



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03996

Work-Product

COUNSEL: Work-Prod...

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

The substantiated allegation in the commander directed investigation (CDI) report of investigation (ROI) conducted during the period of 2 June 2021 to 19 June 2021, be removed from his record.

### APPLICANT'S CONTENTIONS

His one substantiated allegation in the CDI is an error, as it was not supported by a preponderance of credible evidence from personnel under his supervision. There was no analysis of evidence provided by personnel in his office for the allegation of failing to maintain a healthy organization climate or failing to ensure members of his staff were treated with dignity, respect, and inclusion. Clearly the objective review shows there was not a preponderance of such evidence. The Investigating Officer (IO) erred by relying primarily on statements by personnel outside his organization. Moreover, the substantiation was in error because there was no credibility determination of any statements/witness regarding the substantiated allegation as required by Department of the Air Force Manual (DAFMAN) 1-101, *Commander Directed Investigations*. The word "credibility" appears one time in passing in the Findings, Analysis, and Conclusion section for the substantiated allegation. There was directly conflicting testimony on the ultimate issue of the substantiated allegation, specifically whether his organizational climate was healthy in 2021. The preponderance of direct evidence from personnel in his organization supports a positive organizational climate of dignity respect, and inclusion in 2021; however, the IO did not identify these personnel in the analysis section of the substantiated allegation. Seven of nine witnesses testified in strong terms that there was a positive or healthy office climate, including dignity, respect, and inclusion. He exhausted other administrative avenues of relief by submitting a rebuttal to the Tentative Conclusion Letter (TCL) during the CDI and an informal/formal complaint under Article 138; however, each appeal was denied without addressing the error.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

A CDI was conducted to investigate all aspects of the facts and circumstances concerning allegations against the applicant for discriminatory harassment and his failure to establish and maintain a healthy organizational climate. The following was alleged:

**Allegation 1:** Between on or about 9 April 2021 and 18 May 2021, the applicant unlawfully engaged in discriminatory harassment, on the basis of sex and/or race, against

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[redacted], in violation of Department of Defense Instruction (DoDI) 1020.03, *Harassment Prevention and Response in the Armed Forces*, paragraphs (paras) 1.2 and 3.1. **(NOT SUBSTANTIATED)**.

**Allegation 2.** Between on or about 9 April 2021 and 18 May 2021, the applicant unlawfully engaged in discriminatory harassment, on the basis of sex and/or race, against [redacted], in violation of DoDI 1020.03, para(s) 1.2 and 3.1. **(NOT SUBSTANTIATED)**.

**Allegation 3.** Between on or about 15 October 2020 and 18 April 2021, the applicant unlawfully engaged in discriminatory harassment, on the basis of sex and/or race, against [redacted], in violation of DoDI 1020.03, para(s) 1.2 and 3.1. **(NOT SUBSTANTIATED)**.

**Allegation 4.** Between on or about 3 July 2019 and 18 May 2021, the applicant failed to establish and maintain a healthy organizational climate in accordance with Air Force Instruction 1-2, *Commander's Responsibilities*, paras 1.1 and 3.2, by failing to ensure members were treated with dignity, respect, and inclusion. **(SUBSTANTIATED)**.

On 16 June 2021, the IO of the CDI requested any information relating to the Defense Organizational Climate Survey (DEOCS) data pertaining to the organizational climate within the applicant's organization between July 2019 to the present.

On 17 June 2021, the Command Equal Opportunity (EO) Director indicated the applicant's Wing EO office conducted a DEOCS between 20-30 April 2021. However, after review of the DEOCS, there is no information that pertains to the organizational climate within the applicant's office. In addition, there is no previous history of a DEOCS conducted for the Wing.

On 25 June 2021, the CDI ROI and case file was found to be legally sufficient. The Wing Commander was recommended to tentatively approve the CDI findings and conclusions, as written, and sign the Tentative Conclusion Letter (TCL) for the applicant prior to final approval.

On 15 July 2021, the Wing Commander reviewed and considered the CDI completed by the IO, the legal review, and the applicant's response to the TCL. After careful consideration of all matters, the Wing Commander concurred with the findings and conclusions of the IO, and approved the CDI as written.

On 16 July 2021, the applicant was issued a Letter of Counseling (LOC) based on the CDI's substantiated allegation. Specifically, the IO found that during the first half of 2021, the applicant engaged in several displays of unprofessional conduct that were either overheard or witnessed by members of his office. Thus, the applicant failed to establish and maintain a healthy organizational climate and failed to ensure members were treated with dignity, respect, and inclusion.

On 19 July 2021, the applicant took full responsibility for his actions and words. He provided a statement to give context to the matters noted in his LOC as well as the CDI's substantiated allegation and requested the LOC to be downgraded to a verbal counseling.

On 20 July 2021, the applicant's commander considered his response and decided to sustain the LOC.

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

## AIR FORCE EVALUATION

AF/JAJI recommends denying the application. There is insufficient evidence to demonstrate a material error or injustice. While the applicant contends the preponderance of credible evidence was not met to substantiate allegation number 4, we disagree. Specifically, allegation number 4 indicated his failure to establish and maintain a healthy organization climate for personnel under his supervision as well as his failure to ensure these members were treated with dignity, respect, and inclusion. A careful review of the CDI ROI in its entirety, the applicant's continuation brief, and several witnesses formed a factual basis to substantiate the above cited allegation by a preponderance of credible evidence. Moreover, statements by witnesses describing incidents and behaviors, support substantiation of the allegation as well. The IO further considered evidence from witnesses not directly under the applicant's supervision. While the IO found not all who worked under the applicant's supervision experienced an unhealthy organizational climate or lack of dignity, respect, and inclusion, this fact did not cancel out the experiences of those who did. The IO correctly applied the standard of proof, as did the legal sufficiency reviewing attorney. Thus, the greater weight of credible evidence supported the conclusion to substantiate the allegation. The applicant further contends, the allegation was substantiated in error because there was no credibility determination of any witness statement by the IO in his analysis of this allegation, we disagree. While the IO did not document witness credibility determinations in the analysis of this specific allegation, he did so in his analyses of the other three allegations. Many of the facts, circumstances, and witnesses overlapped. The IO references his analyses of the other allegations. It is fair to conclude the IO found it unnecessary to document witness credibility considerations again to avoid redundancy. Nevertheless, where there were opposing sides of the story, the IO often resolved discrepancies in the applicant's favor. The applicant has offered no evidence of material error or injustice, and it is outside the scope of the AFBCMR to relitigate the facts and circumstances of the CDI or supplant the commander/appointing authority. The commander's decision to approve the IO's findings and conclusion as written, was not arbitrary and capricious, nor was it an abuse of authority. Far from being arbitrary and capricious, the commander was in the best position to assess the facts and circumstances underlying the substantiated allegation through review of twenty (20) witness statements, a written statement from the applicant, and a comprehensive ROI. He also had the benefit of a legal review, finding the investigation and resulting ROI legally sufficient, as well as a technical review from an EO concurring with the IO's substantiation of allegation number 4. Additionally, the commander had the opportunity to consider the applicant's response to the Tentative Conclusion Letter. The commander documented in his CDI approval memorandum that he carefully considered all matters prior to deciding whether to concur with the IO's findings and conclusions. As a result, the commander is deferred to as the fact finder and decision authority. His decision to approve the CDI as written was within his discretion as the appointing authority, and not arbitrary and capricious or an abuse of authority.

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 11 March 2024 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. We note the applicant asserts the substantiated allegation is an error; however, we do not agree. The findings of the CDI, which investigated the allegations against the applicant found some members experienced/witnessed an unhealthy organizational climate or lack of dignity, respect, and inclusion. The fact that any one member had this adverse experience overshadows and nullifies the positive impact or effect the applicant may have had on several members. 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-2023-03996 in Executive Session on 10 September 2024:

- Work-Product, Panel Chair
- Work-Product, Panel Member
- Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 30 November 2023.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 5 March 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 March 2024.
- Exhibit E: 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.

3/25/2025

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Board Operations Manager, AFBCMR  
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