



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00881

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her record reflect she was promoted to the grade of Colonel (O-6) with the corresponding date of rank (DOR) being backdated to the effective date of promotion for the CY20C Colonel Nurse Corps (NC) Selects.

APPLICANT'S CONTENTIONS

Her removal from the CY20C Colonel NC Selects promotion list is due to excessive and unreasonable delays in the processing and completion of an Inspector General (IG) investigation into a complaint in which she was a subject constitutes a material error and injustice. The initial IG complaint was submitted in Jan 20; however, the investigation was not completed until May 23, more than three (3) years later. Throughout the course of the investigation there were several excessive, unreasonable, and unjustifiable delays. On 7 Jun 21, in an email, the IG indicated "the investigative phase is complete:" a full year and a half to complete the investigation phase. Once the investigation phase was complete, it took another two years for the Special Operations Wing (SOW) IG to complete the Report of Investigation (ROI) and finalize the investigation. It is inconceivable why it took the SOW IG not just double or even triple the amount of time provided for in the regulation (estimated timeframe of 180 days) to process the complaint, but instead took *more than six times* to process the complaint.

Department of the Air Force Instruction (DAFI) 90-301, *Inspector General Complaints Resolution*, provides an estimated timeframe from each phase of the investigation: initial contact after complaint submission (< 5 days); complaint analysis (\leq 20 days); decision to transfer or investigate (\leq 5 days); pre-fact finding (\leq 5 days); fact finding (\leq 21 days); writing report (\leq 36 days); quality review (\leq 7 days); technical review (\leq 3 days); legal review (\leq 10 days); reworking the report (\leq 5 days); closing the case (\leq 5 days). Additionally, the regulation requires periodic updates be provided to the complainant 60 days after receipt of the complaint and every 60 days thereafter. Further, paragraph 5.6.3, states, "IAW with DoDD 7050.06, *Military Whistleblower Protection*, the owning IG must provide a 180 Day Notification Letter to the IG DoD (through SAF/IGQ) and to the complainant if the investigations are not completed with 180 days after the initiation of the investigation (tasking due in ACTS) and every 180 days thereafter." Nothing in the regulation suggest that it would be permissible, acceptable, or appropriate for an IG investigation to take more than three (3) years to process.

The IG's failure to investigate in a reasonable and timely manner prejudiced her, detrimentally impacting her career; but for the excessive and unreasonable delay in completing the investigation, she would have been promoted to O-6 on the effective date of promotion for the CY20C NC Selects. Pursuant to 10 U.S. Code § 629(c), she had until 1 Jun 22 to be approved for promotion. The SOW IG had more than an ample period of time – two years – to complete the investigation

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before expiration of her promotion eligibility period (PEP) expired. Her PEP was further extended for another 12 months until 1 Jun 23, more than enough time to complete and finalize the investigation; however, the IG lingered for another year without justification preventing her from being promoted to the grade of O-6. The Chief of the Military Force Policy Division acknowledged the only reason she was not promoted is because of the IG investigation delay which “left insufficient processing time within the PEP.”

Servicemembers should not be subjected to the whims of IG investigators who are either unable or unwilling to do their job and timely complete an investigation into a complaint. Permitting such unreasonable delays would send a message to all Airman that if they do not like someone they work with and want to ruin their career, all they need to do is name them in an IG complaint and the excessive processing time will certainly negatively impact the Airman’s career even without commanders having taken any adverse actions as a result of the complaint. This offends all notions of fairness and justice.

Therefore, the IG’s failure to timely process a complaint in which she was a named subject, leaving insufficient processing time with the PEP for her to be promoted constitutes a material error and injustice that warrants correction.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Nurse Corps lieutenant colonel (O-5).

According to the HQ USAF/A1PP memorandum, dated 25 Jul 23, provided by applicant, in reply to a Senatorial inquiry, the Chief, Military Force Policy Division, provided the following status concerning the applicant’s promotion:

- a. The applicant was selected for promotion to colonel by the CY20C Colonel Nurse Corps (NC) Central Selection Board (CSB).
- b. On 8 Oct 20, the Department of the Air Force Office of the Inspector General (SAF/IG) identified the applicant was under investigation for allegations related to reprisal.
- c. On 7 Dec 20, the Secretary of the Air Force (SecAF) withheld the applicant’s name from the promotion list.
- d. On 3 May 23, SAF/IG closed the investigation, the allegation was substantiated and she consequently received a Letter of Counseling.
- e. On 1 Jun 23, her 30-month promotion eligibility period (PEP) expired, and as the investigation concluded too close to her PEP expiration date, her name was removed from the promotion list, in accordance with 10 USC 629.

On 18 Jul 19, according to the SAF/IGQ advisory opinion, dated 2 Oct 24, Case FRNO <redacted> was opened.

On 4 Nov 19, according to the Work-... Special Operations Wing Inspector General (SOW/IG) *Report of Investigation (ROI), Concerning Allegations of Restriction and Reprisal*, dated 5 Aug 22, the applicant was notified by the Special Operations Medical Group Commander (SOMDG/CC) she had been identified as the subject of an IG investigation. On that same date, she signed the

Command Notification Letter. The applicant was one of four subjects in this IG complaint that investigated 12 allegations. The applicant was the subject of four (4) allegations. The allegations and findings pertaining to the applicant are as follows:

a. **Allegation 4:** On or about 14 Aug 19, <applicant>, SOMDOS Commander, reprised against <redacted> by endorsing a substandard Officer Performance Report for making a protected communication, in violation of Title 10, United States Code, Section 1034 (10 U.S.C. § 1034).

b. **Allegation 8:** On or about 29 Oct 19, <applicant>, SOMDOS Commander, reprised against <redacted> by recommending an improper command directed mental health evaluation for making a protected communication, in violation of Title 10, United States Code, Section 1034 (10 U.S.C. § 1034).

c. **Allegation 11:** On or about 22 Jul 19, <applicant>, SOMDOS Commander, reprised against <redacted> by withholding a Permanent Change of Assignment opportunity for making a protected communication, in violation of Title 10, United States Code, Section 1034 (10 U.S.C. § 1034).

d. **Allegation 12:** On or about 28 Jan 20, <applicant>, SOMDOS Commander, reprised against <redacted> by withholding a Permanent Change of Station opportunity for making a protected communication, in violation of Title 10, United States Code, Section 1034 (10 U.S.C. § 1034).

On 7 Jun 21, according to email traffic, *Investigation Update*, provided by applicant, she inquired as to the status. On that same date, the investigation officer (IO) responded and informed her the investigation phase is complete and they are in the process of writing the ROI.

On 13 May 22, according to email traffic, *RE: Additional Allegation Notification*, provided by applicant, she inquired as to the status. On 16 May 22, the SOW/IG office responded and informed her the adjusted date for ROI completion is 24 Jun 22.

On 27 Jun 22, according to email traffic, *Status Update*, provided by applicant, she again inquired as to the status. On that same date, SOW/IG replied stating they are extending the estimated completion date to 29 Jul 22.

On 5 Aug 22, according to the Work-... Special Operations Wing Inspector General (SOW/IG) *Report of Investigation (ROI), Concerning Allegations of Restriction and Reprisal*, reflects the following finding by the IO:

a. **Allegation 4:** NOT SUBSTANTIATED.

b. **Allegation 8:** NOT SUBSTANTIATED.

c. **Allegation 11:** NOT SUBSTANTIATED.

d. **Allegation 12:** SUBSTANTIATED.

On 9 Nov 22, according to email traffic, *RE: Question on timeline*, provided by applicant, the SOW/IG informed the applicant the legal review is complete.

On 16 Nov 22, according to email, *RE: Periodic Updated for FRNO <redacted>*, provided by applicant, the applicant was informed by IO the ROI is complete and is now going through a series

of quality reviews and approval steps. For IG investigations addressing allegations of reprisal/restriction the ROI will progress through the Appointing Authority, MAJCOM/IG, SAF/IG, and then to DoD/IG for final approval before any notification is made (AFI-90-301, and NOTIG 21-4).

On 3 May 23, according to the SAF/IGQ advisory opinion, dated 2 Oct 24, Case FRNO <redacted> was closed.

On 1 Jun 23, according to memorandum for record, *Removal from Promotion List*, dated 19 Jul 23, the applicant's name was administratively removed from the Calendar Year 2020C Colonel Nurse Corps promotion list, as required by 10 U.S.C. § 629(c). Further, based on this removal, the applicant was now considered a non-select for the Calendar Year 2020C Colonel Nurse Corps Central Selection Board.

For more information, see the applicant's complete submission at Exhibit A, the excerpt of the applicant's record at Exhibit B, and the advisories at Exhibit C, Exhibit F, and Exhibit H.

APPLICABLE AUTHORITY/GUIDANCE

10 U.S. Code § 531 – Original appointments of commissioned officers.

Original appointments in the grades of second lieutenant (O-1), first lieutenant (O-2), and captain (O-3) in the Regular Army, Regular Air Force, and Regular Marine Corps, and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy shall be made by the President alone.

Original Appointments of Commissioned Officers. Original appointments in the grades of major (O-4), lieutenant colonel (O-5), and colonel (O-6) in the Regular Army, Regular Air Force and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advise and consent of the Senate.

10 U.S. Code § 1034 - Protected communications; prohibition of retaliatory personnel actions

(a) Restricting Communications With Members of Congress and Inspector General Prohibited.

(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(b) Prohibition of Retaliatory Personnel Actions. (1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing—

Title 10 U.S. Code § 629 - *Removal from a list of officers recommended for promotion*

(c) Removal After 18 Months.

(1) If an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an *additional 12 months*.

(4) In this subsection, the term "*promotion eligibility period*" means, with respect to an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the *eighteenth month* following the month during which the list is so approved.

DAFI 90-301, *Inspector General Complaints Resolution*, 4 Jan 24:

Table 3.1. The Complaint Resolution Process (T-1)

COMPLAINT PROCESS PHASES	RESOLUTION STEPS		TIMELINE IN DAYS (LESS THAN OR EQUAL TO)
Receive the Complaint (DAF Form 102, phone call, email, etc.)		Total Phase Timelines	
COMPLAINT ANALYSIS			
Contact/Transfer	1	30 Days	5
Conduct Analysis (includes complaint clarification)	2		20
Finalize the complaint analysis and determine resolution path	3		5
30 DAY DECISION POINT* Transfer, Assist, Refer, Dismiss or Investigate ** See Table 3.8 for Transfer, Table 3.10 for Assist, Table 3.12 for Refer and Table 3.14 for Dismissal			
INVESTIGATION (Chapter 4)			
Pre-Fact Finding	4	60 Days	5
Fact Finding	5		21
Write Report	6		34
QUALITY REVIEW Report Ready for Quality Review - 90 days from Complaint Receipt			
IG Quality Review	7	60 Days	7
Technical Review	8		3
Legal Review	9		10
Rework	10		5
Case Completion ***	11		7

Higher Headquarters Review (as applicable)	12			23
SAF/IG Review (as applicable)	13			5
Compliance with above timeline will ensure cases receive appropriate level review within statutory and Department of the Air Force Instruction requirements				150 Days
IG DoD Approval (as applicable)	14			
Case Closure/ Command Action	15			

Note 1: *Except in extraordinary circumstances, a resolution path for each issue in a complaint will be determined and tasked to appropriate agency no later than 30 days after receiving a complaint.

Note 2: **Transfers requiring higher headquarters review.

Note 3: *** For substantiated findings, the timelines for the tentative conclusion letter includes 30 days outside the normal timeline.

7.1. Overview. One of the key tenets of the officer appointment policy is that all officers recommended for Secretary of Defense appointment or Presidential appointment following Senate confirmation are mentally, physically, morally, and professionally qualified for appointment and meet the exemplary conduct provisions of Title 10. As such, officers requiring Senate confirmation (majors and above) will be centrally screened by SAF/IG to check for potential adverse/derogatory information as part of the promotion process. In general, adverse information is defined as (1) a substantiated adverse finding or conclusion from an officially documented investigation or inquiry; or (2) any credible information that reflects unacceptable conduct, or a lack of integrity or judgment on the part of an individual.

Table 7.1. Collection. Documentation and Notification Requirements in support of the Department of the Air Force Officer Promotion Screening (T-1).

R U L E	A	B
	If the adverse information is a result of:	Then SAF/IGQ requires the following documents to close the case:
1	An IG conducted Report of Investigation (ROI)	1. Copy of entire case file (ROI and attachments) 2. Copy of legal review 3. Copy of command/corrective action 4. Copy of command action rebuttal by subject

7.6. Department of the Air Force Screening. 7.6.1. Officers being considered for promotion to major, lieutenant colonel, colonel, or brigadier general will be screened both pre-board and post-board. The purpose of pre-board screening is to ensure applicable adverse information is provided to HAF/A1, AF/REP, NGB/A1, as appropriate, for inclusion in the officer's record. The purpose of post-board screening is to report open investigations or inquiries on officers selected for promotion.

7.6.1.1. SAF/IGQ is responsible for all pre- and post-board screening actions from Major up to and including Colonel.

7.6.1.2. If the post-board check finds that an officer is named in an open investigation or inquiry, report the individual's name, with a general synopsis of the allegation, to the appropriate headquarters personnel office using an MFR format. These individuals will be withheld from the selection list (scroll) pending completion of the investigative process.

7.6.1.2.1. If the open allegation is eventually substantiated, the officer's commander will review the finding of the investigation or inquiry and make a recommendation back to the headquarters personnel office on whether or not the promotion should still be supported. **(T-1)** If the commander no longer wishes to support the promotion, the commander will comply with DAFI 36-2501, *Officer Promotions and Selective Continuation*, Chapter 5, Promotion Propriety Actions. **(T-1)**

7.6.1.2.2. If the open allegation is eventually not substantiated, the officer's record will be placed back into the promotion process.

7.7. Roles in the Officer Screening Process (1st Lt - Colonel Promotions). 7.7. 3 The role of SAF/IGQ: 7.7.3.2. Post-board – Screen FGO boards for open investigation or inquiry and report all found to HAF/A1, AF/REP, NGB/A1, and AFPC and ARPC.

DAFI 36-2501, *Officer Promotions and Selective Continuation*, 12 Jan 24:

5.4. Delaying a Promotion. Delaying an officer's promotion is applicable to officers eligible for promotion to first lieutenant and captain, or selected for promotion by a central selection board, SSB, or special board to the grades of captain through colonel.

5.6.1. The SecAF, acting for the President, approves all removal actions. Initiation of removal action automatically delays an officer's promotion until SecAF makes a decision on the action.

5.6.2. When an officer is considered and selected IPZ or APZ, but later removed from a report of a selection board or a promotion list, the removal is deemed a nonselection for promotion.

AIR FORCE EVALUATION

APFC/DPMSSP recommends denying the request. The timelines for SAF/IG oversight are not under the control of Air Force Officer Promotions. The applicant was selected by the CY20C Colonel Nurse Corps Central Selection Board for promotion to the grade of colonel. However, during a post-board adverse information check, on 8 Oct 20, the SAF/IG identified that she was under investigation for allegations related to reprisal. As a result, on 7 Dec 20, SecAF withheld her name from the promotion list. On 3 May 23, SAF/IG closed the investigation in which an allegation was sustained and finally on 1 Jun 23, the applicant's name was administratively removed from the CY20 Colonel NC CSB, as such, she was then considered to be a non-select.

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 20 Jun 24 for comment (Exhibit D), and the applicant replied on 15 Jul 24. In her response, the applicant through counsel contended the advisory failed to address the reason the applicant's promotion eligibility period

expired and the expiration of her promotion eligibility period was entirely due to the Air Force's excessive and unreasonable delays, which were no fault of her own. Had the SAF/IG completed its investigation in a reasonable timely manner; she would have been promoted to colonel on the effective date of promotion for the CY20C Colonel NC selects.

She was not removed from the promotion list as a result of the findings of the IG investigation, but solely because her promotion eligibility period expired. This is manifestly unjust.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

SAF/IGQ recommends the Board review/consider the findings of the Reprisal Investigation to promote the applicant. Her promotion selection to O-6 was withheld pending the results of the investigation as required by law and the Department of the Air Force policy. The applicant contends the delay of more than three (3) years to process an IG complaint was excessive and the unreasonable delay on the part of the IG team rendered her promotion selection null and void due to the expiration of the associated promotion timeline. The applicant is one of four subjects in an IG Reprisal investigation that covered a 3+ year span, from Jun 19 to Nov 22. Of the twelve reprisal allegations, the applicant was the subject of four, of which one reprisal allegation against her was found substantiated:

Allegation 12: Reprisal. On or about 22 July, <applicant>, SOMDOS Commander, reprised against <redacted> by withholding the opportunity of a permanent change of assignment opportunity for making a protected communication, in violation of Title 10 U.S. Code § 1034.

In Summary, upon a thorough review of the IG complaint where the applicant was a named subject, the investigation was processed in accordance with DAF 90-301, *Inspector General Complaints Resolution*, and received appropriate oversight review and approval by the Department of Defense (DoD) IG on the restriction case, where they alone are the authority to approve final resolution. Although the IG failed to meet DAFI 90-301 investigative timeline goals, the IO through the responsive IG office, provided appropriate documentation as required by governing laws, regulations, and instructions, with respect to the investigation process, to include updates to the applicant.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the additional advisory opinion to the applicant on 3 Oct 24 for comment (Exhibit G) but has received no response.

REVISED AIR FORCE EVALUATION

On 13 Nov 24, the Board staff requested APFC/DPMSSP revise their initial advisory opinion dated 4 Jun 24. Specifically, the advisory opinion reflected the applicant's incorrect grade and was required to be signed by a GS-15/O-6 as the issues dealt with a colonel promotion. On 14 Nov 24, AFPC/DPMSSP provided a revised advisory correcting the applicant's grade; however, they still recommended denying the applicant's request.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF REVISED AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 Nov 24 for comment (Exhibit I), 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 applicant contends her removal from the promotion list is due to an excessive and unreasonable delay in the completion of an IG investigation and not due to the IG's investigation substantiation of the allegation of reprisal. The applicant was selected for promotion to colonel and, in accordance with DAFI 90-301, *Inspector General Complaints Resolution*, as her promotion required Senate confirmation, her record was required to be screened post-board by SAF/IG to check for potential adverse derogatory/information. In general, adverse information is defined as a substantiated finding from an officially documented investigation. The post-board screening revealed that she was under investigation for allegations related to reprisal and her name was withheld from the promotion selection list pending completion of the investigation. The Board notes the IG investigation substantiated the allegation of reprisal against the applicant. Although the Board cannot determine why the DoD IG failed to meet the DAFI 90-301 investigative timelines goals, the Board finds the applicant was provided appropriate updates regarding the investigation and the investigation was properly conducted. The Board notes that in accordance with Title 10 USC § 629 - *Removal from a list of officers recommended for promotion*, an officer whose name is on a list of officers approved for promotion to a grade which appointment is required to be made by and with advise and consent of the Senate, is not appointed to that grade during the officer's eligibility period, the officer's name shall be removed from the list. The eligibility period begins on the date on which the list is so approved and ends on the first day of the eighteenth month, although the President may extend that for an additional 12 months, following the month during which the list is approved. Additionally, the Board notes, in accordance with DAFI 36-2501, *Officer Promotions and Selective Continuation*, when an officer is considered and selected but later removed from a report of a selection board or a promotion list, the removal is deemed a non-selection for promotion. Based on the foregoing, the Board concludes that at the expiration of her promotion eligibility period she was a non-select for promotion. Further, the Board determines, in accordance with 10 USC § 531, the authority to nominate and appoint officers, with the advice and consent of the Senate, resides only with the President. 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-2024-00881 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 1 Mar 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPMSSP, dated 4 Jun 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Jun 24.

Exhibit E: Applicant's Response, dated 15 Jul 24.

Exhibit F: Advisory Opinion, SAF/IGQ, dated 2 Oct 24.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Oct 24.

Exhibit H: Revised Advisory Opinion, AFPC/DPMSP, w/atchs, dated 14 Nov 24.

Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 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.

3/31/2025

X

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Board Operations Manager, AFBCMR

Signed by:

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