

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00694

XXXXXXXXXXXX

COUNSEL:XXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. The Commander's Directed Investigation (CDI) Report of Investigation (ROI) findings be deemed not substantiated and the CDI be removed from her official military records.
2. Her Referral Officer Performance Report (OPR), for reporting period of 18 May 22 – 22 Sep 22, be removed from her official military records
3. Her Letter of Reprimand (LOR), issued 30 Aug 22, be removed from her official military records.
4. She receive any other relief the Board deems just and proper.

APPLICANT'S CONTENTIONS

The administrative actions taken in this case should be stricken for material error, as there is a substantial likelihood she was prejudiced by the improperly conducted CDI and the Space Base Delta 2 Vice Commander's (SBD 2/CV's) inappropriate reason for taking administrative action. The initial inquiry into this matter was almost nonexistent and based on the inaccurate unsworn statement by her ex-spouse and as such the inquiry should have been closed and the CDI should never have been initiated.

The CDI failed to follow the basic standards required. First, the Investigating Officer (IO) was a squadron commander with a busy schedule. DAFMAN 1-101, *Commander Directed Investigations*, requires the IO to be fully available and unhampered by other commitments. The IO was clearly pulled in multiple directions due to their squadron command responsibilities or they would not have failed to interview so many important witnesses; witnesses that were intimately aware of the situation, to include her supervisor and any present during the deployment. Additionally, DAFI 1-101 clearly requires all testimony be taken under oath and the IO did not take a sworn statement from her ex-spouse and further violated the procedural requirements of DAFI 1-101 when the unsworn testimony from the informal inquiry was used to influence their analysis and subsequent findings. Further, and more importantly, the IO failed to use the appropriate evidentiary standard when analyzing the facts. After the IO erroneously substantiated the CDI allegations, she sought out witnesses and provided information that properly framed the situation; a function the IO should have performed during their investigation. As a result, she was able to illuminate the picture for the SBD 2/CV, ultimately leaving him no choice but to find three allegations not substantiated. Specifically, the CV found she did not engage in an extramarital affair, she did not fraternize with an enlisted member, and she did not act in a manner inconsistent with her position as an officer in the Armed Forces. The CV only substantiated one allegation: False Official Statement in violation of Article 107, UCMJ.

To be guilty of Article 107, one must knowingly make a false official statement with the intent to deceive. The Judge Advocate General's Corps Benchbook defines *intent to deceive* [emphasis

added] as “to purposely mislead, to cheat, to trick another, or to cause another to believe as true that which is false.” An accidental or mistaken false statement is not a criminal action and to label as such is absolutely an injustice. The alleged false statement revolves around leave she intended to take in Mar 22. After returning from her deployment, she found her now ex-spouse had been sexually harassing a neighbor, neglecting their child, and had been engaging in multiple adulterous affairs. She sought comfort with her family and scheduled leave through LeaveWeb with the intent to visit them in [Work-Product]. However, shortly before she was scheduled to go on leave, in a last-minute decision she changed her plans and met CMSgt [REDACTED] in [Work-Product] and they got married. He had been a supportive friend and she had maintained contact with him since the deployment, though they did not engage in extramarital contact. He also endured a divorce and she had supported him too, as a friend. She did not hide her feelings for CMSgt [REDACTED] as she happily discussed them with people in her office, to include her immediate supervisor. Nothing about her actions before or after the wedding indicate an intent to deceive. Plans change all the time for military members who schedule leave in advance and the leave address on LeaveWeb is not always a priority or noticed when finalizing leave issues. Her not updating her address on LeaveWeb was a simple mistake and an accident. Without any evidence of intent, there is no UCMJ violation, thereby invalidating the LOR.

The LOR was never about her falsifying the LeaveWeb address, as everyone knows the LeaveWeb system is archaic and mistakes happen frequently. During their lengthy career, she asserts, the Deputy Commander (CV) must have at one time or another changed their leave plans at some point and failed to update LeaveWeb. Even if the CV never had to change their leave plans and/or failed to update LeaveWeb if they did, the CV is still bound by the evidentiary standard prior to issuing adverse administrative action; the CV did not have a shred of evidence that indicated she intended to hide the marriage or that she thought she was doing something wrong as she did not believe that she had broken any laws or military regulations because she had not. Simply put, it is outrageous to determine she did not commit misconduct with CMSgt G, but then simultaneously issue an LOR for attempting to cover up unsubstantiated conduct. The only way this makes sense in any capacity is if the SBD 2/CV had another motive, which was exposed during a meeting before she left the installation where they informed her that she only got the LOR because of their belief it was wrong for her to marry a CMSgt. The decision to issue her an LOR is a clear abuse of authority and it was issued with the intent to deceive others that she committed the offense of making a false official statement.

It is important to note that no adverse administrative action was ever taken against CMSgt G, who worked at a different installation, under a different commander, and in a different career field. This strongly suggests a gender bias contributed to this erroneous decision as the CV chose to impose his personal values, not those captured in the UCMJ or an AFI. This is an inequitable abuse of authority and simply not an equal application of the law. The CV issued her an LOR for making a false official statement when he could not meet the elements of the offense by a preponderance of the evidence.

During the entirety of her career, she has demonstrated strong work ethic, character, and has a stellar moral compass. She has received multiple number stratifications along with receiving numerous awards, to include: xxx Space Operations Command (SpOC) General Lezy Award; her installation's xxx Personnel, Manpower and Service Company Grade Officer of the Year; the xxxTuskegee Airman award from Air Combat Command (ACC); and most recently, the xxx ACC A1 Functional Award (Manpower, Personnel and Services) Field Grade Officer. Additionally, prior to the CDI, she was competitively selected for a fellowship assignment with Education with Industry (EWI) at Amazon, where she was one of seven selected in her career field. Due to the CDI, her EWI assignment was abruptly cancelled and the LOR has significantly impacted her chances of squadron command.

If this derogatory information is not removed, she most likely will be passed over for promotion and the Air Force will lose a stellar officer, leader and future commander because of the inability of the vice-commander to apply the appropriate legal standard. Please consider neither DAFI 36-3003, *Military Leave Program*, nor LeaveWeb, contemplate a requirement to update LeaveWeb upon return from leave. Neither do either one reference a requirement to give a reason for the leave request; a member just needs to be authorized leave. If the location does not need to be updated upon return and a reason for the leave is not required, how then is she in violation of Article 107. Finally, she has made several attempts to correct the injustice she has endured. She has provided substantial supplemental information through the rebuttal submissions to the CDI, LOR, and the Referral OPR. She initiated an Article 138 Complaint, requested assistance through the Evaluation Report Appeals Board (ERAB), and has sought equitable redress from the 12th Air Force Commander.

Relief is warranted as a result of the following: the existence of a material error of fact, law, procedure, and discretions; inequitable, inconsistent, and disparate treatment; and the quality of her service record. As she has exhausted all administrative and appellate remedies, she requests the Board to correct this error and injustice.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force major (O-4).

On 8 Jul 22, according to memorandum *Commander-Directed Investigation (CDI) Regarding Allegations of Fraternization, Extramarital Sexual Conduct, Conduct Unbecoming an Officer, and False Official Statement*, the SBD 2/CV appointed an IO to conduct a CDI into all aspects of the facts and circumstances of the allegations of fraternization, extramarital sexual conduct, false official statement, and fraud. Further, it instructs the IO that this is their primary duty (no leave, temporary duty, or other duties) unless expressly permitted by [SBD 2/CV] until completion of this duty and submission of a legally sufficient report. The IO completed the CDI on 28 Jul 22 and the ROI provided the following four (4) substantiated findings regarding the CDI allegations and recommended the applicant receive an LOR and a Referral OPR.

Allegation 1: [applicant] did, at or near Work-Product, Qatar and within the continental United States, between on or about 13 Jul 21 and on or about 8 Jul 22, knowingly fraternize with CMSgt [REDACTED], an enlisted person, on terms of military equality, to wit: by engaging in a romantic relationship with him and marrying him, in violation of the custom of the United States Air Force that officers shall not fraternize with enlisted persons on terms of military equality, and that said conduct was of a nature to bring discredit upon the Armed Forces.

Allegation 2: [applicant] a married person, did, at or near Work-Product, Qatar and within the continental United States, between on or about 13 Jul 21 and on or about 1 Mar 22 wrongfully engage in extramarital conduct with CMSgt [REDACTED], a person [applicant] knew was not her spouse, and that such conduct was of a nature to bring discredit upon the Armed Forces.

Allegation 3: [applicant] did, within the continental United States, between on or about 11 Mar 22 and on or about 15 Apr 22, with intent to deceive, sign an official record, to wit: a leave request for 11 Apr 22 – 14 Apr 22, with a leave address of <redacted>, GA, which record was false in the [applicant] traveled to Las Vegas, NV, not <redacted>, GA, between on or about 11 Apr 22 and 14 Apr 22 and was known by [applicant] to be false.

Allegation 4: [applicant] did, at or near Work-Product, Qatar and within the continental United States, between on or about 13 Jul 21 and on or about 8 Jul 22, fail to conduct

herself with the integrity and professionalism expected of an officer in the United States Air Force, to wit: by fraternizing with an enlisted member, CMSgt [REDACTED]; by engaging in a romantic relationship with an enlisted member, CMSgt [REDACTED]; by engaging in extramarital sexual conduct with an enlisted member, CMSgt [REDACTED]; and by marrying an enlisted member, CMSgt [REDACTED], which conduct was unbecoming an officer of the Armed Forces.

On 29 Jul 22, according to memorandum *Commander Direct Investigation - <applicant>*, the SBD 2/JA reviewed the CDI and ROI and found the findings and recommendations to be legally sufficient.

On 8 Aug 22, according to the SBD 2/CV memorandum, provided by applicant, she was informed the investigation was recently completed and the preliminary report is provided for her use in responding to the [CDI] conclusions. Additionally, she was informed she had two weeks from this date to provide comments/additional information which they will consider, and may revise their conclusions, if warranted.

On 18 Aug 22, the applicant provided her response to the CDI.

On 30 Aug 22, as a result of the CDI, according to memorandum, *Letter of Reprimand*, the applicant received a reprimand for: “between on or about 11 Mar 22 and on or about 15 Apr 22, you made a false official statement regarding her whereabouts during a period of ordinary leave from 11 Apr 22 – 15 Apr 22. On your official leave request, which you signed, you stated you were in [REDACTED] visiting your parents, when in fact, you were in Las Vegas, Nevada getting married. Your actions violated Article 107 (False Official Statements or False Swearing) of the *Uniform Code of Military Justice (UCMJ)*. When paired with your recent personal relationship decisions, this false official statement gave the appearance you were being deceptive in your personal and professional capacities and were committing additional misconduct.” On the same date, she acknowledged receipt and that she had three duty days in which to provide a response.

On 11 Sep 22, the applicant provided her response.

On 21 Sep 22, the SBD 2/CV acknowledged the applicant’s response and decided the LOR will remain in effect and will be filed in her Unfavorable Information File (UIF). On the same date, the applicant acknowledged the final decisions and the disposition of the LOR.

On 13 Oct 22, according to the unsigned memorandum from the SBD 2/CV provided by applicant, she was notified that although the IO substantiated all four allegations, based on their review of the ROI, their final determination is that the first, second, and fourth allegation were not substantiated as they do not believe the elements for those allegations were met by the preponderance of the evidence. However, in regard to the third allegation [false official statement], they agree with the IO and find it substantiated.

On 8 Dec 22, according to memorandum, *Informal Complaint Under Article 138, Uniform Code of Military Justice*, provided by applicant, she submitted an informal complaint via Article 138 against the SBD 2/CV for committing the following wrongs against her: failure to follow procedural requirements of DAFMAN 1-101; and for the unfair and unjust decision to issue an LOR.

On 20 Dec 22, according to memorandum *Response to Informal Article 138, UCMJ Complaint*, provided by applicant, the SBD 2/CV granted her request, in part, to replace the “incomplete” version with the “complete” report but denied request to remove the CDI report previously shared with SBD 2/JA as report was for official purposes in regard to related investigation against another service member. Additionally, she was informed that since her request for relief

was not granted in its entirety, she may submit her Article 138, UCMJ complaint direct to the General Court-Martial Convening Authority.

On 31 Jul 23, according to memorandum, *Request for Removal of UIF, LOR, Referral OPR from Record* provided by applicant, she submitted a formal request to the 12 Air Force Commander (12 AF (AFSOUTH)/CC for permanent removal of adverse administrative paperwork received on 30 Aug 22.

On 22 Aug 23, according to memorandum, *Response to Removal of Adverse Information from Record*, provided by applicant, the [REDACTED] AF (AFSOUTH)/CC denied her request.

On 13 Oct 23, according to email *Return of Evaluation Appeal Application*, provided by applicant, she submitted an ERAB request to have her Referral OPR removed and was informed by AFPC/DPMSPE that unless the LOR is withdrawn or removed from her record, she has no ground to appeal [Referral OPR] and to appeal the LOR via the BCMR.

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

APPLICABLE AUTHORITY/GUIDANCE

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*). 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. 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. Adverse information includes but is not limited to: paragraph 1.2.1.4. LORs.

2.2. Standard of Proof. The Standard of Proof for adverse administrative actions is the "preponderance of evidence." This standard will be used when evaluating the evidence and every element of the alleged offenses. A preponderance of the evidence exists when it is more likely than not that events have occurred as alleged. Preponderance of the evidence is not determined by the number of witnesses or exhibits, but by all the evidence and evaluating facts such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationships being considered. Consider whether such proof is available before initiating the administrative action. If such proof is lacking, administrative action may be determined legally insufficient and, as a result, could be set aside. There is no requirement to prove any allegation beyond a reasonable doubt.

2.3.5. Letter of Reprimand. Administrative censure for violation of standards which is more severe than a Record of Individual Counseling (RIC), Letter of Counseling (LOC), Letter of Admonishment (LOA) and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior. For Officers only: *Only supervisors and members of the officer's current administrative or operational chain of command may issue an LOR to an officer.* If the person who issues the LOR is not the officer's

unit commander, the person who issued the reprimand must send it to the administrative unit commander. The administrative unit commander acknowledges and endorses the AF Form 1058, *Unfavorable Information File Actions*, establishing the UIF or, if a member has an existing UIF, adds the document to the member's UIF. The AF Form 1058, *Unfavorable Information File Actions*, does not need to be referred to the officer for a response because LORs for officers are mandatory UIF filings.

Department of the Air Force Manual (DAFMAN) 1-101, *Commander Directed Investigations*, 9 Apr 21:

1.1. Overview. Commanders at all levels in the DAF may order investigations of individuals, programs, and processes under their authority.

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 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 and the investigating officer (IO) may consider the events proven. While the amount of evidence is something to consider, less credible evidence will not trump a smaller amount of more credible evidence. Some additional things to consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events. At all times, IOs must use their own common sense, life experiences, and knowledge of the ways of the world to assess the credibility of witnesses they interview and the evidence gathered in the investigation. (T-3).

5.2.5. Testimony Format. The IO can obtain testimony in a variety of formats, but all testimony will be taken under oath.

5.7. How Much Investigation is Enough. At a minimum, IOs interview the complainant, the subject, and all *witnesses named by a complainant or subject*, or document why they were not interviewed.

5.2.7.2. Attorneys. Only a suspect has the right to have an attorney present during an interview. The attorney must not answer questions for the suspect or otherwise be an active participant during the interview. **(T-1)**. A witness or subject may consult with his or her attorney, but are not normally permitted to have an attorney present during the interview.

6.1.10. Commander (Appointing Authority) Approval and Actions. Tab J. Upon receipt, the commander reviews the entire CDI case file, including the legal review. 6.1.10.1. Prior to final approval and signature of an ROI containing substantiated findings, the appointing authority will provide the subject or suspect a tentative conclusion letter (TCL). **(T-3)**. The TCL will briefly outline the allegations substantiated against the subject, the primary reasons that support the substantiated conclusion, and will include a redacted copy of the relevant portions of the preliminary ROI as well as a transcript of the subject's testimony as attachments. **(T-3)**.

7.5. CDI Records Release. The initiating commander is the release authority for CDIs. There are two types of releases: Freedom of Information Act (FOIA) and an official use request (OUR). Release of the CDI to the public falls under the FOIA. The commander should follow the

guidance in DoDM 5400.07 AFMAN 33-302, *Freedom of Information Act* (5 USC § 552). All information that is denied release requires a legal review. An OUR falls under the Privacy Act (5 USC § 552a (b)(1)). Information protected by the Privacy Act may be released to DoD employees who have a need to know in order to perform their duties. DoD personnel may not release the information outside of this parameter unless it falls under another statutory condition of disclosure or one of the routine uses in the System of Records Notice. See OpJAGAF 2019-35 for further guidance.

7.6. Subject, Suspect or Defense Counsel Requests. UCMJ actions have specific requirements for providing the subject, suspect or defense counsel access to evidence. *For CDIs that result in court-martial charges*, the commander should provide defense counsel access to a CDI through trial counsel. Defense counsel (or the member) may request a copy of a CDI to respond to an administrative action. Depending on the type of action, the subject (or his counsel) may have the right to access the CDI or portions thereof.

Manual for Court Martials of the United States, Appendix 2, Uniform Code of Military Justice, (effective 20 Dec 19, Includes updates from FY18, 19, &20 NDAA) §907. Art. 107. False official statements; false swearing (a) FALSE OFFICIAL STATEMENTS.—Any person subject to this chapter who, with intent to deceive— (1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or (2) makes any other false official statement knowing it to be false; shall be punished as a court-martial may direct. (b) FALSE SWEARING.—Any person subject to this chapter— (1) who takes an oath that— (A) is administered in a matter in which such oath is required or authorized by law; and (B) is administered by a person with authority to do so; and (2) who, upon such oath, makes or subscribes to a statement; if the statement is false and at the time of taking the oath, the person does not believe the statement to be true, shall be punished as a court-martial may direct.

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 applicant's delta vice commander initiated a CDI to address allegations that included fraternization, extramarital sexual conduct, false official statement and fraud. Although the CDI substantiated all the allegations, the vice commander determined three of the allegations were not substantiated with the rationale that those allegations failed to meet the preponderance of the evidence. However, in regard to the allegation of false official statement, the vice commander concurred with the CDI finding and found it substantiated. As a result of the substantiated finding, the applicant was issued an LOR by the vice commander and an UIF was established. The evidence provided indicates the vice commander was within their authority and did so in accordance with DAFI 36-2907.

The complete advisory opinion is at Exhibit C.

AIR FORCE EVALUATION

AF/JAJI recommends denying relief on the claim of legal error. The SBD 2/CV directed a CDI into four allegations involving the applicant; fraternization, extramarital conduct, a false official statement, and conduct unbecoming an officer. The IO interviewed witnesses and analyzed associated documents. At the conclusion of the investigation, the IO substantiated all allegations. However, after reviewing the ROI again and the applicant's response to the tentative conclusions, the SBD 2/CV concluded only one allegation, Allegation 3, should be substantiated, to wit:

Allegation 3: [applicant] did, within the continental United States, between on or about 11 Mar 22 and on or about 15 Apr 22, with intent to deceive, sign an official record, to wit: a leave request for 11 Apr 22 – 14 Apr 22, with a leave address of <redacted>, GA, which record was false in the [applicant] traveled to Las Vegas, NV, not <redacted>, GA, between on or about 11 Apr 22 and 14 Apr 22 and was known by [applicant] to be false.

As a result, the SBD 2/CV issued the applicant an LOR for making a false official statement regarding her whereabouts during a period of ordinary leave and after considering her response, decided to maintain the LOR. According to DAFI 36-2907, an LOR is an administrative censure for violation of standards. The standard of proof for any adverse administrative action is a “preponderance of the evidence.” A preponderance of the evidence means it is more likely than not that a fact exists. A preponderance of the evidence is not determined solely by the volume of witnesses or documentary evidence supporting or refuting the 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 makes several claims:

(1) The CDI Investigating Officer (IO) and her commander failed to follow the procedural requirements of DAFMAN 1-101, Commander Directed Investigations (9 April 2021), and they have prevented her from receiving a full and fair evaluation of the evidence and the benefit of an impartial IO and unbiased legal review.

Response. The procedural “error” the applicant raises primarily pertain to an informal inquiry that preceded the CDI. Not only are the alleged errors not substantiated, but they do not impact the legal sufficiency of the CDI because it was a separate and independent investigation.

(2) Her commander issued an LOR with insufficient evidence to substantiate all the elements of the alleged offense.

Response. The applicant alleges she did not have the requisite intent to deceive required for a false official statement under Article 107, UCMJ. In these circumstances, the factfinder disagreed, and determined all elements of the offenses were met by a preponderance of the evidence. Under the circumstances, a rational factfinder could infer the element of intent the applicant believes is missing. The LOR properly documents a false official statement in violation of Article 107, UCMJ.

(3) Her spotless career and significant accolades were not factored into the legal analysis.

Response. While the applicant has an impressive military record prior to the misconduct issue, there is no requirement to overlook significant misconduct notwithstanding an excellent service record.

(4) She was deprived of a coveted assignment {Education with Industry (EWI)} working with Amazon.

Response. Assignment actions can be a natural consequence of misconduct that results in administrative action.

(5) the CDI RO was mishandled after completion and her commander rushed to make corrections and a decision.

Response. Evidence has not been submitted to substantiate this claim.

(6) The information she provided to rebut the allegations was not properly considered by the IO or her commander.

Response. The conclusion by the IO and tentative conclusion by SBD 2/CV was that all allegations were substantiated. However, after thoroughly considering applicant's response to the tentative conclusions, SBD 2/CV substantiated only Allegation 3. This indicates SBD 2/CV properly considered the information applicant provided in response to the tentative conclusions and any claim otherwise is without merit.

(7) The CDI was reviewed using an incorrect legal standard.

Response. Evidence has not been submitted to substantiate this claim. SBD 2/CV specifically states he used the preponderance of the evidence standard to find Allegation 3 was substantiated.

Finally, the applicant's counsel asserts the administrative actions taken against the applicant should be stricken for material error based on the likelihood the applicant was prejudiced, AF/JAJI considered these contentions and disagrees. In the context of 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 the applicant's commander. After a careful review, AF/JAJI concludes that IO's and commander's evaluation of the underlying misconduct and subsequent adverse actions were neither arbitrary nor capricious. Therefore, AF/JAJI concludes the administrative adverse actions are supported by the preponderance of the evidence and advises there is insufficient evidence of material error or injustice to warrant granting the requested relief.

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 20 May 24 for comment (Exhibit E), and the applicant replied on 19 Jun 24 and (Exhibit F). In her response, the applicant through counsel contends there are numerous points of error and injustice and she was specifically prejudiced by: Inadequate Investigation; No Evidence of Intent; Improper Testimony Considered; Failure to Properly Consider the Applicant's Rebuttal; Improper Application of the Standard of Proof; and the Wrongful Imposition of Personal Values. The AFPC/DPMSM advisory provides no substance to counter her contentions and makes no comments on the merits of her case. Additionally, the AF/JAJI advisory falls well short of addressing the several errors and injustices raised and argues her application is nothing more than a disagreement with the conclusions of the CDI IO and her commander. In doing so JAJI completely disregards the elements of the alleged offense and the utter lack of evidence to substantiate the elements. Further, the disparity in how she was treated in this matter, when compared to her husband [CMSgt G] establishes the significant injustice she has experienced. She reiterates there was no intent to falsify an official document and there is no evidence she profited or gained any advantage from the alleged false statement. She never attempted to hide her marriage to CMSgt G, and the three unsubstantiated CDI allegations proved she had no incentive to lie on the leave request. Further, there is no requirement that someone who is on authorized leave, seek immediate updates to the LeaveWeb address and there is certainly no requirement that a military member, who has been on authorized leave, is precluded from changing their location after the leave is approved. As she never had the obligation to change the leave address and she never had the motivation to conceal the leave address she could not have committed the offense; therefore, there was no intent to deceive and there was no false official statement in violation of Article 107, UCMJ. The leave address was accurate when she entered it and she simply chose an alternate destination at the last minute.

On 20 Feb 24 (Exhibit F), she provided an additional response. She adamantly continues to assert she never lied about anything related to her relationship or marriage with her current husband and the motivations in substantiating the sole allegations were improper and not based on the evidence as it wrongfully relied heavily on the unsworn statement from her ex-husband, which was only provided during the informal inquiry. Her ex-husband subsequently refused to provide a sworn statement to the investigation officer during the CDI and he has significant credibility concerns which were recently highlighted and compounded, as he was found to have lied under oath to a **Work-Product** District Court. As a reminder for the Board, her ex-husband was sexually, physically, and emotionally abusive towards her and he exhibited significant negligence when caring for their son.

Lastly, it is important to highlight her military record as it is highly indicative of a service member who repeatedly serves with honor, integrity, selflessness, and with great success. She is not asking the Board to “overlook” misconduct, she is asking the Board to recognize those who know her best have repeatedly endowed her with responsibility and recognition because she embodies the integrity required to make the Air Force function.

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. The Board reviewed the complete evidence of record to reach its own independent determination, and after reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice to warrant changing the CDI to reflect that it was not substantiated. The Board concurs with the rationale and recommendation of both AFPC/DPMSSM and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The Board further notes that while the applicant’s LOR and UIF are not available in her Master Personnel Record, they are based on the substantiated CDI investigation and at the time the LOR was issued the applicant was afforded the opportunity to respond to the LOR in accordance with DAFI 36-2907, *Adverse Administrative Actions*. As such, the commander considered the applicant’s response, but chose to maintain the LOR and UIF. Therefore, the Board finds that since the evidence does not support overturning the investigation, the commander was well within his authority to issue the LOR, the applicant was afforded her due process rights, and the underlying reason for the referral evaluation still stands. Therefore, the Board recommends against correcting the applicant’s record.
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-2024-00694 in Executive Session on 12 Nov 24 and 16 Apr 25:

, 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 16 Feb 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 6 May 24.
Exhibit D: Advisory Opinion, DAF/JAJI, dated 14 May 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 May 24.
Exhibit F: Applicant's Response, w/atchs, dated 19 Jun 24 and 20 Feb 25.

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.

X

Board Operations Manager, AFBCMR