

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00096

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

1. The Letter of Reprimand (LOR) dated 16 Feb 23, be removed from her records.
2. The referral Officer Performance Brief (OPB) ending 31 Aug 23, be removed from her records.
3. She receive a decoration for her separation from the Air Force. **(Board action not required. The applicant was notified her request for a decoration should be submitted under the provisions of Air Force Manual (DAFMAN) 36-2806, *Awards and Memorialization Program*).**

### APPLICANT'S CONTENTIONS

Her commander "fired" her the same day she learned about her Equal Employment Opportunity (EEO) visit. The LOR and Letter of Counseling (LOC) was personal. The commander had to collect several minor incidents in order to make it appear like it was a big deal.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force captain.

On 1 Feb 23, according to AF Form 102, *Inspector General Complaint Form*, provided by the applicant, she submitted a complaint stating her commander engaged in retaliation, reprisal, lying, and potential abuse of authority when he removed her from the operations officer position on 26 Jan 23.

On 16 Feb 23, according to information provided by the applicant, she received an LOR for failing to complete a walk-through of the distinguished visitor quarters as directed on 10 Jan 23 and failing to provide a daily brief to her commander concerning Information Technology (IT) progress as directed on 31 Jan 23 and 1 Feb 23.

On 5 Jul 23, according to the Inspector General, Air Education and Training Command (AETC/IG) memorandum, the Air Mobility Wing Inspector General (AMW/IG) completed an analysis of the applicant's concerns. Based on a preponderance of evidence, the decision to remove the applicant from her duty position and administer her a LOR was made prior to any qualifying protected communications. Therefore, her protected communications could not have been the cause of those personnel actions and reprisal cannot have occurred. In addition, analysis showed that cancellation of two training courses was a logical derivative of her duty position change and not related to her protected communications. Accordingly, the AMW/IG determined no further investigation under 10 USC § 1034 was warranted and forwarded her case file to the AETC/IG Complaints Resolution Division (AETC/IGQ) for a mandatory quality review. On 20 Jun 23, AETC/IGQ completed the quality review, found the case file technically

and administratively sufficient, concurred with AMW/IG's determination and forwarded her case file to the Secretary of the Air Force Inspector General Complaints Resolution Directorate (SAF/IGQ) for additional review. SAF/IGQ completed the quality review on 23 Jun 23 and forwarded her case file to the Department of Defense Inspector General Whistleblower Reprisal Investigations Directorate (IG DoD WRI) for final review and approval. On 27 Jun 23, the IG DoD WRI approved the AMW/IG's determination that further inquiry under 10 USC § 1034 was not warranted. Since IG DoD WRI is the final approval authority in military whistleblower reprisal cases, they considered this matter closed.

On 30 Oct 23, according to the Officer Performance Brief (OPB) for the period 1 Sep 22 thru 31 Aug 23, provided by the applicant, she received a referral OPB. On 2 Nov 23, the applicant responded to the referral OPB.

On 31 Dec 23, per the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, she was honorably discharged in the grade of captain after serving 10 years, 2 months and 2 days of active duty. Her narrative reason for separation is "Non-Selection, Permanent Promotion."

On 8 Feb 24, the applicant was notified her request for award of a decoration requires her to submit a request under the provisions of DAFMAN 36-2806, Section 2B.

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

## **AIR FORCE EVALUATION**

AFPC/DPMSSM recommends denying the applicant's request to remove the LOR. There is insufficient evidence of an error or injustice. The commander administered the LOR in accordance with DAFI 36-2907, *Administrative Adverse Actions*. Additionally, the findings of the DoD IG investigation indicate reprisal was not a factor in administration of adverse action. The adverse action is not currently filed in the applicant's records. The applicant was administered an LOR on 16 Feb 23, for dereliction of duties and failing to meet expectations of a company grade officer. The applicant acknowledged receipt and understanding on 16 Feb 23 and was advised she had three duty days from date of the LOR to provide a response. On 8 Mar 23, the applicant provided a written response. On 10 Mar 23, the issuing authority advised the applicant he considered her response; however, determined to sustain the LOR and subsequent Unfavorable Information File (UIF); the applicant acknowledged receipt on same day. On 26 Jan 23, the applicant was relieved of her duties as the operations officer. She initiated an IG complaint on 27 Jan 23, citing retaliation, reprisal, lying and potential abuse of authority. After a thorough investigation, DoD IG, dismissed the complaint without investigating based on the evidence presented.

The complete advisory opinion is at Exhibit D.

AFPC/DP3SP recommends denying the applicant's request to remove the OPR [sic]. The applicant has not provided substantiating documentation or evidence to prove the final OPR was rendered unfairly or unjustly. Air Force policy is an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all members of the rating chain, not only the support but also for clarification/explanation. Statements from the evaluators during the contested period are conspicuously absent. The applicant has failed to provide the necessary information/support from any rating officials on the contested OPR. Without the benefit of these statements, DP3SP can only conclude the OPR and PRFs are accurate as written. It is determined the OPR was

accomplished in direct accordance with all applicable Air Force policies and procedures. DP3SP contends that once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The burden of proof is on the applicant.

The complete advisory opinion is at Exhibit E.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 18 Mar 24 for comment (Exhibit F) 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 recommendations of AFPC/DPMSSM and AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant was notified her request for award of a separation decoration requires her to submit her request under the provisions of DAFMAN 36-2806. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant alleges she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC § 1034). The Board notes, the applicant initiated an IG complaint on 27 Jan 23, citing retaliation, reprisal, lying and potential abuse of authority. After a thorough investigation, DoD IG, dismissed the complaint without investigating based on the evidence presented. Nevertheless, in accordance with 10 USC § 1034, the Board reviewed the evidence of record to reach its own independent determination of whether reprisal occurred. As noted above, it appears the decision to remove the applicant from her duty position and administer her a LOR was made prior to any qualifying protected communications. Therefore, the Board agrees her protected communications could not have been the cause of those personnel actions and reprisal cannot have occurred. The applicant has not established the adverse actions taking against her were in retaliation to making a protected communication. In view of the above and in the absence of evidence to the contrary, the Board finds no basis to recommend granting the relief sought in this application.
5. 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-2024-00096 in Executive Session on 8 Oct 24:

, Panel Chair  
, 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 22 Dec 23.
- Exhibit B: Relevant excerpts from official records.
- Exhibit C: SAF/IG Report of Investigation, dated 31 Jan 23 (Withdrawn).
- Exhibit D: Advisory Opinion, AFPC/DPMSSM, dated 1 Mar 24.
- Exhibit E: Advisory Opinion, AFPC/DP3SP, dated 11 Mar 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Mar 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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Board Operations Manager, AFBCMR