



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00861

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her Letter of Admonishment (LOA) issued 11 May 21, as the result of a Commander Directed Investigation (CDI) be expunged from her Officer Selection Record (OSR).

APPLICANT'S CONTENTIONS

The chronology and the conduct of the CDI on which her LOA was based was surrounded by misunderstandings and misstatements. The Inspector General (IG) complaints of 4 and 7 Dec 20 complaining of toxic leadership and a work environment characterized by bullying, belittling, unfairly treating those within her command and making arbitrary decisions were in response to her memorandums for record that she submitted a month earlier to the laboratory leadership in which she described a chaotic environment and the burn-out experienced by the junior members of the lab.

Mistakes were evident at the outset of the CDI investigation. On 5 Jan 21, she received an email from the investigating officer (IO) inviting her to appear for an interview, which the IO referred to as an "inquiry." When she was interviewed by the IO on 7 Jan 21, she was identified as a witness and not as a subject of the investigation. However, later that day, after she was interviewed by the IO as a witness, she was informed by her supervisor that she was the subject of the CDI and not a witness. This was the only interview she had with the IO. She was punished for information she provided to the IO as a "normal witness" without her due process and rights advisement as the conduct of the CDI did not follow proper procedures as required by Department of the Air Force Manual (DAFMAN) 1-101, *Commander Directed Investigations*, for the following reasons:

a. Since she was identified as a witness, she was not given any rights advisement but was also not afforded proper representation during the IO's interview. These elements are required in a valid and legal CDI.

b. During the interview, if she ever gave an incriminating statement, the interview should have been stopped and she should have been given her Article 31 rights advisements.

c. If any part of her statement merely made the IO suspect she had committed any type of UCMJ or otherwise criminal violation, she was owed her due process and her rights advisement.

Further, if it was her intention to retaliate against the laboratory personnel or her squadron leadership, instead of the memorandums for record detailing her concerns with the laboratory, she could have reported her findings directly to the College of American Pathologists, which has a robust and confidential reporting process encouraging anyone with laboratory operations and safety concerns to report any suspicions of non-compliance.

AFBCMR Docket Number BC-2024-00861

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The conduct of the Staff Assistance Visit (SAV) also did not follow the proper procedures because if the SAV was to be used as part of the CDI to determine allegations of misconduct or UCMJ violations, then she should have been made aware as to who were the members of the SAV team and the SAV team members should have been required to reveal any potential biases or conflict of interests. This is especially true as the SAV team leader was the same officer with whom she has had a long standing strained professional relationship. The SAV leader was vindictive and their report was a personal attack on her personality, integrity, questions her leadership ability, maligns her character, and became a smear campaign against her professional and military career.

The improper conduct of the CDI and the SAV never allowed her the chance to fully defend herself and provide adequate responses to counteract the allegations contained in both the CDI and SAV. As a matter of fact, many of the findings in the heavily redacted CDI and the full SAV report only became available to her when she was preparing her response to the Letter of Reprimand (LOR), and they were only provided after being requested by her Area Defense Counsel. Her LOR was downgraded to an LOA by her commander after they considered her voluminous response. However, she was informed the reason for the downgrade was not due to the merits of her case but instead was due to the extensive letters of support that she provided.

Finally, had the IO clarified she was the subject of the investigation rather than just a witness, she could have corrected the narrative being painted against her as she could have requested interviews for other hospital staff outside of the laboratory. Instead, the investigation was marred by confusion, misunderstandings, invalid procedures, and a misrepresentation of facts. Prior to and even after this CDI, she had never been the subject of any investigation, inquiry, or allegation of misconduct. She has always maintained a professional demeanor and treats others with fairness and compassion.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 7 and 11 Jan 21, according to a memorandum, *Command Directed Investigation of the <redacted> Histopathology Lab*, provided by applicant, the IO interviewed individuals with regards primarily to events listed in IG complaint dated 2, 4, 5, and 6 Nov 20.

On 8 – 9 Feb 21, according to the report, *Staff Assisted Visit (SAV) for <redacted> Pathology*, provided by applicant, the SAV summary noted the operations of the <redacted> Medical Group Pathology Department have room for improvement, but patient safety is NOT at risk and that the major problem is the toxic and hostile working environment which is mostly the result of the applicant's demeanor, actions, and supervisory approach.

On 11 May 21, according to the memorandum, *Letter of Reprimand (LOR)*, the applicant's group commander issued her an LOR as the result of an investigation which disclosed:

- a. Between on or about 1 Jun 20 to on or about 24 Feb 21, she engaged in toxic leadership by bullying, belittling, unfairly treating those within her unit, and making arbitrary decisions. Because of her actions, a CDI was undertaken, and ultimately substantiated the fact she was bullying, belittling, and unfairly treating members of the unit.
- b. Between on or about 1 Jun 20 to on or about 24 Feb 21, she retaliated against the section after the CDI was initiated and she knew she was a subject of the investigation. She completed a

self-inspection wherein she alleged the Lab had several violations, was at risk of losing accreditation, and was an unsafe environment. She was warned the self-inspection findings could be perceived as reprisal or retaliation for the CDI that was pending. However, she did not heed counsel and instead presented unsubstantiated findings. Following her unsubstantiated self-inspections, a SAV was conducted and found the Lab in good working order, was not in danger of losing its accreditation, and was not an unsafe environment.

c. Between on or about 1 Jun 20 to on or about 24 Feb 21, she abused her authority, based on her rank [sic], by making statements such as “I’m an O-6, they’ll listen to me more than you,” “I outrank <redacted> and I will tell her myself,” and “I outrank every at <redacted> so what are they going to do to me?” She has been using her rank to justify unacceptable behavior, and have time and time again given the outward appearance that she can operate with impunity; do, demand, and get whatever she wants because of her rank [sic].

On 11 May 21, she acknowledged receipt and that she had three (3) duty days from date of receipt to provide a response.

On 14 May 21, she provided her response.

On 7 Jul 21, the applicant’s group commander, after reviewing all the evidence to include the applicant’s response, found the applicant did engage in the conduct; however, decided to downgrade the LOR to an LOA and place it in her Unfavorable Information File (UIF) and OSR.

For more information, see applicant’s submission at Exhibit A, 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:

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 (reference paragraph 1.2.7).

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

1.2.3. All adverse information as defined by this instruction will be permanently placed in the MPerRGp. (T-0) Except for the set aside of a court-martial or nonjudicial punishment, removal of

adverse information from the MPerRGp may only be directed pursuant to an Air Force Board for Correction of Military Records (AFBCMR) recommendation.

3.4.3. Wing commanders, delta commanders, or issuing authorities can no longer direct removal of derogatory data from the OSR as previously permissible in this instruction and DAFI 36-2608. (T-0)

The Secretary of the Air Force Office of the Inspector General Complaints Resolution Directorate, Commander Directed Investigation (CDI) Guide, 1 Jun 18:

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. After weighing all the evidence, the IO may substantiate a finding when the greater weight or quality of the evidence points to a particular conclusion as more credible and probable than the reverse. While the amount of evidence is something to consider, non-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 may use their own common sense, life experiences and knowledge of the ways of the world to assess the credibility of witnesses they interview.

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. Testimony. In CDIs, the majority of evidence is witness testimony. Testimony includes oral statements, written statements and IO summaries of witness interviews.

5.2.1.1. Witness Availability. IOs should work through the witness' commander to make the witness available for interviews.

5.2.1.2. Order of Witnesses. Each witness must be interviewed individually. The recommended sequence is: (1) the complainant(s); (2) subject matter experts; (3) regular witnesses; (4) subjects or suspects. Interviewing the subject last ensures the IO has learned the necessary information to ask the right questions. This process can also enhance truth telling, as people are more likely to be truthful if they know the IO has information from others. If the subject interview is last, the IO can also challenge any statements that are inconsistent with other evidence. Finally, interviewing the subject last allows the IO to advise the subject of all adverse information against them and decreases the need to re-interview.

7.1. Closure with Subjects, Suspects, and Complainants. Final notification of CDI results is exclusively the commander's prerogative.

7.2. Use of Results in Adverse Administrative Actions. The information obtained in a CDI, including an IO's findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated as a subject or suspect.

7.3. CDI "Appeal." There is no formal appeal process for a CDI. Any "appeal" is entirely within the discretion of the initiating commander and the next echelon of command. As a general proposition, the "appealing" party should provide additional information to justify a review. Simply disagreeing with the results does not ordinarily constitute sufficient justification for further review or additional investigation. Complainants and subjects may appeal a subsequent adverse administrative action or non-judicial punishment to the Air Force Board for Correction of Military Records pursuant to AFI 36-2603, *Air Force Board for Correction of Military Records*, for substantive relief. Active duty members may be able to use Article 138, *Complaints of Wrongs*, to request redress from the Commander and General Court-Martial Convening Authority. An "appeal" alleging reprisal must be referred to the Inspector General.³⁵

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the request. Based on the review of the documentation provided by the applicant and careful analysis of the pertinent facts, there is insufficient evidence to support claims of an error or injustice. The applicant was administered an LOR for repeated unacceptable conduct, conduct that is in violation of the Uniform Code of Military Justice (UCMJ) Article 93, Cruelty and Maltreatment; Article 132, Retaliation; and Article 134 Conduct unbecoming an officer. She acknowledged receipt and was advised she had three (3) duty days in which to provide a response, which she did on 14 May 21. On 7 Jun 21, the issuing authority reviewed the evidence, to include the written response from the applicant, and decided to downgrade the LOR to an LOA and place it within her UIF and OSR. A review of her Master Personnel Record Group (MPerRGp) and OSR show that the LOR and her response has been filed. The issuance of the LOA by her commander is in accordance with the guidelines outlined in Department of the Air Force Instruction 36-2907, *Adverse Administrative Actions*, Chapter 3, and no deviations from procedural norms have been identified to warrant removal from her records.

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 7 Jun 24 for comment (Exhibit D), but has received no response.

AIR FORCE EVALUATION

AF/JAJI recommends denying the request on the basis of insufficient evidence to demonstrate a legal error or injustice. Following the substantiated findings of a CDI and a SAV, the applicant was issued an LOR by the medical group commander (MDG/CC) for toxic leadership (bullying, belittling, unfairly treating unit members, and making arbitrary decisions), retaliation, and abuse of authority. The CDI was initiated to investigate the allegations of whether she had engaged in the behaviors described within the LOR towards subordinate staff and the SAV was initiated to look into her self-inspection which she conducted after she was informed she was the subject of a CDI. The MDG/CC, upon considering the applicant's response to the LOR downgraded it to an LOA, which was filed in her official military personnel records. Because, in accordance with Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.4.4, "the applicant has the burden of providing evidence in support of their allegation(s) or an error or injustice," the BCMR is bound to draw every

reasonable inference from the evidence in favor of the principals who resolved questions of fact and took the actions at issue. Deference is not blind as the BCMR can reverse an arbitrary or capricious decision for an abuse of discretion (*Roberts v. United States*, 741 F.3d 152, 158 (D.D. Cir 2014)).

A rational factfinder could conclude it more likely than not the alleged misconduct occurred under the applicable standard, which in accordance with DAFI 36-2907, paragraph 2.2., the Standard of Proof for adverse administrative actions is a “preponderance of the evidence.” This standard will be used when evaluating the evidence and every element of the alleged offenses. 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. Further, 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 withdrawn. There is no requirement to prove any allegation beyond a reasonable doubt.

The complete advisory opinion is at Exhibit E.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Aug 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 AF/JAJI and AFPC/DPMSSM advisory opinions and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant contends her LOA was result of an improperly conducted Commander Directed Investigation which deprived her of her due process rights as it did not follow the proper procedures as required by DAFMAN 1-101, *Commander Directed Investigations*. However, the Board disagrees. The Board notes the investigation preceded the publication of DAFMAN 1-101 and determines it was not conducted under the guidelines of DAFMAN 1-101 but instead was appropriately conducted in accordance with *The Secretary of the Air Force Office of the Inspector General Complaints Resolution Directorate, Commander Directed Investigation (CDI) Guide*, dated 1 Jun 18. Nevertheless, based on the authority granted to this Board pursuant to Title 10 USC § 1034, the Board reviewed the complete evidence of record to reach its own independent determination, and agrees with the original CDI’s assessment. In this regard, the Board finds the preponderance of the evidence shows the applicant: engaged in toxic leadership by bullying, belittling, and unfairly treating members of her unit; after being warned against doing so, and knowing she was a subject of a CDI, she performed a self-inspection where her findings could be perceived as reprisal or retaliation for the pending CDI after which a Staff Assistance Visit was conducted and found her findings to be unsubstantiated; and abused her authority by giving the appearance that based on her rank she can operate with impunity. The Board unanimously agreed the LOA was the correct level of corrective action and finds it was well within the commander’s authority and the evidence presented does not

demonstrate an error or injustice warranting removal of the LOA or show it was unjust or inaccurate as written. Furthermore, the Board finds the applicant was provided due process with multiple levels of review and in accordance with DAFI 36-2907, *Adverse Administrative Actions*, the LOA meets the criteria for adverse information and should remain a part of her record. Therefore, the Board recommends against correcting the applicant's records.

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-2024-00861 in Executive Session on 10 Dec 24:

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 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 3 Jun 24.
- Exhibit D: Notification of Advisory, Work-Product C to Applicant, dated 7 Jun 24.
- Exhibit E: Advisory Opinion, AF/JAJI, dated 8 Aug 24.
- Exhibit F: Notification of Advisory, Work-Product C to Applicant, dated 19 Aug 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.

3/30/2025

X

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Board Operations Manager, AFBCMR

Signed by

Work-Product

AFBCMR Docket Number BC-2024-00861