order on the installation and to safeguard persons and property thereon. As far as practicable, they should prescribe by regulation the rules and conditions governing access to their installation.

DoDI 5200.08, Security of DoD Installations and Resources and the DoD Physical Security Review Board (PSRB)

3.1. DoD installations, property, and personnel shall be protected and that applicable laws and regulations shall be enforced.

3.2. The authority of a DoD commander to take reasonably necessary and lawful measures to maintain law and order and to protect installation personnel and property:

3.2.1. Extends to temporarily established “National Defense Areas,” in emergency situations, such as accident sites involving Federal equipment or personnel on official business.

3.2.2. Includes the removal from, or the denial of access to, an installation or site of individuals who threaten the orderly administration of the installation or site. Removal or denial actions must be based on reasonable grounds and be judiciously applied.

3.2.3. Shall not be exercised in an arbitrary, unpredictable, or discriminatory manner.

DoD Manual 5200. 08 Vol 3, Physical Security Programs: Access to DoD Installations.

1.2. POLICY. It is DoD policy that: a. In accordance with DoDI 5200.08, DoD installations, property, and personnel must be protected. Commanders have authority to take reasonably necessary and lawful measures to protect installation property and personnel, but that authority must not be exercised in an arbitrary, unpredictable, or discriminatory manner. Removal or denial actions must be based on reasonable grounds and be judiciously applied.

AFI 31-218, Motor Vehicle Traffic Supervision

1–4. Responsibilities.

f. Installation Law Enforcement Officers. The installation law enforcement officer will...(1) Exercise overall staff responsibility for directing, regulating, and controlling traffic, and enforcing laws and regulations pertaining to traffic control.

2–2. Stopping and inspecting personnel or vehicles

b. Stops and inspections of POVs within the military installation, other than at restricted areas or at an installation gate, are authorized only when there is a reasonable suspicion of criminal activity, or a violation of a traffic regulation, or the installation commander’s policy.

4-9. Traffic Violation Reports

b. Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (*Armed Forces Traffic Ticket*) or a DD Form 1805 (*United States District Court Violation Notice*), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms.

Glossary: Law enforcement personnel (officials): Persons under supervision of the installation law enforcement officer who are authorized to direct, regulate, and control traffic, and to apprehend or arrest violators of laws or regulations. They are usually identified as military police, security police, civilian guards, or DoD police.

AIR FORCE EVALUATION

AFPC/DPMSSM (Special Programs) recommends denying the application. The AFMC Deputy Commander administered an LOC to the applicant in accordance with DAFI 36-2907, *Adverse Administrative Actions*. The applicant acknowledged receipt and understanding of the LOC on 28 Sep 21 and provided a written response on 5 Oct 21. On 17 Nov 22, the SecAF overturned results of CDI in part and directed portions of the LOC be redacted; however, the allegation of abuse of authority remained. Unless otherwise overturned by appropriate authorities, the CDI findings regarding the abuse of authority remain valid, which by extension the LOC remains valid.

The complete advisory opinion is at Exhibit C.

AF/JAJI (Justice Review & Secretarial Actions) recommends denying the application. On 4 Apr 23, the AFMC/CD initiated a CDI into six allegations involving the applicant. Upon recommendation from the IO and after consulting with legal counsel, AFMC/CD substantiated two allegations. On 28 Sep 21, the applicant received an LOC for the misconduct substantiated in the CDI. On 6 Apr 22, the applicant filed an Article 138 UCMJ complaint with the SecAF. On 17 Nov 22, the SecAF granted partial remedial relief, determining there was not a preponderance of the evidence to substantiate one of the two allegations. As such, the SecAF directed redaction of those portions of this allegation as referenced in the LOC. The remaining allegation read, “Between on or about 1 Jul 20 and on or about 25 May 21, [the applicant] ...abused her authority by pulling over drivers...and by improperly directing SFS personnel to do so, in violation of AFI 1-2, paragraph 3.” This substantiated allegation is the subject of Applicant’s BCMR complaint.

According to DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.4.4, “[t]he applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice.” As this is not a *de novo* review, AF/JAJI opines their scope is limited to determining whether there was an error or injustice to the detriment of the applicant. In this regard, they recommend the AFBCMR defer to the factfinder and find no error or injustice. In correcting military records, an “unusually deferential application of the ‘arbitrary or capricious’ standard” is applied. *Roberts v. United States*, 408 U.S. App. D.C. 211, 217 (2014). Under this deferential standard, the applicant’s claims are no more than a disagreement with the CDI IO and AFMC/CD’s evaluation of the matter. Their evaluation of the matter was neither arbitrary nor capricious. The LOC and the remaining substantiated allegation on which it is based are supported by a preponderance of the evidence.

In reaching their conclusion JAJI further notes the applicant’s asserts substantiated finding as referenced in the LOC appeared to be reprisal. However, the applicant did not pursue this assertion through Inspector General (IG) channels and irrespective of the lack of an IG complaint, nothing in the application supports the applicant’s contention the FW/CC acted in reprisal.

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 12 Mar 24 for comment (Exhibit E), and the applicant replied on 11 Apr 24. In her response, the applicant contended the fact she was investigated for upholding standards and ensuring the safety of more than 29,000 personnel was a pure act of retaliation. During her tenure as ABW/CC the unsafe driving conditions on base were a hot agenda and her participation in vehicle safety was a reasonable attempt to prevent tragedy. It is not only allowed that an Installation Commander enforce safety standards on the base, but it was also critical and expected of her. This was proper and important work and the

investigation was a complete farce and was nothing but an act of retaliation. The investigation was conducted in a biased manner and the results should not stand to impact her career and reputation the way they have.

In support of her rebuttal, the applicant provides several letters of support and articles from public affairs that address the important issues she faced while in command and which required her intervention to ensure safety.

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 AFPC/DPMSSM and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant submitted an Article 138, *Request for Redress*, on 6 Apr 22 and while the SecAF granted partial relief and found that Allegation Number 1 was unsubstantiated, Allegation Number 3 remained substantiated, and the Board found no new or convincing evidence that would warrant removal of the remaining allegation. In addition, while the applicant alleges retaliation, there was no complaint filed by the applicant with the Inspector General. Nevertheless, based on the authority granted to this Board pursuant to Title 10 U.S.C. Section 1034, we reviewed the complete evidence of record to reach our own independent determination of whether the CDI and LOC were issued in an act of retaliation, but other than conjecture by the applicant the Board did not find evidence that substantiated her claim. Moreover, the Board conducted an independent review of the investigation and agrees with the Investigating Officers finding that while the Air Base WG/CC is responsible for protecting personnel and property, she is not trained in law enforcement or traffic control procedures. As such, the applicant's decision to personally stop or pull over vehicles to enforce traffic regulations appears to be arbitrary and the Board finds no reason to overturn the decision by the applicant's commander to issue the LOC that was given to correct behavior. 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-2023-03417 in Executive Session on 12 Nov 24:

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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 16 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 8 Dec 23.
- Exhibit D: Advisory Opinion, AF/JAJI, dated 11 Mar 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Mar 24.
- Exhibit F: Applicant's Response, w/atchs, dated 12 Apr 24.
- Exhibit G: Commander Directed Investigation – 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.

12/19/2024

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