RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXXX

DOCKET NUMBER: BC-2024-03123

COUNSEL: XXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Overturn the two substantiated allegations against him, as documented in the Secretary of the Air Force Inspector General Senior Inquiries (SAF/IGS) Report of Investigation (ROI).

2. Remove the Letter of Admonishment (LOA), which resulted from the ROI, from his records.

APPLICANT'S CONTENTIONS

According to applicant's counsel, a complaint was filed through the Department of Defense (DoD) Inspector General (IG) Hotline alleging improper misconduct against the applicant spanning a seven-year period from 2013 to 2020. In Sep 21, an investigation was conducted by SAF/IGS into three allegations, two of which were substantiated, one was unsubstantiated. Three additional allegations were dismissed due to the untimeliness of the complaint, lack of evidence to support the complaint, and/or the situation having been resolved prior to investigation. Three other allegations were referred to the [State] military department for state investigation due to a lack of jurisdiction by SAF/IGS because the applicant was on state active-duty orders at the time of the allegations. Counsel cites the *Joint Ethics Regulation (JER)*, Air Force Instruction (AFI) 36-2907, *Adverse Administrative Actions*, AFI 90-301, *Inspector General Complaints Resolution*, AFI 10-203, *Duty Limiting Conditions*, and the *Joint Travel Regulation (JTR)* in support of his contentions.

Per counsel, all complaints should have been dismissed by SAF/IGS due to untimely filing by the complainant. The initial complaints filed by the complainant were alleged between 2011 and 2019. As outlined by the Investigating Officer (IO) in his report, three allegations were dismissed for a variety of reasons to include one allegation that was dismissed because the complaint was untimely, records no longer existed to provide credible evidence for analysis, and witness interviews regarding this issue provided insufficient evidence to assess this allegation. This aligns with the explanation within AFI 90-301 for dismissing untimely allegations. Further, while the complaints were filed against the applicant when he was a brigadier general (O-7), the majority of the complaints themselves were when he was only a colonel (O-6) and would not qualify as a senior leader and due special treatment by SAF/IGS as a senior officer. Establishing such a precedent as this one would encourage service members to hold off on filing complaints against officers in a timely manner if it is anticipated/expected that the officer will become a senior leader (for SAF/IGS purposes) at some time in the future.

Counsel also contended SAF/IGS did not have jurisdiction to investigate Allegation 3 and should have dismissed it. Allegation 3 was purported to have occurred in Oct 20 when the applicant was on State Active Duty (SAD) orders. As the IO noted for other dismissed allegations, the applicant was acting in his full-time SAD capacity at the time of these allegations; therefore, would not be subject to federal regulations or jurisdiction for the Information Assurance training requirements. This allegation should have been dismissed by the IO and referred to the state for processing. Further, counsel contended Allegation 1 should have been unsubstantiated because the preponderance of the evidence does not support the allegation. One of the issues with this

allegation is its broad and vague nature. This allegation must be analyzed in three subparts due to its broad scope.

First, counsel, regarding the allegation of the applicant's subordinates providing rides for medical appointments, differentiated between personal appointments, medical appointments, and appointments for surgical procedures, claiming these are official duties and not considered violation of the JER. Counsel referenced AFI 10-203 to detail readiness requirements required of all airmen, and cited witness statements from military medical officers, provided by the applicant, in support. Further, counsel contended a review of the JTR supports these points. Because the applicant was injured in the line of duty and required follow-up medical care, he would have been entitled to reimbursement of travel expenses, use of a government vehicle, and potentially, per diem for the Dec 19 overnight surgery. Per counsel, the provisions within the JTR that authorize reimbursement for an attendant for medical care make it clear that certain medical conditions and/or treatment require assistance from another individual and, as a result, should include reimbursement of travel expenses and potential per diem for that assistant. It is equally clear that having the attendant be another active-duty military member is authorized, allowed, and even preferred. The investigation by the IO does not take into account any of the above issues pertaining to National Guardsmen and the challenges they face when trying to obtain necessary and mandatory medical care to ensure readiness. Neither does the investigation by the IO consider the other relevant, governing, and enforceable federal regulations that authorize the use of official duty time and other active-duty service members to attend necessary medical appointments that are away from the local base. Counsel referred to, and cited, testimony provided during the investigation to support his contention the IO overlooked the JTR. According to counsel, there is a lack of evidence indicating abuse of authority by the applicant to ensure his own safety for mandatory surgical procedures. Nowhere within the ROI does any witness state that they felt encouraged, directed, coerced, or requested to provide the applicant services outside their official duties. Further, per counsel, there is zero evidence presented within the ROI that supports the position that either the [State] Vice Chief of Staff or the [State] Chief of Staff felt unduly pressured, coerced, directed, encouraged, or requested to provide the applicant assistance with personal matters. Counsel referred to, and cited, testimony provided during the investigation to support these contentions.

Second, counsel contended the sole evidence cited by the IO to substantiate allegations that subordinates ran errands for the applicant and his mother is the statement provided by a former command chief who was not the complainant on this issue. Counsel referenced and cited witness statements, provided by the applicant in support, to address concerns regarding this allegation, stating it raises concerns that the recollection and characterizations by the command chief of the applicant's actions could have been affected by events and circumstances in the intervening years and the possibility they were influenced by other motives should be considered as well. The sole uncorroborated statement of one witness, eight years after the fact, who admitted that she did not think it was illegal, immoral, or unethical is insufficient evidence to substantiate this sub-allegation, especially in light of the statement from another witness, provided by the applicant. Further, counsel contended the IO found and dismissed another allegation due to untimeliness and witness interviews providing insufficient evidence. Counsel contended failure of the IO to dismiss this allegation for the same reasons reflects an abuse of authority by the IO and an arbitrary and capricious decision based on cherry-picked facts. Counsel cites *Wilhelmus v. Geren*, 796 F. Supp. 2d 157, 162 (D.C. Cir. 2011); *Helferty v. United States*, 133 Fed. Cl. 308 (2013), *Doyon v. United States*, 2024 U.S. Claims LEXIS 2105, *45 (Fed. Cl. Aug. 19, 2024); and *Keltner v. United States*, 165 Fed. Cl. 484, *57 (2023) in support.

Third, counsel contended the allegation of a subordinate reconciling the applicant's personal travel points is easily dismissed due to the status of both individuals involved, as both were in SAD status when she reconciled the applicant's travel rewards points. The IO justified the application of the JER on this sub-allegation by stating the applicant's official travel was funded

with federal funds. Per counsel, the IO concluded the applicant was using his military title, position, or authority to encourage, direct, coerce, or request the subordinate individual to perform this personal service during official time, outside of her official duties. Counsel contended this conclusion by the IO is a strawman fallacy designed to confuse the issues at hand. First, there is no evidence contained within the report that the orders being reconciled were official travel under Title 32 or Title 10 versus SAD status. Second, there is zero evidence within the ROI that supports the conclusion that the applicant was using his official military title, position, or authority in such a manner that the JER would apply. As a result, the jurisdiction of such an allegation would fall in line with that similar to the allegation that was referred to the [State] military department and should be removed as a substantiated sub-allegation of Allegation 1 from the applicant's IG investigation.

Finally, counsel contended notwithstanding the decision by the Board regarding the IG investigation, the LOA was issued unlawfully. Counsel cited AFI 36-2907, paragraph 2.1 stating any general officer with administrative or operational command over a service member may issue an LOA to the service member. The allegations against the applicant occurred while he was in Title 32 status and SAD status. At the time he received his LOA, the applicant was in SAD status. At no point in time during any of these alleged incidents, nor at the time of issuance, was the Vice Chief of Staff of the Air Force (VCSAF) in the applicant's administrative or operational chain of command. Per counsel, as a result, the LOA is invalid and should be removed.

In support of his request, the applicant provides the following supporting evidence: 1) ROI, dated Sep 21; 2) LOA, dated 26 Oct 21; 3) Five witness statements, dated Aug 24.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired [State] Air National Guard (ANG) brigadier general (O-7).

On 26 Jul 12, according to a Secretary of the Air Force (SecAF) memorandum, Subject: Authority to Take Administrative Disciplinary Action Against Air National Guard Officers, the authority to take administrative disciplinary action against Air National Guard officers, above the grade of colonel, where there is a nexus between substantiated adverse information against the officer and the exercise of federal authority by the officer, was delegated to the VCSAF.

SAF/IGS conducted a ROI (XXXXX) on the applicant in response to a complaint filed by an ANG member on 14 Jun 20. In Sep 21, the SAF/IGS completed their investigation with the following findings:

ALLEGATION 1: On diverse occasions between 2013 and 2020, the applicant wrongfully encouraged or requested subordinates to perform activities other than those required in the performance of official duties, in violation of DoD 5500.07-R, *Joint Ethics Regulation (JER)*, 17 Nov 11. **SUBSTANTIATED**.

ALLEGATION 2: Between 2017 and 2018, the applicant abused his authority, as defined in AFI 90-301, *Inspector General Complaints Resolution*, certified current 29 Dec 18, when he wrongfully prevented an officer promotion. **NOT SUBSTANTIATED**.

ALLEGATION 3: In or around Oct 20, the applicant failed to comply with annual Information Assurance training requirements in violation of DoD Directive (DoDD) 8570.01M, *Information Assurance Workforce Improvement Program*, 19 Dec 05. **SUBSTANTIATED**.

On 26 Oct 21, according to a HQ USAF/CV memorandum, Subject: Letter of Admonishment, provided by the applicant, he was issued an LOA by the VCSAF as a result of the SAF/IGS ROI findings. The LOA noted some of the instances occurred after the applicant was warned in 2017 to not use subordinates in an unofficial manner. On 1 Dec 21, the applicant reviewed the allegations in the LOA and provided a response on his behalf. On 16 Feb 22, the VCSAF decided to let the LOA stand and that it be filed in the applicant's Personnel Information File.

On 15 Mar 24, according to Special Order Number XXXXX, dated 28 Feb 24, the applicant was permanently disability retired.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, D, G, and H.

AIR FORCE EVALUATIONS

SAF/IGS carefully reviewed the entire application, as well as the 2021 ROI and finds insufficient evidence to warrant modifying the ROI. Per AFI 90-301, Table 3.13, Rule 3, a complaint can be dismissed if: (a) there are no extraordinary circumstances justifying the delay; and/or (b) there is no special Air Force interest in the matters alleged; and (c) given the nature of the alleged wrong and the passage of time, there is a reasonable probability that insufficient information can be gathered to make a determination. Sufficient information was available to make a determination by the preponderance of the evidence, as evidenced by the legally sufficient substantiated ROI. Additionally, there is a special interest for the Air Force to address allegations made against senior officials. Accordingly, timeliness is not a sufficient basis to overturn either substantiated allegation.

Regarding Allegation 1, the applicant maintains military members should have been allowed to assist him to appointments related to medical issues that needed to be addressed to ensure his military readiness. He also questions the credibility of a primary witness to one of the instances of misuse of subordinates. SAF/IGS disagrees and stands behind the substantiated allegation. The requirement to maintain military readiness did not give the applicant a license to use his subordinates in the manner outlined in the ROI. While there may be circumstances in which military members may be able to use government resources such as their own time and/or transportation support or otherwise be entitled to reimbursement of travel expenses for themselves or an attendant, using subordinates to accomplish the tasks as outlined in the ROI is not allowed by the JER. As to the credibility of the witness who testified to taking the applicant's mother grocery shopping and taking the applicant to the bank, the IO did find the witness credible and that those actions constituted a violation of the standard by a preponderance of the evidence. The ROI was reviewed by the assisting legal advisor; various reviewing parties within SAF/IGS, and the SAF/IGS Director; it received a formal legal review from a different attorney within HAF/JA; it was approved by the Air Force IG; and it received a formal oversight review by the DoD IG's office. All agreed the allegations in question were substantiated by a preponderance of the evidence.

Regarding Allegation 3, the applicant alleges that SAF/IG did not have jurisdiction to investigate the allegation and argues that since he was in SAD status during the action in question, any violation was a matter for the state to resolve instead of SAF/IG. SAF/IGS disagrees. The allegation was not one of misusing his subordinates to take the training for him. Such a misuse of subordinates' time, if the applicant was on SAD status, likely would have been a matter for the state to resolve, as they did for other allegations involving his misuse of subordinates while he was in SAD status. However, Allegation 3 substantiated the applicant violated DoDD 8570.01M, *Information Assurance Workforce Improvement Program*, which requires all individuals with DoD information technology (IT) systems access to complete Information Assurance training. That standard shows the applicant had a responsibility to complete the

training to use the DoD IT systems, including for the performance of his work in his SAD, Title 32, or Title 10 status. He failed to accomplish the training himself and was non-compliant with DoDD 8570.01M regardless of his status. Therefore, the substantiation for Allegation 3 should stand.

Regarding the applicant's contention that the VCSAF did not have the authority to issue the administrative discipline (the LOA), the SecAF delegated that authority to the VCSAF position in a 26 Jul 12 memorandum. This was in response to a 1 Aug 11 request from the then-Chief, National Guard Bureau to SecAF asking him to withhold Title 32 ANG administrative action authority for misconduct to the VCSAF level rather than at the state level. The Chief, National Guard Bureau's rationale was, "The current paradigm does not yield uniform results across the Nation, nor does it ensure that disciplinary actions are consistent with Air Force values," and pointed out that the VCS of the Army handled disciplinary matters for Title 32 Army National Guard senior officials. Both the Air Force and the Army presently continue this practice for substantiated misconduct identified in IG investigations. In summary, SAF/IGS finds the applicant has not provided a sufficient basis to warrant changing the ROI's conclusion that he violated Air Force standards.

The complete advisory opinion is at Exhibit C.

AF/JAJI concurs with the SAF/IGS advisory opinion and finds insufficient evidence to recommend relief on the bases of legal error. Because "the applicant has the burden of providing evidence in support of their allegation(s) of an error or injustice," Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, 4 Oct 22, para. 3.4.4, the AFBCMR 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 AFBCMR can reverse decisions it determines were erroneous or unjust. See *Roberts v. United States*, 741 F.3d 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 the underlying alleged misconduct occurred under the preponderance of the evidence standard prescribed for senior official investigations and LOAs, respectively. AFI 90-301, 28 Dec 18, Incorporating Change 1, paragraph 8.3.3; DAFI 36-2907, 22 May 22, Incorporating Change 1, paragraph 2.2, arguments to the contrary, every reasonable inference from the evidence supports the decisions of the principals who resolved questions of fact in this case, including the SAF/IGS IO and the VCSAF.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 28 Apr 25 for comment (Exhibit E), and the applicant replied on 23 May 25. In his response and through counsel, the applicant contends both advisory opinions lack instructions on specific corrective actions to be taken if the Board recommended relief in accordance with DAFI 36-2603, paragraph 4.2.2.3, and should be considered null and void and set aside. Counsel further contended violation of Title 10, United States Code § 1556 in that the SAF/IGS advisory opinion referenced a 26 Jul 12 delegation memorandum signed by the SecAF authorizing VCSAF to take administrative action against general officers in the ANG; however, the actual delegation memorandum was not provided to the applicant along with the advisory opinion. Further, the delegation memorandum is not available publicly as required by DAF publication requirements. The evidence that was

relied upon by the advisory opinion must be provided to the applicant for his consideration and response.

Counsel further contended the VCSAF does not have appropriately delegated authority and cited Air Force Mission Directive (AFMD) 1, *Headquarters Air Force*, dated 5 Aug 15, in support. Per counsel, no Headquarters AFMD (HAFMD) exists delegating authority down from SecAF or CSAF [Chief of Staff of the Air Force] to VCSAF, nor is the allegedly still-valid 2012 delegation memorandum available in any public forum, in direct violation of DAF regulations. Even if the applicant were to concede, which he does not, that VCSAF had the authority to take administrative action under a significantly outdated delegation memorandum that has not been provided to him nor is it available to him through the required e-publishing forum, the LOA issued by VCSAF to the applicant failed to comply with the requirements outlined in OPJAG 2014-6[1], and, as such must be removed from the applicant's record.

In its analysis of VCSAF's authority to take administrative action against National Guard Bureau general officers (GO), the Judge Advocate General (TJAG) cited not only from the 26 Jul 12 SecAF memorandum that is not publicly available, but also from AFMD 1 as the basis of the authority to take the action. There are two issues with this citation. First, without access to the actual 2012 delegation memorandum, it cannot be confirmed the memorandum did or did not include an expiration date for the delegation of authority. Since that memorandum was issued in 2012, eight individuals have held the position as both the acting and official SecAF. AFI 33-360, *Publications and Forms Management*, dated 18 May 06, paragraph 2.2. states, "When an approving official vacates his or her position, publications showing the individual's signature element remain in effect until rescinded or rewritten." Since the 2012 delegation memorandum was never officially published on e-publishing, and the publication regulations have since been updated requiring a HAFMD to establish delegation of authority, the quoted paragraph and application to the 2012 SecAF memorandum would not apply. Second, AFMD 1 was updated in 2016, superseding the one from 2011. The 2016 version of AFMD 1 expressly states that all delegations of authority would be published in a HAFMD. As noted above, no HAFMD exists that delegates the authority from SecAF down to VCSAF. OPJAG 2014-6[2] also includes mandatory language that must be included in any administrative action taken by VCSAF against an ANG GO. TJAG directed there must be a "nexus between the officer's actions and the exercise of Federal authority by that office." A review of the LOA given by VCSAF to the applicant reveals a clear lack of any language that even hints at meeting those mandatory requirements. Additionally, counsel contended the admonishment does not question the applicant's qualifications as a member of the Air National Guard of the United States or the Air Force Reserve, nor does it reference his duty status over the course of the seven-year period specific to the allegations in question. As a result, it is not in compliance with the articulated requirements by TJAG for administrative actions taken by VCSAF against ANG GOs and cannot be considered legally sufficient.

Counsel also contended there was disparate treatment of similarly situated individuals and provided the circumstances surrounding another [State] ANG member for comparison. Upon oversight review, TIG overturned four substantiated allegations against this member citing a lack of evidence to support the allegations. Per counsel, the justification provided by TIG bears consideration in relation to the applicant's case. One of the issues raised by the applicant was the significant passage of time between the alleged complaints against him and the IG investigation. The SAF/IGS advisory opinion cited the exception to the rule for timeliness in AFI 90-301. However, in this other case, TIG stated both the passage of time, and the level of Air Force interest, impacted SAF/IGS's determination not to pursue the matter further. According to

---

[1] Operational Judge Advocate General's Advice and Opinions (OpJAGAF) 2014-6, *Authority to Impose Administrative Action Against State Adjutants General and Other Air National Guard (ANG) Officers*
[2] Ibid.

counsel, TIG commentary regarding this other [State] ANG member is directly contradictory to the stated position by the SAF/IGS in the applicant's case, in that it has a special interest in addressing allegations against senior officials. Either allegations against senior officials are important to SAF/IGS or they are not. Treating one differently than the other for no apparent reason other than either favoritism or discrimination is the very definition of arbitrary and capricious. TIG also cited the lack of intent to do harm to others, either physically or professionally, as justification for an unsubstantiated finding with the other [State] ANG member. This member's JER violation, which is similar to the allegation against the applicant, does not require a specific intent to do harm to the subordinate, yet the SAF/IGS found it mitigating. If the standard is going to be applied to senior official investigations, then the same standard must be applied equally to each case, otherwise it is facially arbitrary and capricious.

Per counsel, another justification for overturning allegations in the other [State] ANG member's case was the lack of complaints by her subordinates. Similarly, none of the applicant's subordinates complained to him or other leadership about his alleged abuse of their time. An additional justification was no evidence of official work not being accomplished. According to counsel, the applicant was authorized the assistance of a fellow service member for transport to and from a mandatory medical procedure. This was within the laws and regulations governing appropriate use of duty time.

Counsel contended there was no accounting for adverse witness personal bias. Although the [State] Vice Chief of Staff's testimony matches the applicant's account that he completed the Information Assurance training himself, the IO discounted his statement in favor of another witness who was in the office briefly, and who could not see the computer screen from his location.

Again in comparison with the previously referenced [State] ANG member's case, counsel contended that individual did not knowingly violate the JER; therefore, the applicant must be granted the same standard. The applicant provided multiple statements indicating he was unaware of the provisions of the JER that he was allegedly violating.

Finally, counsel contended neither advisory opinion addressed the evidence provided by the applicant, nor do they recommend overturning their decisions. In addition to the evidence provided with his application, the applicant provided a personal statement, statements from two other witnesses, and copies of text messages in support of his contentions. According to counsel, when the evidence is considered as a whole, it paints a clear picture of an investigation that failed to comply with governing authorities, failed to consider personal biases, removals from command, and personal relationships between witnesses interviewed as part of the investigation. Counsel concluded the advisory opinions have not complied with statutory and regulatory requirements for issuing their opinions, the delegated authority to VCSAF to take administrative action against the applicant is not supported in regulation, nor does the LOA itself comply with legal requirements set forth by TJAG in 2014, and the Board must consider not only the relevant evidence, but also the different standards applied to two similar IG complaints within the [State] ANG during the same timeframe, resulting in the applicant being subject to both error and injustice at the hands of the SAF/IGS and the VCSAF.

The applicant's complete response is at Exhibit F.

SUPPLEMENTAL AIR FORCE EVALUATIONS

In a supplemental advisory opinion, after careful assessment and consideration, SAF/IGS determined the application and new submission do not provide a sufficient basis to warrant changing the ROI's conclusions. The fact remains the applicant's actions violated the standards, and the application and new submission do not provide new and compelling information to

warrant overturning the substantiations and do not show he suffered and error or injustice. As described in the 25 Mar 25 advisory opinion, the ROI went through multiple reviews, all the way to the DoD IG, and all agreed the allegations in question were substantiated by a preponderance of the evidence.

SAF/IGS provided an advisory opinion on 25 Mar 25 maintaining the applicant's petition did not provide a sufficient basis to warrant changing the ROI's conclusion that the applicant violated Air Force standards. After reviewing the SAF/IGS opinion, and also the AF/JA opinion regarding the application, the applicant and his counsel sent the board a response maintaining the applicant was treated disparately from a separate IG case and the biases of some witnesses should cause the ROI's two substantiated allegations to be changed to not substantiated.

As to the disparate treatment issue, the new submission is drawing a false equivalence between the applicant's case and a separate case involving another [State] ANG member. Every IG case is different and must be approached in accordance with the particular facts and circumstances of the situation at hand. In this other case, SAF/IG was required to perform an oversight review of a [State] ANG IG investigation per Chapter 8 of DAFI 90-301. Despite numerous attempts to get the [State] ANG to produce investigative and legally sufficient ROI, the [State] ANG was unable to do so, and the Inspector General (TIG) made the final determination for that case. The applicant's investigation was in response to a complaint filed directly with SAF/IG, and SAF/IGS conducted the investigation in accordance with our established operating procedures – ensuring the case could be conducted properly from start to finish. Another distinction between the cases is that the other [State] ANG member's case resulted in a single deviation from standards, while the applicant's investigation showed he committed several violations. As to the timing concerns mentioned in the new submission, most of the applicant's actions were nearer in time to SAF/IG's decisions on the allegations than the other [State] ANG member's actions were to TIG's decision in her case. That two different IGs made different determinations in differently situated cases does not amount to disparate treatment, nor does it lead to the conclusion that the results in the applicant's investigation should be overturned.

Regarding the new submission's concerns about the potential biases of witnesses within the [State] ANG, investigators are charged by DAFI 90-301 with evaluating the credibility of evidence, including witnesses and their testimony. In this case though, any potential biases or motivations on the part of some witnesses do not negate the evidence that led to the substantiation of Allegation 1 and Allegation 3 since there was a preponderance of credible evidence to show it was the applicant's behavior and actions that amounted to the violations of the standards.

As to the substantiation of Allegation 1, the new submission maintains subordinates should have been allowed to take the applicant to medical appointments as a medical attendant/safety driver. However, the applicant did not attempt to have the subordinates be officially designated or put on orders for that purpose. He did not follow the advice of his leadership or legal counsel to not use his subordinates in the manner in which he did, nor did the applicant attempt to reimburse his subordinates for the personal costs they incurred while supporting him. Regarding one subordinate taking the applicant's mother grocery shopping and taking the applicant to his credit union, the applicant readily admits in his submission the subordinate performed those services. As described in the ROI, supervisors shall not encourage, direct, coerce, or request a subordinate to perform those types of activities. The subordinate would not have known of the need for the grocery store trip or credit union trip had the applicant not brought them up or otherwise requested or encouraged the trips. Therefore, the applicant's doing so was just another example that contributed to the substantiation of the allegation, regardless of any potential bias or the passage of time.

Regarding Allegation 3, the applicant states his lateness in performing the required training was not a relevant factor to be mentioned in the ROI. However, it is indeed relevant because his repeated failure to perform the training was adversely impacting his staff, so much so that even the [State]

ANG Commander had to become involved, so there was motivation to help the applicant complete the training. The applicant maintains some witnesses for the investigation had reasons to be biased against him, but he describes a key witness to seeing the [State] Vice Chief of Staff perform the applicant's training, a senior noncommissioned officer, as a "stand up" guy. But more important is the [State] Vice Chief of Staff's own testimony that he performed at least some of the training for the applicant. That alone amounts to a violation of the standard, and Allegation 3 should remain substantiated.

Finally, SAF/IGS was unaware of the requirement to provide a recommendation on specific corrective action to be taken if the Board recommends relief be granted, and we were not informed of that procedural shortfall when submitting our 25 Mar 25 advisory. We do not believe any such shortfall should invalidate the analysis and determinations in that previous advisory. If the Board does direct SAF/IG to overturn any of the investigation's results, which we do not support, SAF/IG will adjust the case result in the SAF/IGS database accordingly.

The complete supplemental advisory opinion is at Exhibit G.

In a supplemental advisory opinion, FOA/JAJI addresses topics raised in the applicant's response to the initial advisory. The background and facts sections from the original advisory are not repeated in this supplemental advisory. Although FOA/JAJI does not recommend relief in this case, they did provide instructions on specific corrective actions to be taken if the AFBCMR grants relief.

The applicant's response to the initial advisory claims the advisory was deficient in that, *inter alia*, it did not contain the instructions on corrective action contemplated by DAFI 36-2603, paragraph 4.2.2.3. The applicant's initial request for relief requested removal of the LOA from his records and overturn of the two substantiated allegations from the SAF/IG investigation which resulted in the LOA. FOA/JAJI did not recommend relief in this case; however, provided if the AFBCMR grants relief, the Board may consider the following actions alone or in combination with one another: remove the LOA from the applicant's record; downgrade the LOA to a lesser form of counseling, order change to records to reflect modification to one or both substantiated allegations.

The complete supplemental advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF SUPPLEMENTAL AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 16 Jul 25 for comment (Exhibit I), and the applicant replied on 23 May 25. In his response, counsel, on behalf of the applicant, contended the FOA/JAJI supplemental advisory opinion does not address their reliance on an outdated and superseded delegation memorandum from 2012 in support of the VCSAF authority to issue the LOA. The supplemental advisory also does not address that even if the VCSAF had the authority, the LOA failed to comply with the requirements set forth by TJAG in the 2014 OPJAG[3] opinion; therefore, the LOA is legally insufficient.

Per counsel, the advisory opinion attempts to argue the AFBCMR can rely upon whatever opinion it wants, even one that violated agency regulations, because the AFBCMR is given an "unusually deferential" application of the arbitrary and capricious standard under the APA [Administrative Procedure Act]. While *Piersall v. Winter*, 435 F. 3d 319 (D.C. Cir. 2006) is still good law, there is other more relevant military case law in Federal Court that addresses the issue of the military failing to comply with its own regulations, particularly after AFBCMR adjudication. In support, counsel cites *Hensley v. United States*, 292 F. Supp. 3d 399, 408 (D.D.C. 2018) (citing

[3] OpJAGAF

Remmie v. Mabus, 292 F. Supp. 3d 399, 408 (D.D.C. 2012)) and (*Bussey v. Driscoll*, 131 F. 4th 756, 761 (9th Cir. 2025) (internal citations omitted, emphasis added). Counsel further stated when the Air Force and AFBCMR violate law, regulations, and/or a published mandatory procedure, the federal courts will not apply the unusually deferential standard but will make a *per se* finding that the AFBCMR's actions were arbitrary and capricious and set the finding aside.

Further, according to counsel, while the VCSAF had the authority to issue the LOA in 2012 and 2014, he did not have authority in 2021. Producing the outdated delegation authority with the advisory opinion still does not satisfy DAFI 90-160, *Publications and Forms Management*, paragraph 1.4.1, which requires delegation memoranda to be available publicly in the form of HAFMD on e-publishing. Reliance on the original advisory opinion regarding the validity of the 2012 VCSAF delegation memorandum is in direct contradiction to the subsequently published mandatory Air Force regulations that require said delegations to be published in HAFMDs and accessible on e-publishing. The VCSAF did not have the authority to take the actions he did when issuing the LOA against the applicant. As a result, the LOA must be removed from his records.

Regarding IG timing, counsel contended the actions taken in the applicant's investigation were nearer in time to the SAF/IG's decision on allegations than the other [State] ANG member's actions were to TIG's decision in her case. All of the allegations in the other [State] ANG member's case occurred in 2021. The complaints against this member were filed in 2021, and the final ROI was completed in 2021. Between 2022-2024, SAF/IG directed the state to correct the issues within the investigation. Final action was taken on this case on 24 Oct 23, with clarification in Apr 24. The time frame from allegation to completion is three years. The allegations against the applicant span a seven-year period, dating back as early as 2013 to as late as 2020. The initial complaint was filed in Jun 20, and the investigation not completed until Sep 21, a passage of eight years from the time of the initial alleged misconduct to completion of the investigation. To state the allegations investigated against the applicant were closer in time to those against the other [State] ANG member is disingenuous and easily shown to be inaccurate.

Counsel contended the supplemental SAF/IGS advisory first indicated the standards for conducting the investigation between the two individuals are different; however, there is a disconnect between what the advisory opinion states versus the requirements contained in DAFI 90-301, Chapter 8. Counsel cites the DAFI and a TIG memorandum to the [State] TAG in support and questions the lack of consistency in application with the other [State] ANG member's investigation.

Additionally, counsel contended the advisory opinion tries to further distinguish between the two cases by highlighting the number of violations. Counsel contended there are two issues. First, the number of allegations originally investigated by the [State] ANG for the other member numbered eight, stemming from three different alleged violations through two different complaints. Counsel detailed the initial allegations in support. Second is the lack of acknowledgement by SAF/IGS regarding the per se violation of Title 41, Code of Federal Regulations § 102-74.425 by the other [State] ANG member. This was not a deviation from standards, but a violation of federal law.

Counsel concluded the Air Force and AFBCMR have an obligation to comply with law, regulations, and published mandatory procedures. That includes a requirement to publish all delegations of authority through HAFMDs. Failure to do so will result in federal courts setting aside decisions by the corrections board. Per counsel, the applicant provided sufficient evidence from doctors and the JTR that the medical rides were not a JER violation. He provided evidence including general officer testimony to show the main witness for Allegation 1 had known conflicts with him well prior to the investigation, and additionally, the applicant provided testimony from multiple witnesses that directly contradicts the 2013 ride provided to his mother was initiated or as a result of any pressure applied from him but rather it was initiated by the service member. These facts combined with the improperly issued LOA by the VCSAF and the documentation showing the handling of the applicant's IG case was disparate from others similarly situated in time, proximity, and rank, despite

assertions by TIG that he ensures consistency and adherence to Air Force standards, provides no other conclusion than the AFBCMR must grant the requested relief in this case.

The applicant's complete response is at Exhibit J.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all other available administrative remedies before applying to the Board.

3. After reviewing all Exhibits, to include the applicant's rebuttals, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationales and recommendations of SAF/IGS and AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant believes the SAF/IGS ROI and resulting LOA are not supported by a preponderance of the evidence and fail to comply with statutory and regulatory requirements, the Board disagrees. The Board opines the available evidence supports the ROI findings and the LOA was appropriately administered by the VCSAF in accordance with the 26 Jun 12 policy. Furthermore, the Board notes counsel's arguments and reference to two IG complaints he views as comparable to the applicant's situation. The Board does not find these to persuade our decision. Each case before this Board is considered on its own merits. While the Board strives for consistency in the way evidence is evaluated and analyzed, the Board is not bound to recommend relief in one circumstance simply because the situation being reviewed appears similar to another case. Therefore, the Board recommends against correcting the applicant's records.

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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-03123 in Executive Session on 22 Aug 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 29 Aug 25.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, SAF/IGS, dated 25 Mar 25.
Exhibit D: Advisory Opinion, AF/JAJI, dated 23 Apr 25
Exhibit E: Notification of Advisories, SAF/MRBC to Counsel, dated 28 Apr 25.
Exhibit F: Counsel's Response, w/atchs, received 23 May 25.

Exhibit G: Supplemental Advisory Opinion, SAF/IGS, 12 Jul 25.
Exhibit H: Supplemental Advisory Opinion, FOA/JAJI, 14 Jul 25
Exhibit I: Notification of Supplemental Advisories, SAF/MRBC to Counsel, dated 15 Jul 25.
Exhibit J: Counsel's Response, 8 Aug 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