



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01611

COUNSEL:

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His record be corrected to reflect he was not relieved of command in Mar 18, but continued to command until mid-Jun 18 and received an end of tour award.
2. He be considered for promotion by a special selection board (SSB) for promotion to the grade of colonel (O-6) due to material errors in his record.
3. His Officer Performance Report, for the period of 3 May 17 – 5 Mar 18, be corrected to reflect he met standards and he be properly stratified. **(Failure to Exhaust; Has not applied to the Evaluation Reports Appeal Board (ERAB)).**
4. To properly stratify his evaluations **(FTE; Has not applied to the ERAB).**
5. He be granted any other relief the Board deems just and proper under the unique circumstances of his case.

APPLICANT'S CONTENTIONS

His relieve from command was arbitrary and capricious, and procedurally invalid as he was not allowed to provide any responses. He was never given a written notice as to the reasons why he was relieved of command and never had a chance to provide a response as required under DAFI 51-509, *Appointment to and Assumption Of Command*, dated 29 Dec 23. He was one of two African American intelligence officers selected for command in 2017 and despite numerous command positions available and numerous African American officers eligible to assume command, he understands only two African American officers are selected for command each year. During his command, his squadron performed better than any other squadron within the group as they won three (3) out of seven (7) awards, to include the best squadron award, within the group. The Nov 17 *DEOMI Organizational Climate Survey (DEOCS) Report* showed a positive command climate under his leadership. Specifically, trust in leadership was rated at 85 percent and senior leadership was rated at 84 percent. Most of the airman in the squadron agreed his command communicated a clear vision, listened, and shared information. In fact, some of the anonymous comments specifically noted he improved communication and was an effective leader, while other positive comments complemented his leadership style. However, in early 2018, Col D (Intelligence, Surveillance, and Reconnaissance Group Commander, (ISRG/CC)) without any prior written counseling and without allowing him to provide a response relieved him and left the squadron without a commander until Jun 18 when his replacement, a Caucasian, took command of the squadron.

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Controlled by: SAF/MRB

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

[REDACTED]

During his time in command, he experienced a series of discriminatory and adverse actions. The ISRG/CC did not counsel him on any of the perceived shortcomings or “small things.” Further, the ISRG/CC did not mentor him or try to develop him to become a better commander – like he did with the other squadron commanders in the group. Following his relieve of command, he conducted additional research and discovered he was a victim of systemic discrimination that has been extensively written about and the Air Force has been attempting to correct as there is a bias in a predominately white Air Force.

He was never told by the ISRG/CC the specific reasons for him being relieved of command as there was no investigations and no relieve of command counseling provided. He did not have a DUI, he did not assault anyone, and was never derelict in his duties. The ISRG/CC said his relief was not due to anything “illegal” but due to a lot of “small things,” but failed to provide any details. Had he been treated like any other Air Force lieutenant colonel in command, he would not have been relieved of command over “small things,” he would not have received a referral OPR, and he would have more likely than not been promoted to the grade of colonel as well as receiving assignments and awards commensurate with his actual performance and grade.

In summary, the ISRG/CC and others acted arbitrarily and capriciously in unjustly relieving him from command. The evidence shows he was improperly relieved of command, denied promotion, received a referral OPR, and other adverse records. Not only was his relieve of command procedurally improper; the evidence shows it was likely motivated by bias and animosity based on his age, length of service, race and related issues. Therefore, he should not have been relieved of command and he should be entitled to full and fitting relief.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Mar 18, according to memorandum, *Relief of Command*, the [Wor...] Intelligence, Surveillance, and Reconnaissance Wing Commander ([Work-Product]/CC) notified the applicant of the decision to remove him from command for cause, in accordance with AFI 51-604, paragraph 14.2.

On 27 Jun 18, the applicant’s AF Form 707, *Officer Performance Report (Lt thru Col)*, for the period of 3 May 17 – 5 Mar 18, shows he received a Referral OPR. Section IV, *Rater Overall Assessment*, reflects the following comment: “<applicant> was relieved of Command for repeated pattern of ineffectiveness in commanding his squadron.” Section XI, *Referral Report*, reflects the following statement: “as a commander, you were expected to lead people effectively, develop a healthy command climate and an environment of trust, to ensure the well-being of your subordinates, and otherwise exercise good judgement when executing decisions. You displayed a repeated pattern of ineffectiveness in commanding your former squadron. These expectations were provided to you in your initial feedback on 31 Aug 17, the direct feedback I provided on 3 Nov 17, and in AFI 1-2, *Commander’s Responsibilities*. As a result of your poor leadership and judgement, I lost confidence in your ability to lead the [Wor...] IS and you were relieved by the WG/CC on 5 Mar 18.” On that same date, the applicant acknowledge receipt and that he has three duty days in which to provide a rebuttal.

On 2 Jul 18, the applicant provided a response.

[REDACTED]

On 19 Jul 18, the additional rater, the ~~Work-Product~~/CC concurred and signed. Section V, *Additional Rater Overall Assessment*, reflects the following statement "I have carefully considered <applicant's> comments to the referral document of 2 Jul 18."

On 25 Jul 18, Section VI, *Reviewer*, reflects the ~~w...~~ Air Force Commander, concurred and signed.

On 6 Aug 18, Section VII, *Ratee's Acknowledgement*, reflects he signed and acknowledged all required feedback was accomplished during the reporting period and upon receipt of this report.

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force Instruction (AFI) 51-604, *Appointment to and Assumption of Command*, 11 Feb 16, paragraph 14, *Relief of Command*. Command is a privilege, not a right. As such, a superior competent authority may relieve an officer of command for any reason not prohibited by law or policy.

14.2. For cause. An officer may be relieved of command for cause, including instances where the superior competent authority has lost confidence in the officer's ability to command due to misconduct, poor judgment, the subordinate's inability to complete assigned duties, the interests of good order and discipline, morale, the good of the organization, or other similar reasons.

14.2.1. A superior competent authority's decision to relieve a commander for cause must not be arbitrary and capricious.

14.2.2. Relief of command for cause may be used as a basis, in addition to the specific underlying reason for relief, to support adverse action(s) or collateral administrative documentation pertaining to the officer.

14.2.3. If a specified cause for relief of command is later discovered, or determined by competent authority, to have been in error, the officer is not entitled to be returned to command. The competent authority may initiate, or the officer may request that the competent authority issue, a memorandum for record recharacterizing the relief of command from "for cause" (paragraph 14.2) to "relief of command not for cause" (paragraph 14.1) or to a suspension (paragraph 14.3). The officer relieved in error may then use the memorandum in any appropriate forum (e.g., Evaluation Report Appeals Board , Air Force Board for the Correction of Military Records) as support in seeking corrections to his/her personnel records.

14.4. Notice requirements. 4.4.1. Notice to Superior Competent Authority. Prior to taking final action to relieve an officer from any command position, with or without cause, a superior competent authority must first notify the next higher superior competent authority of the officer being relieved of command. For example, a wing commander relieving a subordinate group commander must notify the wing commander's next superior commander. If the relief of command is for cause, notice to the next higher superior competent authority must be in writing (e.g., email exchange, memo, etc.). (T-1) Failure to provide the required written notice in advance of the relief from command does not invalidate the relief from command. In such cases, the required written notice must be accomplished as soon as practicable following the relief from command of the officer.

[REDACTED]

14.4.2. Notice to the Officer. A superior competent authority must provide written notice of his/her decision to relieve an officer of command without cause (paragraph 14.1), for cause (paragraph 14.2), or to suspend an officer from command pending further investigation (paragraph 14.3) to the officer at or before the time the officer is relieved of command. (T-1) A sample written notice is provided at Attachment 4. ***The officer relieved of command is not required to be afforded an opportunity to respond to this written notice.*** Such written notice becomes effective immediately upon notice to the officer relieved of command. In cases where written notice cannot be immediately provided and verbal notice is provided instead, a subsequent written notice is effective at the time the earlier verbal relief was communicated to the relieved officer.

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:

1.2.1.6. Notice of Relief of Command (for cause).

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.

Department of the Air Force Instruction (DAFI) 36-2501, *Officer Promotions and Selective Continuation*, Chapter 6, *Special Selection Boards (SSB)*, paragraph 6.3, *Conditions That May Warrant an SSB*: 6.3.1, Grant SSBs for promotion to the grade of captain through colonel based on: Legal, Administrative, and Material Errors. Acting on behalf of the SECAF, HQ AFPC/DPPP and HQ AFPC/DPPPO can direct an SSB for an officer if it is determined: The action of the board that considered the officer was contrary to law or involved material error of fact or material administrative error, or; The board did not consider material information that should have been available in compliance with pertinent Air Force directives and policies.; An eligible officer did not meet a board or met the board in an incorrect promotion zone or competitive category.

6.3.2. Pursuant to Formal Appeal. The AFBCMR can grant SSBs when they determine an officer's nonselection for promotion resulted because of an error or injustice in the officer's record.

6.3.3. Exercising Reasonable Diligence. Do not have an SSB if, by exercising reasonable diligence, the officer should have discovered the error or omission and could have taken corrective action before the originally scheduled board convened.

AFI 36-2406, *Officer and Enlisted Evaluation Systems*, 6 Aug 24. 1.4.3. When an Evaluation Becomes a Matter of Record. 1.4.3.1. An evaluation is considered complete when all applicable signature elements are signed or completed. Completed evaluations become a matter of record

[REDACTED]

once they are uploaded into ARMS/PRDA. Evaluations are considered “working copies” until they are made a matter of record.

1.4.3.2. Correction requests made after an evaluation becomes a matter of record must be submitted in accordance with **Chapter 10**.

10.3. Correcting Evaluations. 10.3.2. Appealing Evaluations and Requesting Changes After Evaluations Have Become a Matter of Record. See **paragraph 1.4.3** to determine when an evaluation becomes a matter of record. Applicants must exhaust all avenues of relief before submitting their requests to the AFBCMR. The other avenues available are:

10.3.2.2. When the correction cannot be corrected administratively, the next avenue of relief is through the ERAB. Procedures for appealing evaluations through the ERAB are prescribed in this chapter.

10.3.2.3. If the correction cannot be corrected administratively, the ERAB denies the appeal, or the requested action is not authorized by this chapter, the next avenue of relief would be through the AFBCMR procedures and can be found in DAFI 36-2603, *AF Board for Correction of Military Records*.

10.3.3. Any changes or corrections that substantially alter the content from the original version require original signatures from all evaluators.

AIR FORCE EVALUATION

AF/JAJI recommends denying relief because there is insufficient evidence to demonstrate a legal error or injustice. On 5 Mar 18, the ISRW/CC relieved the applicant of command for cause in accordance with AFI 51-604, paragraph 14.2, which resulted in a referral OPR for the period of 3 Mar 17 – 5 Mar 18. The applicant filed an Article 138, Uniform Code of Military Justice (UCMJ) complaint, dated 2 Mar 18, against the ISRG commander alleging the relief from command was arbitrary and capricious and a direct result of the applicant’s religious beliefs, his longevity in the service, and his race. The applicant provided a response to the referral OPR, and finally, in Feb 22, he requested through his Congressional representatives assistance with his complaints.

In accordance with DAFI 36-2603, paragraph 4.3, “[t]he applicant has the burden of providing evidence in support of their allegations of 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 facts and took 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 F3d 152, 158 (D.C. Cir. 2014) (reviewing decision of a military corrections board under an “unusually deferential application of the ‘arbitrary or capricious’ standard”)).

A rational factfinder could conclude it more likely than not than not, in accordance with AFI 51-604, *Appointment to and Assumption of Command*, the applicant’s relief [of command] for cause was not arbitrary or capricious. Similarly, it is reasonable to conclude his complaint of wrongs under Article 138, UCMJ, in accordance with AFI 51-604, *Appointment and Assumption of Command*, was properly processed. The subsequent referral performance report and promotion recommendations were follow-on actions based on the relief of command. Finally, he did not provide any new or additional information in his request.

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 31 Jul 24 for comment (Exhibit D), and the applicant replied on 14 Aug 24. In his response, the applicant contended the advisory opinion is not reliable as it fails to adequately address the evidence. It also fails to rationally connect the evidence to its recommendation. Instead of addressing his arguments and evidence, the advisory opinion merely speculates that "*a rational fact finder*" (emphasis added) would not find the relief for cause to be arbitrary. Because the advisory opinion is not reliable, it should be set aside and the Board should grant the requested relief as he has provided clear and irrefutable evidence of arbitrary and capricious actions.

The applicant's complete response is at Exhibit E.

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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends the evidence shows his commanders actions were arbitrary and capricious, and his relief from command, was likely motivated by the applicant's age, race, and related issues, resulting in his referral Officer Promotion Brief (OPB) and promotion denial. The Board recognizes that command is a privilege, not a right and the grounds for a commander losing confidence in a subordinate commander are broad. As such, the Board finds the commanders decision to remove the applicant for cause was neither arbitrary nor capricious. While the applicant contends, he was never informed of the specific reasons for being relieved and was not given corrective feedback prior to his relief of command, we disagree. Specifically, the applicant's Officer Performance Brief reflects he was provided feedback twice regarding command expectations, as outlined in AFI 1-2, *Commander's Responsibilities*, prior to his relief of command. As for the applicant's contention he was treated unfairly and differently than his peers due to his race, the Board considered the entire case file and finds the applicant has provided insufficient evidence that his age and race was the reason for his relief of command. Therefore, the Board finds the applicant's OPB was accurate as written, and he was provided his due process rights. Alos, the Board notes the finding of exhibiting a repeated pattern of ineffectiveness in commanding in of itself justifies the decision to relieve him of command. With respect to the applicant's request to remove the contested OPR and he be given proper stratifications, the applicant has not presented his case to the Evaluation Reports Appeal Board (ERAB), which would be able to review the case fully and, if warranted, provide relief. 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.

[REDACTED]

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-2024-01611 in Executive Session on 11 Feb 25:

[REDACTED] Panel Chair
[REDACTED], Panel Member
[REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Apr 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 18 Jul 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Jul 24.
- Exhibit E: Applicant's Response, dated 14 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.

4/8/2025

X [REDACTED]

[REDACTED]
Board Operations Manager, AFBCMR

Signed by: [REDACTED]

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Work-Product