



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

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-00035

**COUNSEL:**

**HEARING REQUESTED:** YES

**APPLICANT'S REQUEST**

The Letter of Counseling (LOC) and the findings from a Commander Directed Investigation (CDI) be removed from her Officer Selection Record (OSR) and her official military records.

**APPLICANT'S CONTENTIONS**

The issuance of the LOC stemmed from a CDI, which was based on false statements, mischaracterization of events, and exaggerations made by members of the unit who resented her stricter management style. Moreover, the CDI failed to comply with the evidentiary standards set forth by AFT 36-2907, *Adverse Administration Actions* and the resulting LOC was an abuse of discretion, as established in AFI 1-1, *Air Force Standards*, and AFI 1-2, *Commander's Responsibilities*. She was improperly punished, despite statements received by the Investigating Officer (IO) during the CDI and the toxic work environment at the time of the issuance of the LOC. The CDI is fraught with inaccuracies and procedural errors as evidenced by the memorandum from , an independent party, clearly violates Air Force policies, and did not afford her due process. When notified of the CDI, she was never informed that she could have "opted-out" of an in-person interview and instead had all questions sent in writing through counsel, nor was she provided a copy of her initial statement to review for accuracy as required prior to signing. Additionally, during the CDI three senior lieutenant colonels were interviewed but their testimony was never mentioned in the report. Lastly, Air Force "hand-off" policy was violated as at the conclusion of her IO interview, she was never assigned an individual to escort her out and to check in on her. She walked out of the interview scared and distraught and her squadron leadership, to include the squadron commander, never checked in on her.

Furthermore, the LOC was issued by a commander that she had only communicated with a handful of times, mainly through emails and telephonically, as they were geographically separated from the unit. As such, the commander lacked appropriate insight and perspective on the situation. Finally, this unjust LOC was placed in her OSR which led to non-selections for promotion.

The CDI should never have been initiated, the LOC should never have been issued, and she humbly requests the Board to make a strategically ethical decision and correct this injustice.

In support of her application, she provides several letters of support, to include a memorandum detailing the procedural errors within the CDI.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is an Air Force Biomedical Service Corps (BSC) major (O-4).

On 27 Oct 17, according to *AFELM MED DOD Commander Directed Report of Investigation (CDI) Concerning Abuse of Authority & Other Misconduct at the Armed Forces Blood Bank Center, San Antonio (ASBBC-SA), 1 Apr 17 – 13 Oct 17*, the Air Force Element Medical DoD Commander (AFELM MED DoD/CC) appointed an IO to conduct an investigation into allegations of harassment, maltreatment, dereliction of duty, failure to exercise due care, creating an unsafe working environment, abuse of authority, and unprofessional relationships at ASBBC-SA. The CDI was conducted from 3 Nov 17 – 22 Nov 17. The report provided the following four (4) substantiated findings regarding the CDI allegations:

**Allegation 1:** Applicant, who knew of her duty to refrain from unprofessional relationships, between on or about 1 Apr 17 and 13 Oct 17, was derelict in the performance of those duties in that she negligently or willfully showed or created the appearance of favoritism toward three enlisted members in violation of Article 92, Uniform Code of Military Justice (UCMJ), and AFI 36-2909, *Professional and Unprofessional Relationships*, paragraph 6.

**Allegation 2:** Applicant did, between on or about 1 Apr 17 and on or about 13 Oct 17, harass and intimidate her subordinates, conduct which was unbecoming of an officer in violation of Article 133, UCMJ.

**Allegation 3:** Applicant did, on or about 17 Aug 17, maltreat an E-5 by striking him with a book, in violation of Article 93, UCMJ.

**Allegation 11:** Applicant did, on or about 23 Jul 17, maltreat an E-7 by requiring her to work late because her subordinate was in trouble, in violation of Article 93, UCMJ.

On 8 Feb 18, as the result of a CDI, according to memorandum, *Letter of Counseling (LOC), Dereliction of Duty and Conduct Unbecoming*, the applicant received a LOC from AFELM MED DoD/CC for on diverse occasions between on or about 1 Apr 17 and on or about 30 Sep 17 conduct unbecoming an officer, being derelict in her duty to avoid the overall appearance of favoritism, and abuse of authority. On the same date, she acknowledged receipt and that she had three duty days in which to provide a response.

On 16 Feb 18, the applicant provided her response.

On 21 Feb 18, the AFELM MED DoD/CC acknowledged the applicant's submission and decided to sustain the LOC. In addition, the applicant was informed the LOC would be placed in her Personnel Information File (PIF). On the same date, the applicant acknowledged receipt of the final decision and the disposition of the LOC.

On 26 Jun 23, according to the memorandum to the applicant from the [REDACTED] Bomb Wing Commander, she was notified that she was considered but not selected for promotion by the CY22E Lieutenant Colonel BSC CSB. On the same date, she was notified and accepted continuation on active duty until she qualified for retirement as an officer.

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

**APPLICABLE AUTHORITY/GUIDANCE**

***The Secretary of the Air Force Office of Inspector General Complaints Resolution Directorate (SAF/IGQ), Commander Directed Investigation (CDI) Guide***, 18 Feb 16:

1.2. Authority to Conduct CDIs. Commanders appointed in accordance with (IAW) AFI 51-604, *Appointment to and Assumption of Command*, 11 February 2016, and AFI 38-101, *Air Force Organization*, 16 March 2011, (on G-series orders) have an inherent authority to conduct a CDI to investigate matters under their command, unless preempted by higher authority. A CDI would normally be initiated by a squadron level or higher commander.

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 and quality of the credible evidence," meaning the evidence indicates that one position is more probable than the opposing position.

2.1. Matters Appropriate for a CDI. Generally speaking, commanders may initiate an investigation into matters within their command when another investigative channel does not exist or is less suitable. For example, investigations into matters that will likely result in a court-martial or other judicial action would normally be referred to the Air Force Office of Special Investigations or Security Forces. Commanders should consult with the SJA regarding whether or not a CDI is the best means of investigating a matter. Command matters include all issues and circumstances involving people, processes and materials under their command.

2.1.1. Standards of Conduct. CDIs may be used to investigate whether an individual has violated a standard defined by law, regulation, or policy.

2.1.2. Abuse of Authority. *Abuse of authority* is one example of a command matter. Anyone who holds authority over others has the potential to abuse that authority.

5.2.1.4. Testimony Format. The IO can obtain testimony in a variety of formats, but all testimony should be under oath. Regardless of form, testimony should always include the full name, office designation, and unit for each witness.

5.2.1.4.1. Under Oath. All testimony should be taken under oath.

5.2.1.4.2. Summarized. The IO may interview witnesses and prepare summaries of testimony. The witness and the IO should sign the summarized statement, under oath, to certify its validity.

5.2.1.5.1. Military. The mere fact that someone is the subject of a CDI does not automatically trigger the need for a rights advisement. The test is whether the IO, at the time the active duty military subject is interviewed, either believes or reasonably should believe the individual has committed an offense under the UCMJ or other criminal code. If so, then the subject or witness should be considered a *suspect*. The IO should advise suspects of their Article 31(b), UCMJ rights.

Cases involving Guard and Reserve personnel are further complicated by their status at the time of the alleged conduct and the time of interview. Consult with the legal advisor in these cases prior to interviewing a subject or suspect.

5.2.1.6.2. Attorneys. Only a *suspect* has the right to have an attorney present during an interview. The attorney may not answer questions for the suspect. Witnesses and *subjects* may consult with their attorney, but are not normally permitted to have an attorney present during the interview.

5.2.1.9. Air Force Hand-Off Policy. The Air Force policy regarding subject/suspect/witness hand-offs applies to CDIs. This policy requires a person-to-person hand-off of all subjects and suspects, and any distraught witnesses following an investigative interview. The hand-off must take place between the IO and the individual's commander or the commander's designated representative. The policy applies to everyone, regardless of rank or position. The IO needs to document the hand-off in the ROI, normally somewhere in the witness' testimony.

**Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*, 14 Oct 22:**

1.2. Adverse Information for Total Force Officer Selection Boards Overview. All adverse information an officer receives will be filed in the OSR and will be considered by promotion selection, special selection, Federal recognition (ANG specific), and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information" per Department of Defense Instruction (DoDI) 1320.14, *DoD Commissioned Officer Promotion Program Procedures*).

1.2.1. 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 credible, the information must be resolved and supported by a preponderance of the evidence. **(T-0)** To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. **(T-0)** Adverse information includes, but is not limited to:

1.2.1.1. Any substantiated adverse finding(s) or conclusion(s) from an officially documented investigation or inquiry, regardless of whether command action was taken as a result.

1.2.1.7. LOC related to a substantiated finding or conclusion from an officially documented investigation or inquiry.

## **AIR FORCE EVALUATION**

AFPC/DPMSSM recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is insufficient evidence of an error or injustice. The AFELM MED DoD/CC administered a LOC to the applicant, who acknowledged receipt and provided a written response, due to the substantiated findings from a CDI which shows that four of the eleven allegations were substantiated. The findings of the CDI are consistent with the requirements cited in DAFI 36-2907, paragraph 1.2.1. Although the Division Chief of Epidemiology Laboratory, who previously served as a wing inspector general, provided a memorandum to indicate procedural errors within the CDI, there is no validation of this from an authoritative source, i.e. SAF/IG.

The complete advisory opinion is at Exhibit C.

AF/JAJI recommends denying the request based on the claim of legal error. There is insufficient evidence of material error or injustice to warrant granting the requested relief. During the relevant timeframe, the applicant's commander, AFELM MED DoD/CC, directed a CDI into 11 allegations involving the applicant. The IO interviewed over 30 individuals and analyzed numerous associated documents. At the conclusion of the investigation, 4 of the 11 allegations against the applicant were substantiated. Based on the CDI findings, her commander issued her a LOC for conduct unbecoming an officer, dereliction of duty for failing to avoid the overall appearance of favoritism, and abuse of authority. While she contends the issuing of the LOC was an abuse of discretion and did not comport with the evidentiary standards set forth by DAFI 36-2907, the applicant acknowledged and responded to the LOC, took responsibility for her actions, and recognized where there was room for improvement as a leader and also highlighted her professional military accomplishments. After considering her response, her commander decided to maintain the LOC.

According to DAFI 36-2907 paragraph 2.3.3. a LOC is an "Administrative censure for violation of standards. The intended outcome of a LOC is to help Airmen and Guardians use good judgment, assume responsibility, understand and maintain standards, and face and solve problems. Generally, this is a form of corrective action appropriate for correcting habits or shortcomings not necessarily criminal or illegal, but which can ultimately affect job performance, work center morale, and discipline." Additionally, according to DAFI 36-2907, paragraph 2.2, the Standard of Proof for adverse administrative actions is a "preponderance of the evidence." Further, paragraph 2.2.1. states "A preponderance of the evidence merely means that it is more likely than not that a fact exists. Preponderance of the evidence is not determined solely by the volume of witnesses or documentary evidence supporting or refuting an allegation. Rather, it is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses."

The applicant further contends the CDI was based on false statements, mischaracterizations of events, and exaggerations. She maintains she implemented a stricter management style that was not welcomed by individuals in her unit, and claims she refuted the allegation(s) against her with concrete evidence. Additionally she asserts that there were due process and procedural errors within the CDI. Specifically; (1) she was never informed she could opt out of an in-person interview, (2) she was never provided a copy of her summarized statement to review for accuracy before signing, and (3) proper hand-off procedures were not followed at the conclusion of her interview. However; (1) the applicant was represented by an attorney during her interview, (2) she submitted an unsigned statement in her BCMR package, and (3) if Air Force hand-off procedures were not followed, this is concerning, but, it is a procedural error at most and not related to the legal sufficiency of the CDI. Furthermore, although she contends directly, and through the memorandum provided by [REDACTED] the CDI failed to follow the procedures set forth in DAFMAN 1-101, *Commander Directed Investigations*, however, as Col S noted in her memorandum, DAFMAN 1-101 was not enacted until 2021. Thus, the newly prescribed procedures were not applicable in 2017, at the time her CDI was accomplished. Finally, her claims of procedural error have not been validated by an authoritative source and she has not submitted evidence to support her claim.

Therefore, they defer to the factfinder and find no error or injustice. In the context of correcting military records, an "unusually deferential standard 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 CDI IO and her commander. After a careful review, they conclude their evaluations of the underlying misconduct and subsequent administrative disciplinary actions were neither arbitrary nor capricious. Furthermore, they conclude the administrative actions were supported by a preponderance of the evidence.

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 22 Apr 24 for comment (Exhibit E), and the applicant replied on 9 Jun 24. In her response, the applicant through counsel, contended the advisory opinions of DPMSSM and JAJI should be rejected and relief granted on the basis of the applicant's application. The advisory opinions cannot legitimately hold the positions that the applicant's complaints are not "validated" by the IG when an IGQ officer, [REDACTED] has validated her complaints in writing. [REDACTED] analysis of the CDI has provided clear and convincing evidence of injustice where substantial investigatory steps and rights should have been provided to the applicant during the course of the investigation that would have resulted in unsubstantiated findings.

There was no refutation of the myriad bases of errors articulated in [REDACTED] analysis, further, the advisory acknowledges, as [REDACTED] pointed out in their review of the CDI, that at the time of the applicant's investigation there were no formal guidance for the conduct of a CDI. Subsequently, this lack of guidance was corrected by the Air Force with the publishing of DAFMAN 1-101. While we agree DAFMAN 1-101 was not in legal effect in 2017, violations of the DAFMAN provisions is evidence of an injustice. Afterall, the reason for the creation of DAFMAN 1-101 was to improve the CDI process. Bottom line, if the applicant's case was investigated in 2021 or after, a different result would have been achieved. This is a textbook example of an injustice.

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. After thoroughly reviewing the case file in its entirety, the Board concurs with the rationale and recommendation of both AFPC/DPMSSM and AF/JAJI and finds a preponderance of the evidence does not support the applicant's contentions. The applicant contends her LOC was the result of a flawed CDI report as there was no formal guidance for conducting CDI's in place, as the investigation predated the publication of DAFMAN 1-101; however, the Board disagrees. The Board determines the IO followed the guidance contained within, *The Secretary of the Air Force Office of Inspector General Complaints Resolution Directorate (SAF/IGQ), Commander Directed Investigation (CDI) Guide*, dated 18 Feb 16, and conducted a fair and objective investigation. While the applicant claims an independent third party, a former IG, substantiates her claims; the Board finds reasonable minds can differ and this is no more than a disagreement with the IO's conclusions, and further finds the commander was in a position to evaluate the information available to them to support the CDI substantiations and the LOC. As such, the Board unanimously agrees the LOC was the correct level of corrective action and finds it well within the commander's authority and the evidence presented does not demonstrate an error or injustice warranting removal of the LOC or show it was unjust or inaccurate as written. Furthermore, the applicant's circumstances are not unique compared to other similarly situated officers as the Congressional-mandate requires the military to furnish adverse information to selection boards considering active duty officers for promotion to O-4 and above. 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 effort 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-2024-00035 in Executive Session on 8 Oct 24:

\_\_\_\_\_, Panel Chair  
 \_\_\_\_\_ Member  
 - \_\_\_\_\_ Panel Member

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

- Exhibit A: Application, DD Form 149, w/attachments, dated 28 Aug 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 23 Feb 24.
- Exhibit D: Advisory Opinion, AF/JAH, dated 16 Apr 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Apr 24.
- Exhibit F: Applicant's Response, w/attachments, 9 Jun 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.

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 - Operations Manager, AFBCMR  
 Signed by: \_\_\_\_\_