ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-03818

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. The following documents be removed from her records:

a. The Officer Performance Reports (OPRs) rendered for the periods 5 Dec 06 through 4 Dec 07 and 5 Dec 07 through 8 Jul 08.

b. The Promotion Recommendation Form (PRF) prepared for the Calendar Year 2010D (CY10D) Lieutenant Colonel Nurse Corps (NC) Central Selection Board (CSB).

c. The “Not Qualified for Selective Continuation” letter that was in her Officer Selection Record (OSR) during the CY10D Lt Col (NC) CSB.

d. The DD Form 2499, Health Care Practitioner Action Report, signed 17 Nov 09.

2. She be given consideration for promotion and continuation by a special selection board (SSB) for the CY10D Lt Col (NC) CSB.

3. The applicant requests her Mandatory Separation Date (MSD) be extended to afford her an opportunity to be continued under the sanctuary provisions.

The applicant amended her request for reconsideration with her 12 Apr 12 letter to the Board to include the above mentioned requests.

STATEMENT OF FACTS:

On 26 Oct 10, a similar appeal was considered by the Board where the applicant requested two referral reports, closing 4 Dec 07, and 8 Jul 08, and a Letter of Reprimand (LOR), dated 14 Feb 08, be removed from her record and her record was corrected to reflect the following:

a. The comment, "outcome-reduction with permanent removal from critical care or inpatient care duties" was removed from the Section IV, Rater Overall Assessment, of the OPR rendered for the period, 5 Dec 07 through 8 Jul 08,

b. Her record, to include the corrected OPR, was considered for promotion to the grade of lieutenant colonel by a SSB for the CY09D Lieutenant Colonel Nurse Corps Central Selection Board and any subsequent board the OPR was not a matter of record.

The applicant forwarded multiple requests for reconsideration, with additional documentation, prior to receiving the Board's final decision. On 7 Apr 11, the applicant was advised of the

Board's findings and decision on her case and that based on the claims in her additional submissions, the Board would not be able to consider those claims until the formal investigation by SAF/IG was completed. For an accounting of the facts and circumstances surrounding the applicant's request and the rationale of the earlier decision by the Board, see the Record of Proceedings at Exhibit H.

By letters, dated 7 and 21 Apr 11, the applicant requests reconsideration of her appeal, contending that she was reprised against by her former wing and group commanders. In addition, she provided a copy of the allegations she filed against her former commanders with SAF/IG. She specifically contends the contested OPRs and PRF incorrectly state in Section IV that she underwent Peer Review in accordance with (IAW) Air Force Instruction 44-119, Medical Quality Operations; however, proper guidelines were not followed in conducting her peer review.

In support of her appeal, the applicant provides a personal statement; email correspondence; her SAF/IG request for investigation; her "New Information" package presented to AETC/CC, and other supporting documents.

The applicant's complete submission, with attachments, is at Exhibit I.

On 17 Jan 12, the applicant was advised that based on the Board's directive, her letter that met the CY10D promotion board was being replaced and that her corrected OSR would meet the SSB for the CY10D Lt Col promotion board with the new letter. On 31 Jan 12, the Air Force Review Boards Agency (AFRBA) Intake office received a DD Form 149, requesting removal of a memorandum, dated 3 Dec 10, addressed to the CY10D promotion board.

In Mar 12, the applicant was notified by SAF/IGS that the investigation did not substantiate her allegations of reprisal and dereliction of duty. The SAF/IG reviewed the report of investigation and approved the findings. In addition, the Department of Defense Inspector General (DoD/IG) conducted a thorough review of the report, found it adequately addressed the allegations, and concurred with its findings (Exhibit J).

In Apr 12, the applicant amended her request for reconsideration. In addition, she requested a change to her records to afford her an extension of her mandatory separation date and provided a response to the IG report (Exhibit K, w/atchs).

The applicant was nonselected by the CY09D and the CY10D Lt Col (NC) SSBs.

On 29 Apr 12, the applicant was honorably discharged with a reason for separation of non-selection, permanent promotion.

On 3 May 12, the applicant was advised that based on conflicting applications to the Board her requests for correction of her military records had been administratively closed until she consolidated her requests into a single application. The applicant advised the AFBCMR to proceed with her reconsideration package (Exhibit L).

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a careful review of the application and the available evidence provided in support of the appeal under our authority found in 10 USC § 1552, we are not convinced that further relief is warranted or the Board's earlier corrections should be disturbed. In an earlier finding, the Board thoroughly considered the available evidence, including a very voluminous submission by the applicant, and determined the referral comment, "outcome-reduction with permanent removal from critical care or inpatient care duties" in her OPR closing 8 Jul 08, should be removed and granted her SSB consideration for promotion to the grade of Lt Col. However, she was not selected for promotion by the SSBs. The applicant was later advised that her additional requests, in which she contended that she was reprised against by her former chain of command, would be considered once SAF/IG's review was completed. The SAF/IG

completed its review and the applicant's allegations were not substantiated. While the applicant's submissions suggest that she was not afforded fair and objective evaluations, we believe the relief already provided by this Board has provided her full and fitting relief in this regard. Moreover, the applicant has not provided sufficient evidence to establish that her commanders abused their discretionary authority, that their actions were acts of reprisal, or that their decisions were arbitrary or capricious. As such, we find no basis to determine their evaluations of her performance are an inaccurate assessment of the applicant's allegations. In our opinion, the earlier Board, which thoroughly considered the applicant's entire record in arriving at its decision that corrective action was warranted, is reflective of considerable reviews by senior Air Force officials vested and charged with the responsibility to ensure the applicant received a fair and impartial consideration during her peer review, promotion board considerations, that she received due process in accordance with applicable laws and policies, and the DoD/IG and SAF/IG agreed with the findings of the investigation.

2. The Inspector General (IG) has investigated the applicant's allegations that she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection

Act (10 USC § 1034) and found that her allegations of reprisal and dereliction of duty by her commander were not substantiated. We have completed our own independent review under our authority found in 10 USC § 1034 and have determined the applicant has not established the administrative actions taken by her senior rater and commander were in retaliation for making protected communications. In reaching this determination, we find the evidence of record establishes the actions taken against her were reasonable and would still have occurred, regardless of her protected communications; and she has submitted insufficient evidence to substantiate they were motivated by reprisal. Therefore, in view of the above and based on substantial evidence, we find no basis to recommend relief beyond that already granted by this Board.

3. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 3 January 2013, under the provisions of AFI 36-2603 and the authorities found in 10 USC Sections 1034 and 1552:

The following documentary evidence was considered in BC-2009-03818:

Exhibit H. Letter, AFBCMR, SAF/MRB Memorandum, and Record of Proceedings, dated 7 Apr 11, w/atchs.

Exhibit I. Letter, Applicant, dated 21 Apr 11, w/atchs.

Exhibit J. SAF/IG Report, Mar 12 (withdrawn).

Exhibit K. Letter, Applicant, dated 12 Apr 12, w/atchs.

Exhibit L. Letter, AFBCMR, dated 8 May 12, w/atch.

Acting Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-04305

XXXXXXXX COUNSEL: XXXXXXXX

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His 27 Oct 09 Letter of Reprimand (LOR) be removed from his Unfavorable Information File (UIF) and Officer Selection Record (OSR) and any and all adverse information be removed from his records.

APPLICANT CONTENDS THAT:

Counsel states the applicant has been the victim of both official and unofficial retaliation for the filing of inspector general (IG) reports and his protected criticism of the fighter pilot culture and the F15C leadership community within his command. The LOR and UIF is the most recent form of retaliation.

Counsel contends the LOR/UIF is an unlawful use of a commander's discretionary authority in an attempt to retaliate against, silence, and discredit the applicant. Counsel states the police report of the arrest presents a number of unanswered questions, and the applicant's commander made the decision to reprimand him without waiting for the outcome of the court proceedings or any further investigation. In addition, the reprimand was also based on the applicant lying to the Public Affairs (PA) officer, who the commander failed to investigate.

In his 23 Nov 09 IG complaint, the applicant requested an investigation into the events leading up to the LOR/UIF, contending that he was the victim of retaliation for raising issues within his command at the general officer level and for his attempts to redress an academic freedom violation suffered in Air University (AU). He requested immediate removal of the LOR/UIF from his records, as well as supplemental consideration for promotion in the event the matter was not resolved before his in-the-promotion zone consideration. He also requested that appropriate action be taken against his commander, the PA officer he was accused of lying to, and any other official found to have retaliated against him.

By amendment, Counsel notes the citation received by the applicant was dismissed. The prosecutor indicated the charge was dismissed because the arresting officer failed to appear. However, Counsel states this is not true, the officer was present, but the prosecutor wanted to avoid a discovery hearing which would furnish his client with more damaging information regarding the arresting officer. Counsel indicates the applicant intends to file a civil suit against the officer.

In support of his request, the applicant provides a four-page statement of Counsel with six appendices.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of major (O-4). On 27 Oct 09, he was issued a LOR by his

wing commander for unprofessional behavior related to his arrest subsequent to a routine traffic stop. In addition, the LOR cited his false response to a public affairs officer regarding a possible publication in the Air Force Times and whether he had posted information that might be of interest to the Air Force Times on any blog or public web site. The LOR was filed in his UIF in accordance with AFI 36-2907, Unfavorable Information File (UIF).

On 10 Nov 09, the applicant's squadron commander notified him of his intent to file the LOR in his officer selection record (OSR) and of his right to appeal the decision. The applicant failed to submit a written appeal and on 16 Nov 09 the squadron commander directed the LOR be filed in his OSR.

On 23 Nov 09, the applicant filed a complaint with the Secretary of the Air Force IG, citing similar contentions to the matter under review. The complaint was subsequently transferred to the Major Command (MAJCOM) IG on 8 Dec 09 for resolution. On 14 May 10, the MAJCOM/IG notified the applicant they were unable to substantiate his claims. Additionally, they advised that a review by the Department of Defense (DoD) IG Military Reprisal Investigations Office failed to substantiate his claims. Therefore, further investigation into his complaint was not warranted. The applicant was advised of his right to appeal to the DoD IG.

The applicant was considered and not selected for promotion by the Calendar Year 2010A (CY10A) Lieutenant Colonel Central Selection Board (CSB), which convened on 8 March 2010.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibits C, D, E, and F.

AIR FORCE EVALUATION:

AFPC/DPSIMC recommends denial of the applicant's request to remove the LOR from his UIF. The record shows that the LOR was filed in accordance with AFI 36-2907 and all administrative actions were properly documented.

A complete copy of the AFPC/DPSIMC evaluation is at Exhibit C.

AFPC/PB recommends denial of the applicant's request to remove the LOR from his OSR. The LOR was properly evaluated for file by the senior rater and all procedures were properly followed. Additionally, the record does not reflect the applicant petitioned his senior rater to remove the LOR in light of the information that the traffic ticket was dismissed and that the arresting officer had been suspended for a lack of truthfulness, although not specifically related to the applicant's incident.

A complete copy of the AFPC/PB evaluation is at Exhibit D.

HQ AFPC/DPSOO recommends denial of the applicant's request for an SSB. Based on the recommendations of AFPC/DPSIMC and AFPC/PB, they find no basis to recommend granting the requested relief.

A complete copy of the AFPC/DPSOO evaluation is at Exhibit E.

HQ AFPC/JA recommends denial. The applicant claims the LOR rendered him the victim of retaliation for the filing of IG reports and his protected criticism of the fighter pilot culture and F-15C leadership community within his assigned MAJCOM. He also alleges that the information relied upon for the LOR is unreliable and the statements of the primary witnesses are untruthful. However, he has not presented evidence to support his claim of unlawful retaliation. Rather he relies on the coincidence of timing of the alleged misconduct and his complaints (IG and otherwise) directed at the MAJCOM. The juxtaposition of events does not establish that the LOR was motivated by a desire to retaliate against the applicant. He suggests that both witnesses in his case lied with respect to the behavior cited in the LOR. However, other than his own self-serving statements, he has offered no evidence to refute the events in question. Finally, while the preponderance of the evidence supports the offense described in the LOR, the decision whether to take that action (or some greater or lesser action) belongs to the commander. Likewise, the discretion as to whether the LOR should be

filed in the officer's selection record belongs to the command chain.
A complete copy of the AFPC/JA evaluation is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 1 Oct 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit G).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends his commander abused his discretionary authority when he issued the contested LOR and filed it in his UIF and OSR without fully investigating the circumstances surrounding his arrest, which was incident to a minor traffic violation, and his alleged false response to public affairs officials related to a potential Air Force Times story. The applicant cites the ultimate dismissal of the charges stemming from his arrest as proof the commander's actions were premature. Furthermore, he contends the allegations related to his interaction with public affairs officials are false and offers his own version of events as proof the allegations are unjustified. After a thorough review of the evidence of record and the applicant's complete submission, we do not find his assertions and the documentation submitted in support of his appeal sufficient to persuade us that corrective action is warranted. In this respect, we note that even though the charges in the civil case were dismissed, the applicant has presented no evidence, other than his own assertions, that his misconduct which precipitated the arrest did not form an appropriate basis for the contested LOR. Additionally, while the facts regarding his interaction with public affairs officials are apparently in dispute, we presume the commander acted in good faith and used his knowledge of events and circumstances at the time in exercising his discretionary authority. Absent a strong showing of abuse of that authority, we choose not to substitute our judgment for that of officials who were closer to the events in question. Therefore, absent evidence to the contrary, we find no basis to recommend the relief sought in this application.

4. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). We note the Inspector General investigated these allegations and concluded the commander was within his rights to issue the LOR and file it in the applicant's UIF and OSR. Based upon our own independent review, we have determined the applicant has not established the LOR, UIF, or OSR actions were motivated by retaliation for making protected communications. In reaching this determination, we note he has submitted no direct evidence of this reprisal motive, and we believe the actions taken were a reasonable response to his misconduct. Therefore, absent evidence to the contrary, we find no basis exists upon which to recommend granting the relief sought in this application.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2009-04305 in Executive Session on 16 Nov 10, under the provisions of AFI 36-2603:

XXXXXXXX, Panel Chair
XXXXXXXX, Member
XXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 24 Nov 09, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSIMC, dated 19 May 10.
Exhibit D. Letter, AFPC/PB, dated 26 Aug 10, w/atch.
Exhibit E. Letter, AFPC/DPSOO, dated 2 Sep 10.
Exhibit F. Letter, AFPC/JA, dated 23 Sep 10.
Exhibit G. Letter, SAF/MRBR, dated 1 Oct 10.

XXXXXXXX
Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02704

XXXXXXXX COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His date of rank for the grade of lieutenant colonel (O-5) be backdated to 2 Aug 07, instead of 18 Sep 08.

2. He be appointed in the Air Force Reserve Active Guard/ Reserve (AGR) program, effective 1 Feb 08, with all relevant pay, points, and allowances, to include Aviator Continuation Pay of $25,000 per year for a term of four years.

3. The Board direct further investigation into the lack of systemic control within the US Air Force Academy (USAFA) faculty.

APPLICANT CONTENDS THAT:

He was unfairly denied the opportunity to meet the FY08 United States Air Force Reserve (USAFR) Line Lieutenant Colonel Promotion Board as a "Position Vacancy" candidate. He was unfairly denied the opportunity to apply for multiple AGR positions, including one in his organization for which he was more qualified than the officer selected. He had his reputation damaged by repeated, unwarranted career interference by members of his supervisory chain when they provided negative references to potential employers. An Inspector General (IG) investigation substantiated that he repeatedly suffered abuse of authority, restriction, and reprisal at the hands of his chain of command. However, based on incomplete information, the Superintendent, USAFA (USAFA/CC) later amended some of those findings to indicate they were unsubstantiated. By amendment, he contends that his officer performance report (OPR), closing 14 Feb 08, was a possible reprisal action, given the timing of his IG complaint.

In support of his appeal, the applicant provides an expanded statement and copies of three supporting statements, an IG Report of Investigation, email traffic, memoranda for record, and AGR vacancy announcements related to the matter under review.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant is currently serving in the Air Force Reserve as an Individual Mobilization Augmentee (IMA) in the grade of lieutenant colonel (O-5), effective and with a date of rank of 18 Sep 08.

On 5 Jul 06, he commenced a temporary tour of active duty as an instructor at the USAFA, performing successive active duty tours until his reassignment to an IMA position at Nellis AFB, NV on 22 Aug 08.

On 6 Mar 08, the applicant filed an AF Form 102, Inspector General Personal and Fraud, Waste, and Abuse Complaint Registration, alleging reprisal within his department. On 2 May 08, USAFA/CC directed an investigation into the applicant's allegations. The investigation was conducted from 14 May 08 through 11 Jun 08 at the USAFA and via telephone communications with witnesses. The specific allegations and findings are as follows:

Allegation 1. That on or about 28 Oct 06, Lt Col M--- abused his authority by implying to the applicant that his approval was required in order for the applicant to audit a course outside of his academic department.

FINDING: NOT SUBSTANTIATED

Allegation 2. That on or about 4 Sep 07, Lt Col M--- abused his authority by implying to the applicant that he would be terminating his employment in his department.

FINDING (As amended by USAFA/CC): NOT SUBSTANTIATED

Allegation 3. That on or about 11 Sep 07, Lt Col M--- abused his authority by implying to the applicant that he would prevent his future employment within the faculty of the USAFA.

FINDING: (As amended by USAFA/CC): NOT SUBSTANTIATED

Allegation 4. That on or about 4 Oct 07, Col A--- restricted the applicant's access to the chain of command by verbally counseling him for making a protected communication.

FINDING: NOT SUBSTANTIATED

Allegation 5. That on or about 28 Nov 07, Col B--- restricted the applicant's access to the chain of command by verbally counseling him for making a protected communication.

FINDING: SUBSTANTIATED

Allegation 6. That on or about 29 Feb 08, Col B--- restricted the applicant's access to his chain of command by issuing him a letter of counseling (LOC) for making multiple protected communications.

FINDING: SUBSTANTIATED

Allegation 7. That on or about 2 Oct 07, Lt Col M--- reprised against the applicant for making a protected communication by preventing his participation as a tutor on a trip with the USAFA women's tennis team.

FINDING: NOT SUBSTANTIATED

Allegation 8. That on or about 3 Oct 07, Lt Col M--- reprised against the applicant for making a protected communication by rescinding reserve mandays previously allotted to him.

FINDING (As amended by USAFA/CC): SUBSTANTIATED

Allegation 9. That on or about 22 Nov 07, Col B--- reprised against the applicant for making a protected communication by providing negative information about him to a potential employer.

FINDING (As amended by USAFA/CC): NOT SUBSTANTIATED

Allegation 10. That on or about 6 Dec 07, Colonel B--- reprised against the applicant for making a protected communication by providing negative information about him to a potential employer.

FINDING: NOT SUBSTANTIATED

Allegation 11. That on or about 29 Feb 08, Colonel B--- reprised against the applicant for making a protected communication by issuing him an LOC.

FINDING: SUBSTANTIATED

On 5 Apr 10, HQ USAFA/IG notified the applicant the Department of Defense Inspector General's Office (DOD/IG) found the subjects of the investigation did reprise against him and restrict him from making a protected communication.

The remaining relevant facts pertaining to this application are contained in the applicant's master personnel records and the letter prepared by the appropriate office of the Air Force, which are attached at Exhibits B and C.

AIR FORCE EVALUATION:

AFRC/A1A recommends denial, indicating there is no basis to assume the applicant would have been selected for position vacancy promotion by the lieutenant colonel promotion board, or hired as an AGR. In accordance with AFI 36-2132, Full-Time Support (FTS) AGR Program, a written release from a member's commander is required for a member to be eligible to apply for an AGR vacancy. The applicant did not obtain such a release from his commander and their records show that his application was not among the ten received for the position. As for his request for ACP, the applicant was not selected for an AGR position, and, thus, is not eligible for an ACP bonus or any back pay or allowances.

A complete copy of the AFRC/A1A evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant objects to the basis of the AFRC conclusion that since he did not apply for the position, he is not entitled to redress. Since the basis for his claim is that he was improperly denied the opportunity to apply for the position, the rationale of the evaluation, that his application was not received, is irrelevant. Nonetheless, he believes he would have been selected for the position because he was more qualified, in terms of education and operational experience, than the officer who was ultimately selected. While he specifically cites this particular position in his application, it was not the only position he was inappropriately denied the right to apply for. He also points out that his Feb 08 OPR is possibly a form of reprisal for filing an IG complaint because it contains a weak push line and is written using terminology in an attempt to weaken the stratification. Finally, he describes case law and certain previous AFBCMR cases that he believes support his request.

The applicant's complete response, including attachments, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice regarding the applicant's ability to meet the FY08 USAFR Line Lieutenant Colonel Promotion Board as a position vacancy candidate. The applicant contends that his chain of command unfairly withheld his name from consideration when his previous unit failed to timely file some of his officer performance reports (OPRs). After a thorough review of the evidence of record, including the IG report, we agree. In this respect, we note that circumstances which were beyond his control resulted in his name not being forwarded for consideration. While we believe the evidence supports granting the applicant some relief due to this error, we do not find it is sufficient for us to recommend direct promotion. In this respect, we believe that a duly constituted selection board, applying the complete promotion criteria, is in the best position to render this vital determination, and that its prerogative to do so should only be usurped when there are: 1) extraordinary circumstances (e.g., a showing that the officer's record cannot be reconstructed in such a manner so as to permit fair and equitable consideration) and 2) when the probability of selection for promotion would have been extremely high were it not for the original errors. We find no such showing here. Therefore, we believe affording him supplemental consideration by a Special Board represents full and fitting relief in this case. We note that his record, as it existed the day the board convened, lacked a Promotion Recommendation Form (PRF) as he was never recommended for consideration by the contested board. However, in view of the fact he was considered for promotion by a subsequent mandatory promotion board, and the record considered by that board contains a PRF describing his accomplishments over roughly the same period, we believe it is appropriate to utilize the PRF, appropriately modified, for use by the Special Board in evaluating his promotion potential. Accordingly, we recommend his complete record, as of the date of the original board, to include the aforementioned OPRs and the appropriately modified PRF, be considered by a Special Board under the provisions of 10 USC 1558 for promotion to lieutenant colonel. As regards to his remaining assertions that members of his chain of command unfairly denied him consideration for multiple positions within the AGR program and damaged his reputation by providing negative references to potential employers, we will discuss these assertions in conjunction with our reprisal analysis below.

4. The applicant alleges that he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). We note the applicant filed an IG complaint alleging, among other things, that members of his chain of command unfairly denied him the opportunity to apply for multiple AGR positions and damaged his reputation by providing negative references to potential employers in retaliation for his multiple protected communications with his chain of command. The IG investigated his allegations of abuse of authority, restriction, and reprisal and made four distinct findings, as amended by USAFA/CC, of restriction and reprisal. Based upon our own independent review, we have determined the applicant has established he was subjected to restriction and reprisal in violation of 10 USC 1034. The applicant was twice subjected to restriction when his supervisor verbally counseled him on 28 Nov 07 for making a protected communication, as documented in a memorandum for record (MFR); and again, when his supervisor issued him a letter of counseling on 29 Feb 08 for making multiple protected communications. He was twice subjected to reprisal when his supervisor rescinded reserve man-days previously allotted to him for making a protected communication; and again, when his supervisor issued him a letter of counseling on 29 Feb 08 for making multiple protected communications. We note the IG recommended the applicant's records be corrected by removal of the aforementioned MFR and LOC which formed the basis of their amended findings of restriction and reprisal, but did not substantiate his allegations that the command reprised against him when they: prevented him from being considered for multiple positions within the Active Guard/Reserve (AGR) Program; and provided negative references to potential employers. After a thorough review of the evidence of record and the applicant's complete submission, including his response to the Air Force evaluations, we find the evidence presented does not establish that his unit reprised against him by preventing him from competing for AGR positions. First, we note the comments by the Air Force office of primary responsibility indicating that AFI 36-2132, Full-Time Support (FTS) AGR Program, requires a written release from a member's commander in order to be eligible to apply for an AGR vacancy. The instruction provides commanders with wide latitude in the factors they consider when making a determination to release a member to compete for reassignment. These factors can include the needs of the organization, the member's readiness for the position sought, or a variety of other factors. While the applicant provides evidence indicating that his relationship with members of his chain of command was tenuous, he has not provided any direct or even indirect evidence that reprisal motivated the decision to not release him. Moreover, even if one presumes the retaliatory animus as established in other personnel actions was present, it appears more likely than not that

management would have taken the same action in not releasing other newly assigned personnel (and the applicant has not provided other instances of newly assigned personnel being released). While the evidence provided makes it clear that a serious personality conflict existed between the applicant and certain members of his chain of command, it fails to establish a nexus between the personality conflict and his command's reluctance to release him to compete for full-time positions within the AGR program. Lastly, even if we were to assume for argument's sake the failure to release him was a retaliatory act, we find the applicant has not met his burden of proof to demonstrate that he would have been selected. Specifically, the evidence he provides is statistical information which apparently describes his standing among fellow instructors, and as such, is insufficient to conclude he would have been selected for any of these positions, including the one in his own academic department. Any such selection would be purely speculative and speculation is an inadequate basis upon which to grant the requested remedy. As for the negative references, we find the evidence presented is not sufficient to establish the applicant's supervisor's motive in providing the recommendation was retaliation or that it was a knowingly false or inaccurate opinion of what he observed during the period of supervision. Therefore, absent a showing by the applicant that his unit's decision to not release him to compete for AGR positions or the action of his supervisor in providing unfavorable references to potential employers were otherwise arbitrary, capricious, or an injustice, we find the applicant has been provided full and fitting relief in this regard and no further action by the Board is required in response to these allegations. We also note the applicant's assertion, in response to the Air Force advisory, that his officer performance report (OPR), closing 14 Feb 08, was a possible reprisal action given the timing of his IG complaint. However, other than his own assertions, he has provided no evidence that would convince us the OPR was not an accurate description of his performance during the reporting period. Finally, we note the applicant's request for an investigation into the lack of systemic control within the US Air Force Academy; however, we consider this to be outside the Board's purview. In this respect, we note the Board's authority to order an investigation is specific to an applicant's allegations of reprisal as provided for in DoD Directive 7050.06, Military Whistleblower Protection. However, after a thorough review of the evidence, we conclude the reprisal allegations were properly and thoroughly investigated, reviewed, and disposed of by the IG. We note the applicant's assertion that USAFA/CC's action to amend some of the findings of the original Investigative Report was based on incomplete information; however, after a thorough review of the applicant's complete submission and the evidence of record, we do not find the evidence presented sufficient to overcome the rationale expressed in USAFA/CC's addendum to the Report of Investigation or to overcome the presumption of regularity that USAFA/CC would act only with adequate information. Therefore, in absence of evidence to the contrary, we find no basis to recommend granting his remaining requests.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be considered for promotion to the grade of lieutenant colonel (O-5) as a position vacancy candidate by a Special Board, under the provisions of 10 USC 1558, for the Fiscal Year 2008 United States Air Force Reserve (USAFR) Line Lieutenant Colonel Promotion Board.

It is further recommended that an appropriately modified version of the Promotion Recommendation Form (PRF) prepared for consideration by the Fiscal Year 2009 USAFR Line Lieutenant Colonel Promotion Board (V0509B) be utilized by the Special Board in evaluating the applicant's potential to serve in the higher grade.

The following members of the Board considered AFBCMR Docket Number BC-2010-02704 in Executive Session on 16 Dec 10, under the provisions of AFI 36-2603:

XXXXXXXX, Panel Chair

XXXXXXXX, Member
XXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 15 Jul 10, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFRC/A1A, dated 20 Aug 10.
Exhibit D. Letter, SAF/MRBR, dated 1 Oct 10.
Exhibit E. Letter, Applicant, undated, w/atchs.

XXXXXXXX
Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02834

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His Promotion Recommendation Form (PRF) for the Calendar Year 2009C (CY09C) Major (Maj) Central Selection Board (CSB) be reaccomplished.

APPLICANT CONTENDS THAT:

The PRF in question indicated he lacked performance as several items were omitted. He further contends his duty title on the contested PRF should read "Chief, Unit Training" versus "Wing Plans Officer".

In support of his appeal, the applicant provides copies of documents extracted from his military records.

Applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of captain.

The applicant did not file an appeal with the Evaluation Report Appeals Board (ERAB). However, the ERAB reviewed the application and recommends denial.

Applicant's OPR profile as a captain is as follows:

PERIOD ENDING	OVERALL EVALUATION
10 May 05	Meets Standards (MS)
10 May 06	MS
30 Mar 07	Training Report (TR)
10 May 07	MS
10 May 08	MS

PERIOD ENDING	OVERALL EVALUATION
10 May 09	MS
10 May 10	MS

AIR FORCE EVALUATION:

HQ AFPC/DPSIDEP recommends denial of the applicant's request to correct the contested PRF. AFPC/DPSIDEP notes there is no evidence the report is unjust or inaccurate. Although, the applicant contends his Senior Rater omitted several items from the PRF, he has failed to provide documentation to prove this or submitted a reaccomplished PRF with support from the Senior Rater and the MLR President. DPSIDEP contacted the applicant's Senior Rater regarding his understanding and options that were available on completing the PRF. The Senior Rater chose to write the PRF in the best interest he saw fit. The Senior Rater does not support the applicant's request to change the report or upgrade the PRF to a "Definitely Promote" Recommendation. The governing instruction states that changing a promotion recommendation requires the concurrence of both the Senior Rater and Management Level Review President.

The applicant contends his duty title is incorrect on his PRF. He believes it should read "Chief, Unit Training" versus "Wing Plans Officer" since he had a permanent change of assignment (PCA). The Military Personnel Data System (MilPDS) has the effective date of the PCA as 8 Sep 09 and the duty title of "OIC, Unit Training" with an effective date of 31 Mar 10. The governing instruction states to enter the approved duty title as reflected in the PDS. Pending or projected duty titles will not be used. The PCA was after the PRF accounting date of 5 Jun 09 and after the 60th day, i.e., 3 Sep 09, the earliest it could be signed. The duty title for this PCA action was "OIC, Quality Assurance" effective 8 Sep 09. The Senior Rater was following the instructions listed in the governing instruction at the time the PRF was written.

The complete AFPC/DPSIDEP evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states he submitted a revised PRF for consideration on 30 Sep 10 and had sought the support of his prior Senior Rater, but he declined. He was not given any guidance on whom the MLR President would be to contact. He contends all the unfavorable and adverse actions upon his career at the time were unfounded based on his performance.

Appendix D2. DoD 5200.2-R, Section 8-201 and Appendix N from the DoD Security Clearance Ajudication and Appeal Process states that "no unfavorable administrative action shall be taken under the authority of this regulation unless the individual concerned has been…<a. through e>." At the time of his PRF and the CSB, he was in the process of adjudicating his security clearance. His Senior Rater definitely took unfavorable administrative actions by omitting four hard hitting data points from his PRF and taking his career from Definitely Promote status to a Promote. It took him a long time to get clarification on how a security clearance of a line officer impacts their performance directly. Nevertheless, the process is separate for a reason and had his statement of reason been received by 13 Nov 09 (end of promotion board) his Senior Rater would have grounds to do what he did. However, he did not have a valid reason to mark down his exemplary performance since the Statement of Reasons (SOR) did not come until roughly two months later.

The applicant's complete response, with attachments, is at Exhibit E.

The applicant's "secret" security clearance was reinstated effective 26 Jan 11. He believes all adverse actions against should be reconsidered. He has, during the almost two-year battle experienced daily ramifications, including lost TDYs, suspended access to do his job and supervise personnel, daily leadership dilemmas and a cancelled assignment in December 2010. His opportunity for upward mobility and two promotion boards were adversely affected. He has no qualms with the leadership at Beale AFB in how they handled a line officer without a clearance. However, he feels it inhibited 9 RW/CC to give him a DP for the 2010 CSB (Exhibit F).

On 25 Mar 11, the applicant was notified that his case was administratively closed per his 22 Mar 11 request (Exhibit H).

On 11 May 2011, the applicant's counsel requests the case be reopened for consideration based on the following: the

applicant's overall record, the impact of not having a clearance, his professionalism did not falter, and the lack of having a clearance made him ineligible for a flight command or operations officer slot (Exhibit I).

In a letter dated 12 Jun 11, retired Maj and Mrs W. state the applicant has been subjected to repeated forms of reprisal. They request the applicant be extended on active duty with rights, privileges and promotions afforded to officers in the 2001 year group; and that he be reassigned to an appropriate career position at Randolph AFB. He be allowed three years active duty to rebuild his career (Exhibit J).

In an undated letter the applicant states that his date of separation has been established as 30 Sep 11. He further states that his picture was posted on an Air Force website for the purpose of recruiting for the acquisition career field.

His squadron was recently acknowledged for the best small FSS in the USAF and the best unit compliance inspection rating in history of ACC, given to the 9th Reconnaissance Wing in June 2011 (Exhibit K).

In his 27 Jun 11 letter, Maj W states that he attended a Defense Office of Hearings and Appeals (DOHA) hearing in which an Administrative Judge, based on the evidence and facts of the case, exonerated him. In addition, the applicant's security clearance was reinstated retroactive to the date is was suspended. Maj W. questions the movtives of the noncommissioned officer who worked for the applicant. He believes the applicant's Health Insurance Portability and Accountability Act (HIPPA) protections were violated. The applicant has served his country honorably and he believes the Board should promote him and retain him on active duty (Exhibit L).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice regarding the applicant's request for a reaccomplished PRF for the CY09C Maj CSB. The applicant's complete submission was thoroughly reviewed, to include the rebuttal responses. However, we do not find these assertions and the documentation presented in support of his appeal sufficiently persuasive to override the rationale provided by the Air Force office of primary responsibility. Therefore, we agree with the recommendation of the Air Force OPR and adopt its rationale as the basis for our decision the applicant has failed to sustain his burden of establishing that he has suffered either an error or an injustice warranting corrective action. Accordingly, the applicant's request is not favorably considered.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2010-02834 in Executive Session on 27 Jan 11 16 Feb 11, 6 Jul 11 and 14 Jul 11 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 19 Jul 10, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, HQ AFPC/DPSIDEP, dated 4 Oct 10.
Exhibit D. Letter, SAF/MRBR, dated 22 Oct 10.
Exhibit E. Letter, Applicant, dated 3 Nov 10, w/atchs.
Exhibit F. Letter, Applicant, dated 3 Feb 11, w/atchs.
Exhibit G. Letter, Applicant, dated 22 Mar ll.
Exhibit H. Letter, AFBCMR, dated 25 Mar 11.
Exhibit I. Letter, Applicant's Counsel, dated 11 May 11.
Exhibit J. Letter, Character Reference, dated 12 Jun 11.
Exhibit K. Letter, Character Reference, undated, w/atch.
Exhibit L. Letter, Character Reference, dated 27 Jun 11.

Panel Chair

4

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-03937

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be granted full compensation with corresponding points beginning 30 December 2006 to 7 September 2007.

APPLICANT CONTENDS THAT:

1. On 13 January 2007, he was unjustly discharged while on a Profile 4 status.

2. He has been subjected to the injustices, insults, maltreatments, harassments, and denial of pay through conscious acts or omission and all sorts of abuse willfully committed by his superiors.

3. The vengeful, bias, and malicious actions of his superiors caused gross psychological harm, gross injustice with resounding bigotry, prejudice, and hatred that resulted in intimidation and humiliation.

4. His superiors committed fraud and waste by denying him proper authorization for continued medical care and abusing their official authority and power as commissioned officers by hiding behind their ranks and grades to justify their malicious motives and used that as a means of punishment to him while he was on a Profile 4 status.

5. Pertinent information was intentionally withheld at pre-Unit Training Assemblies (UTAs) meetings, unit formations and commander’s call, although he and the first sergeant prepared all the materials for the commander.

6. During the period 1 October 2006 to 29 December 2006, he was placed on a Profile 4 status and on 90-day Military Personnel Appropriation (MPA) medical orders.

In support of his request, the applicant provides a 22-page narrative with attachments.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

Data extracted from the Military Personnel Data System (MilPDS) indicates the applicant initially entered uniformed service on 1 February 1974.

He was partially mobilized from 13 February 2004 to 9 March 2005 in support of Operations NOBLE EAGLE and ENDURING FREEDOM. He served in support of these Operations during the following periods: 3 February 2001 to 4 January 2002; 15 October 2001 to 18 November 2001; 7 January 2002 to 15 February 2002 and 10 March 2005 to 30 September 2006.

On 18 August 2006, the applicant was notified that it was his last official day as a first sergeant. The reason for this action was he refused to take a voluntary demotion which would have qualified him for a position in the squadron.

On 30 December 2006, the applicant was placed on a “4T” not worldwide qualified profile, with an expiration date of 1 Apr 2007.

The record reflects the applicant had a previous “2T” worldwide qualified profile which was subsequently changed back to a “4T” not worldwide qualified, effective 8 June 2007. However, there is no documentation covering the period 2 April 2007 to 7 June 2007, but the most recent profile documentation supplied, reflects he had been in a “2” profile status for his upper extremities.

In addition, the only other profile documentation supplied was initiated on 8 June 2007, with an expiration date of 7 September 2007.

AIR FORCE EVALUATION:

HQ AFRC/SGP states no further waivers were requested or granted during the period the applicant has requested compensation.

The applicant incurred bilateral epicondylitis while on active duty orders from 1 October 2005 to 30 September 2006. He was continued on medical continuation orders from 1 October 2006 to 29 December 2006 during which time he underwent surgery. The applicant was profiled unfit for military duty “U4T” for the period requested. Additionally, an Informal Line of Duty (ILOD) determination was accomplished and found the condition “in the line of duty.”

During the period 12 January 2007 to 12 April 2007, the applicant was granted a participation waiver. In accordance with (IAW) the 18 December 2006, HQ USAF/RE memorandum, change

to AFMAN 36-8001, Reserve Personnel Participation and Training Procedures, in effect at the time, members granted such a waiver are deemed able to perform military duty and thus not eligible for medical continuation orders.

Further, no request for medical continuation orders or revoking of the participation waiver was received by HQ ARPC/SGP for the second elbow surgery on 7 February 2007. Another request for medical continuation orders was made on 18 May 2007, by which time the applicant was considered a good candidate for the participation waiver.

The complete SPG evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

By letter dated 12 February 2011, the applicant states he wants to reinstate his claim for all pay and allowance entitlements as follows earned between December 2006 and September 2007:

a. Full base pay for master sergeant at the 26-year rate.
b. Full basic allowance for housing at the zip code 94014 rate.
c. Full per diem at the 2007 rates, approximately $41 per day.
d. Full family separation pay at the 2007 rates, approximately $250/$275.
e. Full separate rations pay at the 2007 rates, approximately $7.50 per day.
f. Full vacation days earned, cashed in and added on to the tally.

By undated letter, the applicant states he claimed pay and allowance benefits for the majority of the periods between 30 December 2006 and 7 September 2007, but not the entire time as implied. In his report, he excluded 8 June 2007 to 8 July 2007 and apologizes because he forgot to mention and include the days his superiors "forced" him to report for UTAs. During these weekends, he was threatened with being absent without leave (AWOL), if he did not report, even though his superiors knew he was still on a U4T profile.

IAW DODI 1241.2, Reserve Incapacitation System Management, members who are rendered unfit by a condition incurred in the line of duty while in status for 31 days or more are to be continued on active duty orders until found fit or separated via the disability evaluation system" this never happened. The denial of the DODI ruling is what triggered the whole Congressional Inquiry. Their prejudicial behavior was merely a veneer but in reality an astute "payback" on behalf of Technical Sergeant H.

DODI 1241.2 and 1241.01 are the same exact rules they knowingly and intentionally violated and outwardly disobeyed. As a

result, he was denied medical continuation orders despite all the right medical reasons and documentation.

His attending physician Dr. (Lieutenant Colonel) T. declared him NOT fit for duty and that he was NOT worldwide qualified until he was OFFICIALLY MEDICALLY declared and found him to be "Fit for duty" and that happened only on 7 September 2007." This petition is not about whether Colonel G's little guess work has proved anything based on his assumptions and usage of terminology such as "deemed" and "waiver." Bottom line, you cannot substitute those words and try to squeeze it in to change the big picture and total outcome.

He was treated with contempt, and became a victim of injustice and his superiors need to be reprimanded and punished for the crimes they perpetrated and skillfully crafted together against him.

The applicant's complete submission, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice warranting partial relief. In this respect, we note the applicant was on active duty orders in support of Operation ENDURING FREEDOM and Operation NOBLE EAGLE and was diagnosed with a medical injury. Subsequently, the injury was found to be In the Line of Duty (ILOD). However, contrary to established guidance dictating that he remain on active duty status until processed through the disability evaluation system, it appears he was released from active duty without due process. Although the applicant requests full compensation with corresponding points beginning 30 December 2006 to 7 September 2007, we note his AF Form 422 dated 8 June 2007 reflects his previous profile as "2" which would indicate he was worldwide qualified and therefore could not have been on medical continuation orders. Therefore, based on the available evidence, we recommend his records be corrected to reflect he was on medical continuation orders for the periods 30 December 2006 to 1 April 2007 and 8 June 2007 to 7 September 2007. Therefore in the interest of equity and justice, we recommend his record be corrected to the extent indicated below.

4. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). Based upon our own independent review, we have determined the applicant has not established that the reason he was denied medical continuation orders was motivated by retaliation for making protected communications. We also find no evidence he filed a reprisal complaint with the Inspector General as required when reprisal is alleged.

THE BOARD DETERMINES THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. He was not released from active duty on 30 December 2006, but on that date he continued to serve on active duty until 1 April 2007.

b. He was not released from active duty on 8 June 2007, but on that date he continued to serve on active duty until 7 September 2007.

The following members of the Board considered AFBCMR Docket Number BC-2010-03937 in Executive Session on 18 August 2011, under the provisions of AFI 36-2603:

Panel Chair

Member

Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 10 October 2010,

w/atchs.

Exhibit B. Applicant's Master Personnel Record.

Exhibit C. AFRC/SGP, Letter, dated 21 December 2010.

Exhibit D. SAF/MRBR, Letter, dated 14 January 2011.

Exhibit E. Applicant’s Rebuttal, Letter, undated,

w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-03942

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

a. His Article 15 and all punishments involved be expunged.

b. His three years of lost time be returned.

c. One year of not being allowed to test rewarded.

d. Enlisted Performance Reports (EPRs) ending Aug 06 and Oct 07 be removed and voided.

e. He be considered for promotion to the grade of technical sergeant (TSgt) for 2009 technical sergeant (E6) promotion cycle.

f. He be considered for a follow-on assignment to Kadena, Yokota, Bitburg, or Spangdahlem.

g. He be considered for a Permanent Change of Station (PCS) medal.

h. He be given a floor to speak with the Air Force Inspector General about his issues.

i. A board convenes when punishments of this nature are handed down.

j. The three years of lost time it has taken to correct his records be returned.

APPLICANT CONTENDS THAT:

Since Nov 06, he has been seeking assistance to have a “wrong set right”; the evidence logically reviewed a reprisal set right.

He was secretly given a “4” EPR without justification. He believes his original EPR ending 6 Aug 06 was a “5” and was signed by his supervisor. However, the date was changed to 15 Aug 06 which he believes is an injustice.

The issue has put his life in limbo and his career on hold. He is not asking for anyone to be punished or get in trouble but asking for a resolution or an end.

He has consulted with various first sergeants, legal counselors, peers and other wing agencies (Military Equal Opportunity, Area Defense Counsel and chain of command). He has also written his Congresswoman and Inspector General Offices. Key information was not submitted during the processing of his Article 15.

In support of his request, the applicant provides a 14 page statement with attachments discussing the events leading to the Article 15, military service records and a Freedom of Information Act (FOIA) request.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Air Force in the grade of technical sergeant.

On 7 Feb 07, the applicant visited the MEO office because he felt his flight commander, Captain X, was picking on him and had given him a letter of counseling (LOC) for unfounded acts. He stated that no matter what he Captain J always found fault in it." In addition, Captain X has anger issues and sometimes "flies off the handle." The applicant was asked if his concerns with Captain x fell within the MEO purview and he stated he did not feel they did at that time.

According to the MEO Record of Assistance dated 13 Feb 07, the MEO technician conducted a follow-up session with the applicant. The applicant stated he was receiving assistance from the lowest level to address his concerns. Further, the applicant expressed he had no concerns surrounding reprisal. No additional follow-up was required and the MEO technician closed his case

On 9 Aug 07, the applicant was offered nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ). He was charged with one specification of being absent without authority, in violation of Article 86, UCMJ, and one specification of disobeying a lawful order, in violation of Article 92, UCMJ.

On 14 Aug 07, the applicant consulted counsel, waived his right to trial by court-martial and accepted the Article 15. He submitted a statement on his behalf and made a personal appearance before the commander.

On 27 Aug 07, the commander decided the applicant had committed the alleged offenses and imposed punishment consisting of reduction to the grade of senior airman, reprimand and forfeiture of $1,031 pay per month for two months. The portion of punishment which extended to reduction in grade and forfeiture of

pay were suspended through 26 Feb 08, at which time they were to be remitted without further action unless sooner vacated. On 28 Aug 07, the applicant decided not to appeal the commander's decision. On 29 Aug 07, the Staff Judge Advocate (SJA) and General Court-Martial Convening Authority (GCMCA) reviewed the case and found it legally sufficient.

On 4 Oct 07, the applicant received a referral EPR for the period 6 Aug 06 through 3 Oct 07.

On 2 Jul 08, the applicant wrote his Senator requesting his case be looked into from a different perspective.

On 29 Jan 09, the applicant filed an Inspector General (IG) claim for the Article 15 he states was improperly issued. On 6 Feb 09, the IG notified the applicant they had completed a complaint analysis, were unable to assist him and were dismissing his complaint.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibit C.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial of the applicant's request to set aside and remove the nonjudicial punishment he received from his records. JAJM states, ultimately, the applicant has not raised any genuine doubt as to his guilt of the offenses for which he

was punished or established any error on injustice in the Article 15 action such that a set aside would be in the best interests of the Air Force. Based on the evidence presented in the case and considering the other factors mentioned by the applicant, the commander was clearly not acting in an arbitrary or capricious manner when he found nonjudicial punishment appropriate in this case. Further, the punishment imposed was appropriate to the offense and not unfairly harsh.

The complete JAJM evaluation is at Exhibit C.

HQ AFPC/DPAPP recommends denial of his request for reinstatement of a previous follow-on assignment. DPAPP states he could not obtain the necessary retainability due to his high year tenure (HYT). DPAPP further states, the member's spouse was provided an overseas returnee assignment to Columbus Air Force Base, Mississippi and the applicant was provided a join-spouse assignment since their join-spouse assignment intent code indicated they desired to be assigned at the same location.

The complete DPAPP evaluation is at Exhibit D.

HQ AFPC/DPSIDE did not provide a recommendation. DPSIDE forwarded his application to the Evaluation Report Appeals Board (ERAB) and they returned his request without action. In addition, DPSIDE stated the applicant had not provided substantiated evidence to justify why his Aug 06 and Oct 07 EPRs were unjust, inaccurate and should be removed.

The complete DPSIDE evaluation is at Exhibit E.

HQ AFPC/DPSOE makes no recommendation but addresses the promotion eligibility/testing issue. DPSOE states the applicant was eligible and tested on 23 Mar 07 for promotion to the grade of (E6) during cycle 07E6. However, he became ineligible in Aug when he received an Article 15 for being absent without leave (AWOL) and disobeying a lawful order. His punishment consisted of a suspended reduction to the grade of senior airman, suspended forfeiture of $1,031 pay per month for two months and a reprimand. He also received a referral EPR for the period 6 Aug 06 through 3 Oct 07. The suspended bust and referral EPR

rendered him ineligible for promotion cycle 07E6. He remained ineligible for promotion consideration during cycle 08E6 as his nonreferral EPR (3 Oct 08) did not close out until after the promotion eligibility cutoff date (31 Dec 07) for that cycle. The applicant was considered and nonselected for promotion to E6 during cycle 09E6; however, he became a select during cycle 10E6 with a date of rank (DOR) of 1 Apr 10.

The complete DPSOE evaluation is at Exhibit F.

HQ AFPC/DPTOS did not provide a recommendation. DPTOS states upon review of the member's records, the applicant has no lost time in the Military Personnel Data System (MilPDS).

The complete DPTOS evaluation is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

With regard to his request to remove and void the EPRs from Aug 06 and Oct 07, the applicant states he cannot submit anything to the ERAB without having first corrected the Article 15, because the 07 EPR hinges solely on the decision regarding the Article 15.

With regard to his request to reinstate his previous follow-on assignment choices, the applicant states the decision to deny his follow-on based on high year of tenure (HYT) is arbitrary and was very suspicious after the repeated number of requests sent to AFPC for three months, and the amount of phone calls with no response.

With regard to his request for award of a PCS medal, the applicant states if his record at the time of his PCS did not

reflect the 3 and 4 EPRs then maybe he would have been awarded

the PCS medal.

With regard to his request to have lost time returned, the applicant states he is referring to the years it has taken him in the process of getting his records corrected. He has lost time in not being able to test. All his hard work was torn down by favoritism, fraternization and in his opinion hatred.

The applicant's complete evaluation is at Exhibit I.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice to warrant setting aside the applicant's Article 15. After a thorough review of the evidence of record and the applicant's complete submission, to include his multiple responses to the Air Force evaluations, we do not find his uncorroborated assertions sufficiently persuasive to override the rationale provided by the Air Force office of primary responsibility (OPR). Therefore we agree with the opinion and recommendation of HQ Air Force/AFLOA and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice regarding this issue. The applicant requests his EPR ending 5 Aug 06 be removed from his record. However, we note the ERAB denied his request due to a lack of evidence. After carefully reviewing the evidence provided, we too find insufficient evidence that would warrant removal of the contested report. We also considered his request to remove the EPR closing 3 Oct 07 from his record. Again, we find insufficient evidence that would warrant the removal of this report, particularly in view of our finding related to the Article 15 he received. The applicant requests he be granted a

PCS award. However, AFI 36-2803 clearly states, “No individual is automatically entitled to an award upon completion of an operational TDY or departure for an assignment.” Based on our findings related to the Article 15 and EPRs, we find no error or injustice in his not receiving an award upon PCS. Additionally, we also do not find a basis to grant his request for promotion consideration to the grade of technical sergeant or to reinstate the follow-on assignment he was previously granted. In view of the above, we agree with the opinions and recommendations of the Air Force OPRs (AFPC/DPSIDR, DPAPP, DPSIDE, and DPSOE) and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. We also note the applicant requests a floor to speak with the Air Force

Inspector General and his suggestion to convene boards for other similarly situated, these are not requests that fall within the purview of the Board. In the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to the Board's understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered Docket Number BC-2010-03942 in Executive Session on 25 Oct 11, under the

provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2010-03942 was considered:

Exhibit A. DD Form 149, dated 14 Oct 10, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. AFLOA/JAJM, Letter, dated 26 Apr 11.

Exhibit D. AFPC/DPAPP, Letter, dated 4 May 11.

Exhibit E. AFPC/DPSIDE, Letter, dated 2 Jun 11.

Exhibit F. AFPC/DPSOE, Letter, dated 16 Jun 11

Exhibit G. AFPC/DPTOS, Letter, dated 28 Jul 11.

Exhibit H. SAF/MRBC, Letter, dated 18 Aug 11.

Exhibit I. Applicant’s Letter, dated 17 Sep 11.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-00179

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His Enlisted Performance Report (EPR) with a closeout date of 24 Apr 09 be voided and removed from his records.

APPLICANT CONTENDS THAT:

His performance was not accurately evaluated. The EPR in question reflects that he was an Equal Opportunity (EO) Counselor; however, he was assigned as a Dormitory Manager from 13 Feb 09 to 9 Oct 09. His dormitory supervisor wrote his Letter of Evaluation (LOE) and not MSgt G as stated on record. During the period in question, he was given a commander directed evaluation although he was not due an evaluation. He believes it was a way to deter his chances of applying for Officer Training School (OTS).

He received a referral report for being issued a Letter of Reprimand for confiding in a co-worker. The LOR he received

stated it was for unprofessional conduct that led to his removal from his office; however, there is no evidence that shows he behaved unprofessionally or brought discredit to his office. He voiced his unhappiness with the EO office due to experiencing personality conflicts and working in a hostile environment. His first sergeant told him that he was not in trouble, but needed to be moved out of his office only to find himself signing an LOR for unspecified incidents; he wrote a rebuttal. He received a referral EPR a month later. He was only given an initial feedback by his supervisor and believes that had he received another feedback he would have been able to improve any problems areas. He has always presented himself in a professional manner and obeyed the rules and regulation of the Air Force. He notes some of his accomplishments during the contested period to show that an injustice has occurred.

In support of his request, the applicant provides a personal statement, excerpts from his personnel file, and e-mail communications.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of staff sergeant. The applicant received a “4” EPR for the closeout period of 24 Apr 09.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial. DPSID provides two separate

evaluations in which they state the applicant did appeal through the Evaluation Report Appeals Board (ERAB); however, the ERAB reviewed the report and was not convinced the original report was unjust or wrong and denied his request.

While the applicant states that the NCO who wrote the LOE was not his supervisor, he has not provided any information showing that TSgt G was not the rater nor was it contested on the referral EPR rebuttal. The “rater” is the one who is assigned to write the evaluation report and the “supervisor” is the one who is assigned to monitor day-to-day activities.

The applicant mentions the EPR does not accurately reflect his performance during the reporting period. He states that Under Training Requirements, he completed all his upgrade training in a timely manner and acquired a college-teaching certificate; however, he does not provide a copy of his training record or any supporting documents from the rating chain or the training manager to verify all training requirements were completed on time.

Furthermore, the applicant believes had he received feedback he would have been able to improve problem areas; however, if feedback was not provided during a reporting period, the lack of counseling or feedback, by itself, is not sufficient to challenge the accuracy or justness of a report. Evaluators must confirm they did not provide counseling or feedback, and that this directly results in an unfair evaluation. Specific information about the unfair evaluation must be provided in order for the board to make a reasoned judgment on the appeal. The instruction states that while documented feedback sessions are required, they do not replace informal day-to-day feedback. A rater’s failure to conduct a required or requested feedback session, or document the session on a Performance Feedback Worksheet, will not, invalidate any subsequent performance report.

The applicant contends that his rating is untrue, unjust, and was motivated by his supervisor out of spite and jealousy for attaining a dual Master’s Degree and stemmed out of reprisal for filing a discrimination complaint against the EO Director.

Although he makes these claims, he has not provided any evidence that discrimination or reprisal occurred. The applicant does not provide any information from the evaluators, an Inspector General (IG) or Military Equal Opportunity (MEO) complaint, or any other

credible officials that can vouch or substantiate an error or injustice.

Finally, although the applicant contends that previous EPRs with the exception of one were all “5” ratings, after reviewing his previous thirteen EPRs, his assertion does not bear out under scrutiny; a pattern becomes clear. Although most of the evaluations were of a final rating of “5”, all but three had one or more markdowns in the rater portion of the evaluation, and many of these evaluations had three or more areas marked down on each evaluation.

The DPSID complete evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 22 Jul 11 for review and comment within 30 days. As of this date, this office has received no response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of

the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-00179 in Executive Session on 29 Sep 11, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 10 Nov 11, w/atchs.

Exhibit B. Letter, AFPC/DPSID, dated 17 Jun 11 and 21 Jul 11.

Exhibit C. Letter, SAF/MRBR, dated 22 Jul 11.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-00542

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His DD Form 214, Certificate of Release or Discharge from Active Duty, be changed to reflect he was medically retired due to Post-Traumatic Stress Disorder (PTSD).

APPLICANT CONTENDS THAT:

He had two incidents he endured while on active duty, serving in Security Forces within a combat theater.

The mention of his mental state to his leadership would have resulted in him having fear of reprisal from them and his colleagues.

In support of his request, the applicant provides a personal statement, copies of his DD Form 214, and documents pertaining to his Department of Veterans Affairs (DVA) claim.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 21 Apr 99, the applicant entered active duty in the Air Force.

On 20 Apr 05, he was honorably released from active duty by reason of completion of required active service.

Additional relevant facts pertaining to this application are contained in the letter prepared by the BCMR Medical Consultant at Exhibit B.

AIR FORCE EVALUATION:

The BCMR Medical Consultant recommends denial. The Medical Consultant states the Military Disability Evaluation System was established to maintain a fit and vital fighting force, and by law under Title 10, United States Code (USC) can only offer compensation for and when one or more service incurred diseases or injuries specifically renders a member unfit for continued

active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on future changes. In order for an individual to be considered unfit for continued military service, there must be a medical condition that prevents performance of any work commensurate with office, rank, and rating rank or precludes worldwide qualification. Despite the applicant’s self-reported experiences and symptoms, the fact remains he had apparently shown no diminution in his capabilities to carry out the mission of his organization. The applicant’s performance

reports are not supplied to validate this presumptive statement. On the other hand, operating under a different set of laws (Title 38, USC) with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service-incurred or aggravated, without regard to its proven or demonstrated impact upon a service member's retainability, fitness to serve, or narrative reason for release from military service. This is the reason why an individual can be found fit to complete a term of service and yet sometime thereafter receive a compensation rating from the DVA for service-connected, but militarily non-unfitting conditions. The DVA is also empowered to conduct periodic reevaluations for the purpose of adjusting (increasing or decreasing) the disability rating award as the level of impairment from a given medical condition may vary (worsen or improve) over the lifetime of the veteran.

In the case under review, the applicant has neither shown an inability to perform his military duties nor is there evidence that PTSD should have been the cause of termination of his Air Force career. The Medical Consultant thanks the applicant for his service and his bravery under difficult circumstances, but finds he has not met the burden of proof of an error or injustice that warrants the desired change of the record.

The complete BCMR Medical Consultant's evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 21 Oct 11, a copy of the Air Force evaluation was forwarded to the applicant for review and comment within 15 days. To date, a response has not been received (Exhibit C).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case and do not find that it supports a change in his military record. As indicated by the BCMR Medical Consultant, the applicant has neither shown an inability to perform his military duties nor is there evidence that PTSD should have been the cause of termination of his Air Force career. Therefore, we agree with the opinion and recommendation of the BCMR Medical Consultant and adopt his rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. In the absence of evidence to the contrary, we find no basis to recommend the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered Docket Number BC-2011-00542 in Executive Session on 15 Nov 11, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 28 Jan 11, w/atchs.

Exhibit B. Letter, BCMR Medical Consultant, dated 7 Oct 11.

Exhibit C. Letter, SAF/MRBR, dated 21 Oct 11.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-00698

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His Officer Performance Report (OPR) with a closeout date of 13 Oct 02 be removed from his records.

APPLICANT CONTENDS THAT:

In a seven-page brief, the applicant's counsel makes the following key contentions:

The OPR contains comments that are in violation of AFI 36-2406, specifically, paragraphs 3.9.1.1, 3.9.1.2 and 3.9.1.2.1. The OPR indicates his performance as a T-38 Instructor Pilot (T-38 IP) met standards, yet the report contains derogatory comments clearly designed to imply unsatisfactory performance in his described duties as a T-38 IP, while marking "Meets Standards," and not referring the OPR to the ratee. The OPR also contains non-specific/vague comments in violation of the AFI.

Evidence has substantiated a pattern of documenting unsubstantiated negative information in the applicant's record; and, the pattern was recognized in prior cases submitted to this board, specifically BCMR cases BC-2005-00766 and BC-2006-03559. In addition, corrective actions have been made by AFPC/JA that confirmed a pattern of documenting erroneous derogatory information. In particular, the previous cases revealed an effort to conceal and misrepresent his performance by destructing cockpit video tape of one of his check rides; there were multiple instances of retroactive tampering with his flying training records, and unwarranted interference with his flying continuity in an apparently deliberate, but unsuccessful effort to degrade his flying performance. Thus far, corrective actions have included removing an OPR for cause from his records, deleting a reprisal duty title for cause, removal of his AF Form 8, Certificate of Aircrew Qualification, and re-accomplishing a Promotion Recommendation Form (PRF).

Due to the delays in the records corrections process, his appeal from the fall of 2004 was not finalized until the summer of 2006. The derogatory comments in question are still a matter of record and can distort the picture of the applicant's record of

performance for his supervisory chain within the Air Force, or any other potential future employer outside the Air Force.

In summary, it is clear there was an on-going effort to misrepresent his duty performance as substandard. He did not have an opportunity to rebut the slanderous remarks.

In support of his request, the applicant provides a copy of his counsel's personal statement, a copy of his 2001 OPR and a copy of the contested OPR, excerpts from previous BCMR appeals, e-mail communications, excerpts from his flying records, and copies of character letters.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of captain (0-3).

On 4 May 06, under BC-2005-00766, the BCMR corrected the applicant's records to show that:

a. The Company Grade Officer Performance Report (OPR), AF Form 707B, rendered for the period 14 Oct 02 through 13 Oct 03 was removed from his records.

b. His Officer Selection Brief (OSB) prepared for consideration by the Calendar Year 2003 Major Central Selection Board (CSB) was amended in the "Aeronautical Flying Data" section to reflect his flying status as "ACT OPER FLYING."

On 4 Apr 08, under BC-2006-03599, the BCMR corrected the applicant's records to show that his AF Form 8 was declared void and removed from his records.

On 24 Mar 10, under BC-2008-03623, the BCMR corrected the applicant's records to show that he was considered for Special Selection Board (SSB) for the CY03B, CY04A, CY05B, CY06B, CY07A, and CY08C CSBs Major Central Selection Boards.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial. DPSID states that although the applicant may feel the comments are derogatory in nature, they do not imply his performance was below minimum standards. DPSID acknowledges that while the comments are not the strongest it seems they convey exactly what the evaluator intended. The applicant states that if you compare his OPR with a closeout date

of 13 Oct 01, it is clear that the second OPR was written with

the intent to imply regression. However, the governing regulation states that ratings are not erroneous or unjust because they are inconsistent with other ratings one may have received. If an individual stays in the same job and has a change of supervisors there can be a change in performance standards, which, depending on how well the individual adapts, could cause a marked change in the next report.

DPSID states the applicant contends that the standard recommendation for Professional Military Education (PME) is absent from his 2002 OPR; however, PME push comments are optional and it is up to the evaluators to decide whether or not to give the rate a PME push. Furthermore, the regulation states that evaluators "may" also make recommendations for the appropriate level in-residence PME in OPRs; therefore, enforcing that PME comments are not obligatory.

DPSID notes the applicant provides three letters of support; however, they do not believe those individuals were in a better position to evaluate the applicant's duty performance than those who were specifically assigned that responsibility.

DPSID states that although the applicant asserts he discussed complaints with Inspector General (IG) and Military Equal Opportunity (MEO), he has not provided any documentation of support from their office covering the reporting period to substantiate any reprisal claims. In addition, he has not provided any documentation from his rating chain regarding the contested OPR to provide clarification or an explanation of his assertions. DPSID notes that an evaluation report is considered to represent the rating chain's best judgment at the time it is rendered.

The DPSID complete evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant's counsel responded asking the Board to recognize the reality that some raters who intend to kill a subordinate's career know how to use word pictures that do not violate the letter of the regulation, but violate the spirit of the regulation. The applicant's original contentions are reiterated; however, he provides detailed information on why he believes the OPR should be removed from his records.

In this case, the rater's history demonstrates an animus and intent to accomplish a result that is consistent with the use of explicit derogatory language, but avoids the referral process. While the advisory correctly states that ratings are not erroneous or unjust because they are inconsistent with the other ratings one has received, or that simply because the ratee does not like the ratings, ratings that nonetheless deliberately

circumvent governing AFIs in order to deny the ratee due process and the required opportunity in AFIs to rebut derogatory ratings, should not be allowed to stand.

The AFPC/DPSID advisory opinion fails to appreciate that the applicant's OPR is the work product of a rater who knew how to game the OPR system in a way that would adversely affect the applicant's promotion opportunities, without giving him the formal opportunity to challenge the OPR in question.

His counsel's complete submission is at Exhibit D.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice warranting the removal of the contested OPR from his records. The applicant's counsel goes to great length to demonstrate why the contested OPR is in violation of AFI 36-2406. However, this is part of the problem we have with the relief requested by the applicant. While the overall quality of the OPR may be an arguable point, applicant's counsel did not point out any deficiency in the report that we believe is a clear violation of the Air Force Instruction. In fact, it appears that counsel is asking the Board to read beyond the actual content of the report and find that it should be removed based on the previous relief granted to the applicant by the Board. Even considering the applicant's previous case, we do not find that the Board's previous action validates this request for additional relief. Therefore we agree with the recommendation of AFPC/DPSID and adopt the rationale expressed as the basis for our decision the applicant has not been the victim of error or injustice. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-00698 in Executive Session on 20 Sep 11, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 12 Feb 11, w/atchs.

Exhibit B. Letter, AFPC/DPSID, dated 17 Jun 11.

Exhibit C. Letter, SAF/MRBR, dated 15 Jun 11.

Exhibit D. Letter, Applicant's Counsel, dated 15 Aug 11.

Panel Chair

ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-00720

COUNSEL: NONE

HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

1. His Enlisted Performance Report (EPR) for the period ending 13 Oct 05 be voided and removed from his records – reconsideration request.

2. His Enlisted Performance Report (EPR) for the period ending 30 Jun 06 be voided and removed from his records – new request.

RESUME OF CASE:

The applicant filed a complaint with the Air Mobility Command Inspector General (AMC/IG) alleging that his promotion was withheld in reprisal for a protected communication and he was rendered a referral Enlisted Performance Report (EPR). The 62 AW/IG concluded there was insufficient justification to conduct an investigation and recommended the applicant's allegations be dismissed. Additionally, both AMC/IGQ and SAF/IGQ

reviewed the report and concurred that the allegations should be dismissed. The applicant also filed a complaint with the Equal Employment Opportunity (EEO) office; however, his case was dismissed.

He filed an appeal through the Evaluation Reports Appeals Board (ERAB); however, the ERAB was not convinced the original report was unjust or wrong and denied his request.

On 2 Feb 11, the Board considered and denied the applicant's request to void his 2005 EPR, reinstate his line number, award him the AFCM, and fly a flag for his service. A complete copy of the Record of Proceedings is attached at Exhibit H (w/atchs, excluding F and G).

By letter, dated 7 Jul 12, the applicant requests reconsideration of his request to have his 2005 EPR removed or voided from his record and provided additional evidence. Additionally, he requests his 2006 EPR be removed or voided from his record. The applicant states that it is the "smoking gun" in his case and it proves that something was not accurate when the Air Force processed his EPR because non-concurrences of EPRs rarely happen.

It happened in his case because he voiced his concerns to the IG office, EEO office, and his Congressman when he asked for assistance.

The applicant's complete submission, with attachments, is at Exhibit I.

THE BOARD CONCLUDES THAT:

1. In an earlier finding, the Board determined there was insufficient evidence to warrant corrective action. After thoroughly reviewing the additional documentation submitted in support of his appeal and the evidence of record, we do not believe the applicant has overcome the rationale expressed in the

previous Board decision. With regard to the applicant's request to remove the 2006 EPR, the applicant has not provided evidence that the contested report is erroneous, unjust or that it does not reflect an accurate depiction of his performance during the rating period in question. Therefore, in view of the above and in the absence of evidence to the contrary, we find no basis upon which to recommend favorable consideration of the applicant's request.

2. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the additional evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board reconsidered AFBCMR Docket Number BC-2011-00720 in Executive Session on 4 Apr 13, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following additional documentary evidence for Docket Number

BC-2011-00720 was considered:

Exhibit H. Record of Proceedings, dated 8 Mar 12, w/atchs.

Exhibit I. Letter, Applicant, dated 7 Jul 12, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-00720

COUNSEL: NONE

HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

1. His Enlisted Performance Report (EPR) for the period ending 13 Oct 05 be voided and removed from his records.

2. His line number for promotion to master sergeant (E-7) be reinstated and he be granted other relief as appropriate.

3. He be awarded the Air Force Commendation Medal (AFCM).

4. A flag be flown in honor of his service.

APPLICANT CONTENDS THAT:

The applicant states he received unfair treatment when he

attempted to file formal investigations, specifically; his EPR was marked below standard. The applicant provides an 8-page statement, with attachments, making the following key contentions:

1. The IG and EEO offices along with the 62nd Medical Group, McChord Air Force Base, Washington, ignored his requests, which was in direct violation of the governing regulation and the No Fear Act of 2003. He believes that in all of his attempts to bring formal charges against his leadership for dereliction, reprisal, and unprofessional behavior, that he became an easy target of hearsay, harassment, and discrimination. There was a personality conflict between him and his rater.

2. Two other people wrote letters of support to show that his leadership did not take the proper actions to correct his rater's behavior. His request for a change of rater was denied and the personality conflict continued.

3. The documents he provides clearly detail the "root cause" of his behavior during his evaluation between Oct 04 and Oct 05 was influenced by prescription drugs. He was not properly diagnosed until 24 Jul 06. His profile clearly indicates that he was unable to stand longer than 10 minutes. He believes because he was on trial medication that the side effects may have been the reason he had difficulty remembering or thinking, confusion,

abnormal thoughts or dreams, joint pain, as noted in the Letters of Counseling (LOC) and Letter of Reprimand (LOR) that were presented by his rater between 28 Oct and 4 Nov 04; he also received an Article 15 for an unrelated incident and after his promotion to master sergeant was removed.

4. He provides his profiles from 2005 and 2007 to show the contrast in his treatment once he was diagnosed with a herniated disc and pinched nerve root in his spine. His rater gave him a 20 inch stool to sit on to perform his duties, which was in violation of his profile. He believes that if his profile had been accomplished with the words above when he was first placed on a profile none of this would have happened. He asks for this injustice to be corrected because he is not lazy and his records subsequently have proven this.

In the remaining pages of his statement the applicant gives a detailed account of what took place leading to the actions he is contesting.

In support of his request, the applicant provides a personal statement, excerpts from his medical records, letters of support, and other documentation associated with his request.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant retired from the Regular Air Force on 30 Jun 09 in the grade of technical sergeant. He served on active duty for 20 years and 3 days.

The following complaints were filed by the applicant with the Air Mobility Command Inspector General (AMC/IG):

1. Allegation One: “On or about (O/A) 15 June 2005, the commander, 62nd Medical Support Squadron (62 MDSS/CC) withheld his promotion in reprisal for a protected communication, in violation of Title 10, United States Code (U.S.C.), Section 1034.”

2. Allegation Two: “O/A 19 October 2005, the 62 MDSS/CC rendered a referral Enlisted Performance Report (EPR) on the applicant in reprisal for a protected communication, in violation of Title 10 U.S.C., Section 1034.”

3. Allegation Three: “O/A 19 October 2005, the 62 MDSS TRICARE Operations and Administration Flight Commander (62 MDSS/SGST) rendered a referral EPR on the applicant in reprisal for a protected communication, in violation of Title 10 U.S.C., Section

1034."

4. Allegation Four: "O/A 19 October 2005, the applicant's supervisor rendered a referral EPR on him in reprisal for a protected communication, in violation of Title 10 U.S.C., Section 1034."

Upon review of the applicant's complaints and evidence, the 62 AW/IG concluded there was insufficient justification to conduct an investigation and recommended the applicant's allegations be dismissed. Additionally, both AMC/IGQ and SAF/IGQ reviewed the report and concurred that the allegations should be dismissed.

The applicant also filed a complaint with the Equal Employment Opportunity (EEO) office; however, his case was dismissed.

The applicant received an Article 15 for disobeying a lawful order to complete Anti-terrorism training and wrongfully failing to complete the training by the prescribed time.

The applicant did file an appeal through the Evaluation Reports Appeals Board (ERAB); however, the ERAB was not convinced the original report was unjust or wrong and denied his request.

The following is a resume of his EPR ratings, commencing with the report closing 26 Oct 07:

RATING PERIOD PROMOTION RECOMMENDATION

26 Oct 07 5

20 Dec 06 5

20 Jun 06 4

* 13 Oct 05 2

* Contested Report

Under separate cover, the applicant requested assistance from Senator Murray on 19 Jan 11 in support of his appeal to remove the contested EPR; to be awarded the AFCM; have his promotion to master sergeant reinstated, and have a flag flown in his honor.

The AFCM criterion: The AFCM is awarded to members of the Armed Forces of the United States who, while serving in any capacity with the Air Force after 25 Mar 58, shall have distinguished themselves by meritorious achievement and service. The degree of merit must be distinctive, though not involve the voluntary risk of life required for the Soldier's Medal (or the Airman's Medal now authorized for the Air Force).

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial. The application is untimely. Despite his allegations, the applicant has not provided compelling evidence from any competent medical authority to substantiate his claims of being unfit for duty due to prescribed medications or any diagnosed medical conditions he may have been suffering at the time. His profile from 26 Apr 05 through 1 Aug 05 limits the activities he was able to perform at work. However, he fails to provide any documentation that his actual duties performed during the contested rating period violated his medical profile.

Further, the applicant alleged that in his attempts to bring formal charges against his leadership for dereliction, reprisal, and unprofessional behavior, he became an easy target of hearsay, harassment, and discrimination. He asserts he was victimized in direct violation of the No Fear Act of 2003 and because he went

to the IG and EEO that led to the markdowns and referral of his 2006 EPR. However, despite these allegations, he does not provide any evidence of a completed IG, MEO, or other formal investigation from credible sources into any of these matters.

The applicant provides memorandums from three individuals; however, none of the individuals were in his rating chain and did not prepare the contested report. The applicant has not provided factual, specific, and substantiated information that is from credible officials and is based on firsthand observation or knowledge. Furthermore, the applicant does not provide any statements from the evaluators during the contested period; therefore, DPSID can only conclude the EPR is accurate as written.

The complete DPSID evaluation is at Exhibit B.

AFPC/DPSIDR recommends denial. The applicant believes he should have received an AFCM for his "prolonged outstanding service of 20 years." However, without official documentation that verifies the applicant was considered for award of the AFCM, and based on the current merits of this case, DPSIDR is unable to find an injustice exists with regard to the applicant not being awarded the AFCM.

The complete DPSIDR evaluation is at Exhibit C.

AFPC/DPSOE defers to the recommendation of DPSID regarding the applicant's request for removal of the contested EPR. The first time the contested report would normally have been considered in the promotion process was cycle 06E7; however, the fact that the EPR was a referral report rendered the applicant ineligible for promotion consideration in accordance with the governing regulation.

The complete DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS:

He reiterates his original contentions in a 12-page rebuttal; however, the applicant makes the following key contentions and provides it as new evidence:

1. The application was not submitted in a timely manner due to attempts of bringing formal charges against his rater, additional rater, and commander. With regard to his request to have his EPR removed from his records, he provides six facts why the report should be voided:

a. His rights were violated when he was not allowed to receive medical care.

b. His civil rights were violated due to multiple errors in how his Article 15 punishment was administered. He was influenced by neurological drugs for migraine headaches, pain and ADHD which clouded his judgment and made it unclear what he was signing on 28 Apr 05.

c. Many errors occurred in how the LOC punishment was administered.

d. His referral EPR was subjective and did not objectively report his performance accurately since it was negatively influenced by a junior NCO’s dereliction.

e. He never received feedback in accordance with the governing regulation.

f. There were numerous delayed communications from his rater. The rater’s documented unprofessional behavior indicates the rater hindered the mission by having “personality conflicts” with him that affected his training and caused his concern to write a letter to his Congressman to remove him from the “Hostile Work

Environment."

2. Many medical documents indicate he was diagnosed with migraine headaches. He was given trial medications for ADHD; narcotics that caused him to "not feel like himself" along with pain medications for his herniated disc, which resulted in "cruel and unusual punishment" by being ignored by his rater.

3. He provides information from the IG and EEO offices, although due to the time that has passed his case files were not archived, but destroyed after the two-year point.

The applicant's complete submission, with attachments, is at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After a thorough review of the evidence of record and the applicant's submission, we are not persuaded that the contested EPR should be removed, his line number for promotion to master sergeant be reinstated and that he be awarded the AFCM. The documents provided with the applicant's submission do not, in our opinion, support a finding that the evaluators were unable to render unbiased evaluations of the applicant's performance or that the ratings on the contested report were based on factors other than applicant's duty performance during the contested rating period. The applicant asserts he suffered reprisal due to protected communications he made to the IG and EEO office; however, we find

the evidence submitted is insufficient to support the applicant's contentions and further note that multiple levels of review by the IG upheld an initial IG finding that there was insufficient justification to investigate the complaints the applicant alleged. Other than the applicant's own assertions, we see no evidence that his raters abused their discretionary authority, that the ratings were based on inappropriate considerations, or that the report is technically flawed. Based on our finding in regard to the contested EPR, we find no basis to reinstate the applicant's line number to master sergeant. Regarding the applicant's request for award of the AFCM, we are in agreement with recommendation of AFPC/DPSIDR and adopt its rationale for our determination the applicant has not been the victim of error or injustice regarding award of the AFCM. Lastly, the applicant's request for a flag to be flown in his honor is outside the purview of the board.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

5. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). As noted above, the IG determined there was insufficient justification to investigate the applicant's complaints. Based on our own review of the available evidence, we do not find that it supports that the applicant was

the victim of reprisal. Therefore, we find no basis to grant the relief sought by the applicant on the basis of reprisal.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-00720 in Executive Session on 2 Feb 11, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 30 Mar 11, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSID, dated 22 Jul 11.

Exhibit D. Letter, AFPC/DPSIDR, dated 19 Aug 11.

Exhibit E. Letter, AFPC/DPSOE, dated 2 Sep 11.

Exhibit F. Letter, SAF/MRBR, dated 16 Sep 11.

Exhibit G. Letter, Applicant, dated 10 Oct 11, w/atchs.

Panel Chair

ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-00720

COUNSEL: NONE

HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

1. His Enlisted Performance Report (EPR) for the period ending 13 Oct 05 be voided and removed from his records – reconsideration request.

2. His Enlisted Performance Report (EPR) for the period ending 30 Jun 06 be voided and removed from his records – new request.

RESUME OF CASE:

The applicant filed a complaint with the Air Mobility Command Inspector General (AMC/IG) alleging that his promotion was withheld in reprisal for a protected communication and he was rendered a referral Enlisted Performance Report (EPR). The 62 AW/IG concluded there was insufficient justification to conduct an investigation and recommended the applicant's allegations be dismissed. Additionally, both AMC/IGQ and SAF/IGQ

reviewed the report and concurred that the allegations should be dismissed. The applicant also filed a complaint with the Equal Employment Opportunity (EEO) office; however, his case was dismissed.

He filed an appeal through the Evaluation Reports Appeals Board (ERAB); however, the ERAB was not convinced the original report was unjust or wrong and denied his request.

On 2 Feb 11, the Board considered and denied the applicant's request to void his 2005 EPR, reinstate his line number, award him the AFCM, and fly a flag for his service. A complete copy of the Record of Proceedings is attached at Exhibit H (w/atchs, excluding F and G).

By letter, dated 7 Jul 12, the applicant requests reconsideration of his request to have his 2005 EPR removed or voided from his record and provided additional evidence. Additionally, he requests his 2006 EPR be removed or voided from his record. The applicant states that it is the "smoking gun" in his case and it proves that something was not accurate when the Air Force processed his EPR because non-concurrences of EPRs rarely happen.

It happened in his case because he voiced his concerns to the IG office, EEO office, and his Congressman when he asked for assistance.

The applicant's complete submission, with attachments, is at Exhibit I.

THE BOARD CONCLUDES THAT:

1. In an earlier finding, the Board determined there was insufficient evidence to warrant corrective action. After thoroughly reviewing the additional documentation submitted in support of his appeal and the evidence of record, we do not believe the applicant has overcome the rationale expressed in the

previous Board decision. With regard to the applicant's request to remove the 2006 EPR, the applicant has not provided evidence that the contested report is erroneous, unjust or that it does not reflect an accurate depiction of his performance during the rating period in question. Therefore, in view of the above and in the absence of evidence to the contrary, we find no basis upon which to recommend favorable consideration of the applicant's request.

2. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the additional evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board reconsidered AFBCMR Docket Number BC-2011-00720 in Executive Session on 4 Apr 13, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following additional documentary evidence for Docket Number

BC-2011-00720 was considered:

Exhibit H. Record of Proceedings, dated 8 Mar 12, w/atchs.

Exhibit I. Letter, Applicant, dated 7 Jul 12, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-01081

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Officer Performance Report (OPR), rendered for the period 1 Jan 10 through 19 Nov 10, be declared void and removed from his official records.

APPLICANT CONTENDS THAT:

His supervisor unfairly and inaccurately represented his work, professional qualities, etc. in the OPR in question in reprisal for filing an Inspector General (IG) complaint. The OPR is inconsistent with the verbiage in his Development Plan, his Field Grade Officer of the Quarter submission, and prior OPRs, and constitutes an illegal reprisal.

In support of his request, the applicant provides copies of an expanded statement, a letter from his Wing IG concerning his reprisal complaint, his rebuttal letter to the Wing IG, an excerpt from a Development Plan, an award nomination, and the OPR in question.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 21 Jul 10, the applicant informed his supervisor of his desire to go to the Military Equal Opportunity (MEO) to discuss concerns of mistreatment by the supervisor because of the applicant's religious denominational background. The applicant further alleged that his supervisor responded by saying that he was going to remove him from his Senior Protestant Chaplain position and all supervisory responsibilities because he was not impressed with his supervisory abilities or his service as Senior Protestant Chaplain, and make sure he received a bad OPR. The applicant then discussed his concerns with the MEO office, and filed a complaint with his Wing IG against the supervisor alleging reprisal.

On 15 Sep 10, the applicant requested withdrawal of his IG complaint.

On or about 4 Nov 10, his supervisor notified him he was no longer the supervisor of his one subordinate captain.

On 20 Dec 10, he received the contested OPR and, on 22 Dec 10, he asked to reverse his 15 Sep 10 request to withdraw his IG complaint because he was displeased with the OPR he received.

On 13 Jan 11, he filed a new reprisal complaint with the IG against his supervisor, based upon his OPR and his removal as a supervisor.

On 1 Mar 11, the Wing IG informed him that his reprisal case was

being forwarded to HQ AETC/IG. The Wing IG report concluded "This case should be dismissed because there is no evidence of wrongdoing."

In an undated letter, the HQ AETC/IG notified the applicant that they had conducted a reprisal complaint analysis and found no evidence of military reprisal.

On 16 Aug 11, the Department of Defense (DoD) IG notified the Air Force IG (SAF/IGQ) they had reviewed the Air Force Report of Investigation into the allegations of reprisal submitted by the applicant, and agreed the responsible management official did not reprise against him for making a protected communication.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the Air Force office of primary responsibility, which is attached at Exhibit C.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial indicating there is no evidence of an error of injustice. The applicant provides the outcome of his investigation, which did not support a finding of religious discrimination or any violation of Air Force Equal Opportunity (EO) policy. The applicant also filed a separate IG complaint alleging reprisal by the rater for protected communications he made to the aforementioned EO office. The IG investigation found there was no evidence of military reprisal against the applicant on the part of the rater. There were no negative comments by the rating chain on the contested OPR referencing any poor performance by the applicant and the report was not a referral OPR. The applicant has not proven any error or injustice in the form of rater reprisal in the preparation or execution of this report. The report was accomplished in direct accordance with applicable regulations. The applicant has not provided compelling evidence to show the report is unjust or inaccurate as written. Based on a lack of any evidence provided by the applicant of either religious discrimination or military reprisal

by the rater, there is no evidence the rater wrote a biased or unfair report based on those factors.

The complete AFPC/DPSID evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 20 Mar 12 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or an injustice. We took notice of the applicant’s complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility (OPR) and adopt it’s rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice.

4. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). We note the Inspector General investigated these allegations and concluded the applicant was

not the victim of reprisal. Based upon our own independent review, we have determined the applicant has not established the contested OPR was rendered in retaliation for a protected communication. In reaching this determination, we note he has submitted no direct evidence of this reprisal motive, and we believe the contested OPR represents an accurate assessment of the applicant's performance and potential during the matter under review. Therefore, absent evidence to the contrary, we find no basis exists upon which to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-01081 in Executive Session on 26 Jun 2012, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 15 Mar 11, w/atchs.

Exhibit B. Applicant's Master Personnel Records

Exhibit C. Letter, AFPC/DPSID, dated 14 Mar 12.

Exhibit D. Letter, SAF/MRBR, dated 20 Mar 12.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-02507

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His records be corrected to reflect he was retained on active duty for the purposes of Medical Continuation (MEDCON) during the period 17 May 10 through 30 Aug 10.

APPLICANT CONTENDS THAT:

He was unjustly denied Medical Continuation (MEDCON) orders during the period in question. While he was serving an active duty tour of greater than 31 days, he fell and injured his shoulder. The injury (torn labrum) was determined by an Informal Line of Duty determination to be “In the Line of Duty (LOD),” and ultimately required surgery. The surgery was not elective. Based upon the promise of MEDCON orders starting 17 May 10 prior to his 24 May 10 surgery, he voluntarily terminated his active duty orders on 16 May 10. When the MEDCON orders did

not arrive prior to surgery, he attempted to postpone the surgery, but was ordered to have the surgery as scheduled. He did not receive his MEDCON orders until 10 Aug, 11 weeks after the surgery, during which time he was not able to return to his civilian job, and his family went without a paycheck, resulting in a financial hardship.

It normally takes five to six months to fully recover from the type of surgery he had. After six weeks with no income, the flight surgeon authorized him to participate in "light duty" at Dover AFB only (near his home). However, based upon the doctor's note authorizing "light duty," his MEDCON orders were limited to only 38 days. He is aware of another individual who underwent the same surgery and received six months of MEDCON orders.

During his recovery period, he followed the local policies for service members on MEDCON orders, even though he had not received them. He eventually filed a complaint with the Air Force Reserve Command Inspector General (AFRC/IG) against the two medical personnel primarily involved in handling of his LOD determination and MEDCON orders.

In support of his request, the applicant provides an expanded statement and copies of excerpts from his service and civilian medical records, excerpts from AFI 36-3212 and AFRCI 36-3004, and his Point Credit Accounting Summary (PCARS) report.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 4 Feb 09, while on active duty orders, the applicant fell and injured his shoulder. He was treated at the base medical facility, and completed his tour. He completed ensuing tours from 16 Mar 09 to 19 Mar 09, and 15 Jan 10 to 16 May 10.

On 2 Nov 09, an MRI revealed a torn labrum in his shoulder.

On 14 Jan 10, his civilian physician recommended surgery in a letter addressed to the flight surgeon. The surgery was subsequently scheduled for 24 May 10.

On 24 May 10, his civilian physician accomplished his shoulder surgery.

On 24 Jun 10, the applicant filed a complaint with the Air Force Reserve Command Inspector General (AFRC/IG) alleging that medical personnel did not complete his LOD Determination in a timely manner and that he was improperly denied MEDCON orders following his shoulder surgery.

On 30 Jun 10, six weeks after surgery, the Flight Surgeon authorized him "Light Duty" at Dover AFB, near his home.

On 1 Jul 10, an Informal LOD determination found his injury to be "In the Line of Duty."

On 30 Jul 10, the applicant was ordered to active duty for the purpose of MEDCON for 38 days, beginning retroactively on the date of his surgery on 24 May 10.

On 18 Aug 10, the applicant was placed on limited duty with mobility restrictions.

On 27 Sep 10, HQ AFRC/IGQI responded to the applicant, stating in part that "these allegations fall outside the scope of the Inspector General Complaints Resolution Program." However, after conferring with AFRC/SG, AFRC/IGQI acknowledged that his requests for his MEDCON orders were forwarded to AMC/A1RM on 16 Jul 10, and "evidence indicates they were not acted upon."

On 11 Oct 11, the applicant filed a complaint with the AFRC/IG alleging that he was the victim of reprisal by the two primary medical personnel associated with his case.

On 26 Oct 11, AFRC/IG notified the applicant that they had not found evidence of reprisal.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit C.

AIR FORCE EVALUATION:

AFMOA/SGHI recommends denial, indicating there is no evidence of an error or injustice. The applicant was injured on 4 Feb 09 while on Title 10 Active Duty orders. Treatment was received and the applicant returned to duty without further known complications, completing his current tour. The medical provider recommended surgery at that time and the applicant indicated, per provider note, he would "think all this over and talk to military individuals and then get back to us regarding scheduling this electively."

A request for MEDCON orders was submitted on 10 May 10 for surgery scheduled for 24 May 10, and was allocated on 30 Jul 10 with a start date of 24 May 10, the date of the surgery. IAW guidance provided in SAF/AA memo, dated 8 Dec 06, the surgical date is the day the member was rendered unable to perform his duties.

The applicant was denied a MEDCON extension on 30 Jul 10, but was recommended to apply for Incapacitation Pay based on the guidance in DoDD 1241.1, dated 28 Feb 04, Reserve Component Medical Care and Incapacitation Pay for Line of Duty. This guidance defines Military Duties as "The duties of a Service member's office and grade, and not necessarily the specialty or skill qualification held by the member prior to incurring or

aggravating an injury, illness, or disease in the line of duty," and the policy states "The Military Department shall provide pay and allowances to a member who is fit to perform military duties, but experiences a loss of earned income because of an injury, illness, or disease incurred or aggravated in the line of duty."

The complete AFMOA/SGHI evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 10 Jan 12 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends he should have remained on active duty on medical continuation orders until his medical condition was resolved. After a thorough review of the evidence of record and the applicant's complete submission, we believe he has raised sufficient doubt as to whether he should have been released from active duty. In this respect, we note the applicant was

injured in the line of duty (LOD) while on orders for 31 days or more and a request for medical continuation orders was apparently initiated prior to his scheduled release from active duty. However, through no fault of his own, it appears the request was not acted upon and the applicant was released from active duty just days prior to undergoing surgery related to the noted LOD injury. While we note the comments of the Air Force office of primary responsibility (OPR) indicating the applicant's injury did not necessarily render him unfit as his inability to perform the duties of his specialty or skill qualification did not necessarily constitute unfitness, we believe the fact the applicant's injury, which required surgery and a subsequent recovery period, more than likely rendered him unfit during the period requested, regardless of his ability to convince his leadership to allow him to perform a period of active duty (with limitations) during his recovery period. Therefore, we believe it appropriate to resolve any doubt in the applicant's favor and recommend his records be corrected as indicated below.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 17 May 10, he was not released from active duty, but on that date he was continued on active duty for the purpose of medical continuation until 30 August 10.

The following members of the Board considered AFBCMR Docket Number BC-2011-02507 in Executive Session on 15 May 12, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 29 Jul 11, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFMOA/SGHI, dated 9 Jan 12, w/atchs.

Exhibit D. Letter, SAF/MRBR, dated 10 Jan 12.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-02566

COUNSEL: NONE

XXXXXXXXXXXXXXXX HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. The Article 15 imposed on him on 6 October 2010 be set aside and all rights and privileges be restored.

2. His Enlisted Performance Report (EPR) rendered for the period 29 August 2009 through 28 August 2010 be voided and permanently removed from his record. (Administratively corrected)

3. The non-recommendation for promotion to the grade of technical sergeant (E-6) served on him on 16 March 2010 be reversed and removed from his record.

APPLICANT CONTENDS THAT:

The allegations of him having an extra-marital affair and disobeying a lawful no-contact order are false, inaccurate, unsupported, and blasphemous.

In support of his appeal, the applicant provides a personal statement; and, copies of his non-recommendation for promotion memorandum; No-Contact Orders; EPRs; character references; memorandum for record; certificate of recognition; awards and decorations; Performance Feedback Worksheet; notifications of referral EPR; rebuttals to referral EPR; Permanent Record of Performance Report memorandum; Letters of Evaluation; Army Military Police School diploma; and certificates of recognition, achievement and appreciation.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of senior airman (E-4).

On 16 March 2010, the applicant was non-recommended for promotion by his commander for a period of one year for violating a no-

contact order. On 18 October 2010, the applicant received Article 15 punishment for disobeying a lawful order in violation of Article 92, Uniform Code of Military Justice. He received punishment consisting of reduction in grade to senior airman (E-4) and a reprimand.

On 9 November 2010, the applicant was notified by his rater that his EPR rendered for the period 29 August 2009 through 28 August 2010 was referred. However, the applicant's acknowledgment of receipt was dated 27 September 2010 and his rebuttal to the referral EPR was dated 4 October 2010.

On 9 December 2010, the applicant was notified that a "Directed by Commander" EPR for the period 29 August 2010 through 9 December 2010 was referred.

On 22 July 2011, the applicant was notified by AFPC/DPSIDE (Superintendant, Air Force Evaluations) that his referral EPR closing 28 August 2010 was removed by the Evaluations Report Appeal Board (ERAB) as it is in violation of Air Force Instruction 36-2406, paragraph 3.9.5.1. DPSIDE indicates the referral memorandum was referred to the applicant on 9 November 2010. The date of the applicant's rebuttal is recorded as 4 October 2010, a date which is prior to the date of issuance of the referral memorandum, and is thus a procedural violation concerning the preparation of the contested report.

On 15 April 2011, the applicant filed an IG complaint with the 30th Space Wing alleging reprisal by his commander by refusing to sign a Command Directed EPR. On 26 April 2011, after conducting an analysis of the complaint, the 30th Space Wing Inspector General responded to the applicant that he determined there were no violations of any laws, policies, instructions, etc.; therefore, in accordance with Air Force Instruction 90-301, Table 2.9, the applicant's complaint was dismissed.

On 16 May 2011, the applicant filed a Complaint of Wrong under Article 138, UCMJ, to the 30th Mission Support Group (General Court-Martial Convening Authority), that he was wronged by the 30th Security Forces Squadron commander by her discretionary acts, or acts condoned by her, which violated Air Force Instructions, were capricious, an abuse of discretion, and clearly unfair by the selective application of standards. The 14th Air Force Commander responded that after a thorough review of his complaint, she found his commander committed no "wrongs" under Article 138; therefore, his request for redress was denied.

The remaining relevant facts, extracted from the applicant's service records, are contained in the advisory opinions prepared by the Air Force offices of primary responsibility at Exhibits C and D.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. JAJM states that with regard to

the Article 15 action, the applicant has not shown a clear error or injustice. On 6 October 2010, the applicant's commander offered the applicant nonjudicial punishment for failing to obey a lawful order not to have contact with a civilian female, in violation of Article 92, Uniform of Military Justice (UCMJ). After consulting with his assigned military defense counsel, the applicant accepted the Article 15 and waived his right to demand a trial by court-martial. He presented written matters to and personally appeared before the commander who, on 18 October 2010, decided the applicant committed the alleged offense. The resulting punishment consisted of reduction in grade to senior airman (E-4) and a reprimand. The applicant appealed the commander's decision, but that appeal was denied by both the commander and the appellate authority. A legal review of the Article 15 determined it was legally sufficient.

JAJM indicates that in this case, the applicant protests that he did not have an extra-marital affair with the spouse of another active duty member. He details how he cannot have committed the offense of adultery, a violation of Article 134, UCMJ. He also discusses the allegation that his on- and off-duty behavior does not adhere to established standards. However, what the applicant does not discuss is the single offense with which he was charged in the Article 15 action. The Article 15 charge did not allege the applicant had committed adultery or even discussed whether his on- or off-duty behavior met established standards. The allegation on the Article 15 was that: 1) on 17 September 2010, his commander issued the applicant a lawful order not to have contact with a certain civilian female; 2) the applicant had knowledge of that order; 3) the applicant had a duty to obey the order; 4) the applicant failed to obey the order by meeting with the civilian female between on or about 18 September 2010 and on or about 29 September 2010. The applicant's response to the specific allegation of failing to adhere to a lawful no-contact order does not address in any way the issue of whether he actually met the civilian female during the charged timeframe, nor does he provide any evidence to support his contention that he did not violate the specific lawful order which was mentioned in the Article 15 action.

It is JAJM opinion that there is no error or injustice in the Article 15 action such that a set-aside would be in the best interests of the Air Force.

The complete AFLOA/JAJM evaluation is at Exhibit C.

AFPC/DPSOE recommends denial of the applicant's request to remove the promotion non-recommendation. DPSOE states the applicant was considered and tentatively selected for promotion to the grade of technical sergeant during cycle 09E6. He received Promotion Sequence Number (PSN) 6569.0 which would have incremented on 1 June 2010; however, on 6 March 2010, his commander non-recommended him for promotion. On 18 October 2010, the applicant received an Article 15 for disobeying a lawful no-contact order. His punishment consisted of a reduction in grade to senior airman with a new date of rank of 18 October 2010, and a reprimand. He also received referral EPRs for the period 29 August 2009 thru 28 August 2010, and 29 August 2010 thru 9 December 2010. The ERAB approved removal of the 28 August 2010 report.

DPSOE indicates the applicant's commander was in the best position to evaluate the applicant's potential and eligibility for promotion; and acted within his authority when he decided to non-recommend the applicant for promotion to technical sergeant.

The complete AFPC/DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Upon review of the advisory opinions related to his request, he finds some inaccuracies and misunderstandings of the interpretation of his complaints and the information he has provided.

In regard to the DPSOE evaluation, he states that paragraph 4 of the nonrecommendation memorandum fails to comply with AFI 36-2502 by providing vague details of the reason for the demotion, and referring to alleged evidence, which he outlined in his submission to be falsified and corrupt. The applicant also indicates that as much as the actions taken against him are technically within the authority of the commander, he disagrees that a commander is in the best position to evaluate the potential and eligibility for promotion of an enlisted member.

In regard to the JAJM evaluation, he believes their initial recommendation is based on an inaccurate analysis of the information provided. In response to the statement that his appeal was denied by his commander and the appellate authority, he contributes this to a broken and unjust legal system as it is currently operated. The applicant provided his point by point rebuttal to each paragraph in the "Discussion" section of the advisory. In regards to the recommendation made to deny his request, he does not feel the recommendation or advisory opinion of the reviewer is a direct reflection of the correct paperwork associated with the matters for which he provided review. He believes that a more thorough review of the correct arguments and

matters pertaining directly to the area he chose to access "would result in a different opinion if the opinion was in response to the correct documentation for the matters reviewed by this section."

In response to the advisory provided by AFPC/DPSIDE on the removal of the contested performance evaluation, he states that though the matters associated with the decision reached were not directly related to the material provided in his request, they are still factors which he pointed out to his commander in a formal request for redress, which she chose to disregard. He is happy with the outcome of this portion of his request.

The applicant's complete rebuttal is at Exhibit F.

THE BOARD DETERMINES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to

demonstrate the existence of error or injustice. After reviewing the complete evidence of record and circumstances of this case, we are not persuaded that the commander's action nonrecommending the applicant for promotion was in error or constituted an injustice. The applicant argues that the commander's action did not comply with the governing instruction, AFI 36-2502. However based on our review of AFI 36-2502 and the nonrecommendation letter, we believe the letter meets the intent of the instruction. While the applicant may or may not have had an extra-marital affair, we believe his violation of the no contact order was sufficient for the action. In that regard, the letter specifically lists this as a reason and gives specific dates of occurrences. Although the applicant expresses the view the commander was not in the best position to determine if he should be promoted, we note this is an inherent responsibility of the commander's position and we are not persuaded by the evidence submitted that the commander's action was arbitrary or capricious or outside her discretionary authority. The applicant also requested this board remove the referral EPR rendered on him for the period 29 August 2009 through 28 August 2010. However, due to technical deficiencies, this report has been removed by the ERAB. As such, no action is required on this issue. Finally, the applicant requests the Article 15 imposed on him be set aside stating the action was only found legally sufficient because of a broken and unjust legal system. Notwithstanding the applicant's view, we find insufficient evidence that the applicant was denied any rights entitled to under the Article 15 process, to include

his right to demand trial by court martial which would have required a different legal standard for his conviction. By accepting the Article 15 forum, the applicant entrusted to his commander the responsibility to decide if he had committed the alleged offenses. We do not find the commander abused her discretionary authority or that her action was arbitrary or capricious. We considered the extenuating circumstances the applicant raised regarding his pending divorce and the dire financial straits in which he found himself. We also note his exceptional record of performance. Nevertheless, we do not find the commander's actions holding him accountable for his misconduct to be unreasonable. We note the applicant filed a formal complaint with the IG and also a complaint under Article 138, UCMJ, against his commander. No acts of wrong doing by his commander were substantiated in either case. Therefore, although we find the circumstances of this case regrettable, we do not find a basis to recommend granting the relief sought and must recommend that all requests, with the exception of the administrative removal of the EPR, be denied.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved.

Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered Docket Number BC-2011-02566 in Executive Session on 12 October 2011, under the provisions of AFI 36-2603:

XXXXXXXXXXXXXXXXXXX, Panel Chair

XXXXXXXXXXXXXXXXXXX, Member

XXXXXXXXXXXXXXXXXXX, Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2011-02566:

Exhibit A. DD Form 149, dated 27 Jun 11, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFLOA/JAJM, dated 15 Aug 11.

Exhibit D. Letter, AFPC/DPSOE, dated 18 Aug 11.

Exhibit E. Letter, SAF/MRBR, dated 2 Sep 11.

Exhibit F. Letter, Applicant, dated 20 Sep 11.

XXXXXXXXXXXXXXXXXX

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-02768

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His 2007-2008 non-selections to the grade of master sergeant (MSgt/E-7) be set aside and he be reconsidered for promotion or retroactively promoted in a Federal Reserve capacity.

2. He be granted retired back pay and allowances.

APPLICANT CONTENDS THAT:

His former Air National Guard (ANG) unit commander reprised against him by non-recommending him for promotion. After being successful in reenlisting in the United States Air Force Reserve (USAFR), he subsequently transferred back to his former unit with sufficient retainability for promotion; however, he was still not recommended for promotion.

He reenlisted in the USAFR for three years (as a Category-E Individual Mobilization Augmentee (IMA) drilling for points only), and even though he was assigned to the USAFR at Warner-Robins, he was attached to his former ANG unit; successfully retrained into the aeromedical specialist career field, and was eligible for promotion to MSgt under normal promotion consideration and the Deserving Airman Promotion Program (DAPP).

He completed several tours of active duty in support of Operation NOBEL EAGLE and should have been promoted.

In support of his appeal, the applicant provides a brief from counsel; copies of DD Forms 214, Certificate of Release or Discharge from Active Duty, issued in conjunction with his separation from active duty on 10 Oct 02, 4 Jun 03, 10 Mar 05, 30 Sep 07, 16 Mar 08, and 18 Jul 08 respectively and other supporting documents.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

Based on information from the applicant's submission, he completed the following tours of active duty:

03 Jun 02 – 10 Oct 02

03 Mar 03 – 04 Jun 03

01 Nov 04 – 10 Mar 05

23 Apr 07 – 30 Sep 07

06 Nov 07 – 16 Mar 08

17 Mar 08 – 18 Jul 08

The applicant was mandatorily relieved as a member of the Air National Guard and Reserve of the Air Force, on 22 Jul 08, and placed on the USAF Retired List, at age 60, in the grade of technical sergeant. He was credited with 25 years, 3 months, and 6 days of service for basic pay, including 25 years and 10 days of service for retirement.

THE AIR FORCE EVALUATION:

NGB/A1PS concurs with the Subject Matter Expert's (SME) opinion and recommends denial of relief stating they did not find the evidence substantiated an error.

They provide the following analysis of the case:

1) In 2004, the applicant was promoted to technical sergeant under the Deserving Airman Promotion Program (DAPP). This program is one of many tools squadron commanders could employ to effectively manage the force structure and composition of their units. One of the provisions of the DAPP is that it allows a commander to promote someone they deem worthy of promotion while still occupying a position in a lower grade, on a temporary basis. As highlighted in his application, the unit commander counseled him on his options with regard to his future service in the Air Force. Since he would be retirement eligible at the end of the period of enlistment that coincided with his promotion, the commander informed him, if he wanted to remain in the Air Force, he would have to find another unit with which to serve because he did not intend to retain him beyond his Expiration Term of Service (ETS).

2) The applicant actively sought and obtained a position with the Air Force Reserve prior to his ETS in

2005. He was subsequently attached to his former Guard unit in 2007 for the purposes of gaining credit for satisfactory service. During this period, he requested the opportunity to be considered for promotion but was not recommended by his commander. The commander's reasons for not recommending him were she believed he did not have enough "effective leadership or management skills" and had no "proven ability to develop subordinate personnel." In accordance with the governing directive, The Enlisted Force Structure, "MSgts are transitioning from being technical

experts and first line supervisors to leaders of operational competence skilled at merging subordinates' talents, skills, and resources with other teams' functions to most effectively accomplish the mission. This rank carries significantly increased responsibilities and requires a broad technical and managerial perspective." It was her opinion that he did not display these qualities. However, since he was a member of the USAFR, the unit commander of the unit he was assigned to could have gone against her recommendation and promoted him.

Since it is neither their desire nor function to second-guess a unit commander and the applicant did not provide any evidence of the reprisal he alleges, they found no injustice and do not recommend relief be granted.

The complete NGB/A1PS evaluation is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

In regard to his contention that he was reprised against, he notes:

1) In 2007, he transferred back to his ANG unit and was no longer attached to the USAFR. His deployments in 2007 and 2008, originated with his ANG unit. Accordingly, his temporary duty (TDY) commanders were without authority to promote him.

2) His unit commander took him back on the basis that he would deploy and not be at the unit. He was advised that a MSgt unit vacancy position was unfilled. However, even though he was being deployed in positions (security forces) that were not one of his Air Force specialties, he was not recommended for promotion based on his lack of demonstrated leadership and management skills "needed…[for] mission requirements" within the squadron. Consequently, none of his deployed duties were promotion-qualifying.

In his initial request, he points out that according to Air Force instructions, ANG commanders are charged with minimum standards of due care to make "every effort to reassign qualified overage members to vacant positions…make every effort to fill vacant positions with qualified…personnel in the grade authorized." The injustice is plain, his commander could not fairly complain that he failed to show leadership at the 7-skill level in his specialty, that the unit "needed," and withheld promotion qualifying opportunities.

The complete response from counsel, with attachments, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice in regard to the applicant's claim of reprisal and opportunity for promotion to MSgt. We note the applicant alleges whistleblower retaliation

in violation of Title 10 USC 1034 from his superiors. However, based upon our own independent review of the available evidence, the applicant has not established the nonrecommendation for promotion by his superiors was an act of reprisal. The available evidence of record and the applicant's own statements reflect the reasons the commander nonrecommended him for promotion to the grade of MSgt and we did not find the documentation provided sufficient to determine his claim of reprisal. We further note there is no evidence the applicant filed a complaint of reprisal with the IG nor did we find the applicant made a protected communication prior to the nonrecommendation for promotion. As noted by the applicant and counsel the TDY commanders were without authority to promote him. However, since he was a member of the Air Force Reserve, the squadron commander of the unit he was assigned to (not the TDY commander) could have recommended him for promotion. Additionally, we find no basis to overturn their decisions in this matter or to direct further investigation. We note that given the presumption of regularity in the operation of governmental affairs and in the absence of corroborative documentary evidence establishing impropriety, it is presumed that officers of the government, like other public officials, discharge their duties correctly, lawfully, and in good faith. The applicant has not provided sufficient evidence to overcome this presumption. We further note in his declaration statement and response that the applicant believes he was not given sufficient credit for retirement and believes the record does not reflect his 25 years of satisfactory service. However, his retirement order reflects he was credited with over 25 years of service under Title 10 USC 12732 for basic pay. For a complete evaluation of the applicant's retired pay, we recommend he contact the Air Reserve Personnel Center or the Defense Accounting and Finance Services. In view of the above and in the absence of evidence to the contrary, we find no basis upon which to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-02768 in Executive Session on 1 May 2012, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 2 Aug 11, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, NGB/A1PS, dated 4 Oct 11, w/atch.

Exhibit D. Letter, SAF/MRBR, dated 28 Oct 11.

Exhibit E. Letter, Counsel, dated 28 Nov 11, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-03079

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be compensated for his personally procured move (PPM) as briefed to him by the Hickam Traffic Management Office (TMO), or in the alternative cover the actual cost of the PPM.

APPLICANT CONTENDS THAT:

1. The TMO incorrectly used “low cost” rates to counsel him on his PPM application rather than the newly implemented “best value” rates. As such, the counselor incorrectly estimated the amount of compensation he would receive for a Do-it-Yourself (DITY) move.

2. He would not have agreed to a PPM that would have provided no incentive and resulted in excess costs.

3. The decision to accomplish a PPM was based on the TMO’s briefed rates of $174.38, which would have resulted in a cost of $13,950.40 and an incentive of $8,370.24. Instead, the change to “best value” rates resulted in a government computed rate of

$96.24 with a total cost of $13,407.64. Had he been compensated at the originally agreed upon rate, he would have been able to cover the actual cost of the move and make a small profit of $1,501.85.

4. He was only compensated $8,370.24, which did not cover the total move cost of $13,407.64. Therefore, he incurred a substantial debt of $5,037.40, due to the mistake.

5. Should the Board decide only to compensate him for the actual move cost, then he requests the Board add an additional monthly interest rate of 8.25 percent (the amount his credit card company is charging him) beginning June 2010 to 3 March 2011 (the date his initial AFBCMR request was closed based on a Waiver/Remission of Indebtedness Application that was filed).

In support of his request, the applicant provides a letter from the Commander, and other forms associated with his move.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of technical sergeant.

On 4 June 2010, pursuant to a permanent change of station (PCS) move from Hickam AFB, HI to Shaw AFB, SC, the applicant was counseled on PPMs. The applicant completed a DD Form 2278, Application for Do-it-Yourself Move and Counseling Checklist,

and was quoted an estimated incentive payment of $13,950.40 to personally procure his move. Based on that amount, the applicant was given an advance payment of $8,370.24.

The applicant personally arranged to have his HHG transported at a cost of $13,407.64. Under the Defense Personal Property System (DPS), the total incentive payment authorized was $8,228.52. Since the applicant received an advanced allowance of $8,370.24, he owed the government $141.72.

The applicant applied for a remission of the debt, and it was approved by the Air Force.

Effective 1 Apr 10, change 283, to the Joint Federal Travel Regulation (JFTR), required that Government Constructed Cost (GCC) used to determine the incentive payments in PPMs be based on “best value” charges, versus the “low cost” charges.

AIR FORCE EVALUATION:

PPA HQ/ECAF recommends denial. The JFTR requires a member’s incentive be based upon 95 percent of the GCC, and at the time the applicant’s shipment was processed, the GCC was based upon the “best value” rates reflected in DPS.

ECAF recommends the applicant be reimbursed for any funds personally expended in excess of the authorized GCC.

Documentation in the case file indicates the applicant paid a total of $13,407.64 for the shipment of his household goods (HHGs). He received a total of $8,370.24 for the PPM, resulting in an out of pocket expense of $5,037.40.

The complete ECAF evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 10 Nov 11 for review and comment within 30 days (Exhibit D). As of this date, this office has not received a response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an error or an injustice. Although it does appear the applicant was miscounseled regarding the amount of reimbursement he could expect to receive for a PPM, we are not inclined to grant him full relief. However, we do believe partial relief is warranted in this case, and recommend the applicant be reimbursed for his actual expenses incurred. We note the applicant received partial relief through the remission process; however as PPA HQ/ECAF pointed out there still is a net loss of $5,037.40. ECAF is recommending the applicant’s alternative request be approved and he be reimbursed for his out of pocket expenses totaling $5,037.40, and we agree and believe this constitutes proper and fitting relief. We also note the applicant requests the Board add an additional monthly interest rate of 8.25 percent, to cover the amount his credit card company charged him during the period June 2010 to 3 March

2011. However, the Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. §1034 or §1552. Therefore, we accept the opinion and recommendation of ECAF and adopt its rationale as the basis for our recommendation to correct the applicant's records as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that under competent authority, government procured transportation was not available and in accordance with Joint Federal Travel Regulation (JFTR), Volume 1, paragraph U5320-D.1, he is authorized reimbursement for actual expenses incurred. The expenses incurred were $13,407.64; the advance operating allowance received was $8,370.24; resulting in an out of pocket expense of $5,037.40 due the member.

The following members of the Board considered AFBCMR Docket Number BC-2011-03079 in Executive Session on 13 March 2012, under the provisions of AFI 36-2603:

Vice Chair

Member

Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 9 August 2011, w/atchs

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. PPA HQ/ECAF, Letter, dated 20 October 2011.

Exhibit D. SAF/MRBR, Letter, dated 10 November 2011.

Vice Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-03217

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His demotion from chief master sergeant (E-9) to senior master sergeant (E-8) be vacated.

2. His date of rank (DOR) be restored to his original DOR.

3. He be returned to his former position as Force Support Squadron (FSS) Superintendent.

3. He receive all back pay and allowances.

4. He receive 27 days of annual leave.

APPLICANT CONTENDS THAT:

1. He testified against his wing commander in an Inspector General (IG) investigation and believes he was reprised against when his commander demoted him for having an unprofessional relationship. The investigation found the wing commander guilty of three violations of the Air National Guard demotion regulation and three further violations of unlawful command influence. In addition to his removal, the MSG/CC and SF/CC, who testified against the commander, were also removed.

2. The original non-judicial punishment (NJP) notification served by the wing commander violated his due process rights when he was pulled back and re-served the NJP based on information directly relating to the Commander-Directed Investigation (CDI). Neither he nor his attorney was allowed to see the CDI results.

3. The NJP notification also contained procedural errors to include charging him under an Air Force Instruction, but demoting him under the authority of a Department of Military and Naval Affairs (DMNA) regulation and New York State Military Law (NYSML).

4. He was not allowed to turn-in a response for the wing commander to reconsider with regard to the NJP. Further, the severity of the NJP action is inequitable and unjust when

compared to others who were accused of the same unprofessional relationships. His record of performance and conduct was never considered. AFI 36-2909, Professional and Unprofessional Relationships" clearly states that, "…the use of a stepped approach to enforcement of the policy, taking into consideration all the surrounding facts and circumstances…" and "…experience has shown that counseling is often an effective first step in curtailing unprofessional relationships…". The commander ignored the regulations specific guidance and chose to punish him for testifying against the wing commander. Documentation he was provided in response to a Freedom of Information Act (FOIA) requests shows that no one in the past 10 years has been investigated, demoted, removed or punished under the same conditions and accusations that he was in New York State.

5. The embarrassment and humiliation he endured by being removed from his office, having his access removed from e-mail and all

systems, was an injustice. He was physically placed in a back room of the Civil Engineering Squadron (CES) and made to constantly defend himself. He had to fight against almost every personnel action to include being removed from the Air Guard and Reserve (AGR) program, reenlistment denial, denial of a Line of Duty (LOD) determination and several attempts to serve him with a referral Enlisted Performance Report (EPR). The harassment, humiliation, and the fear of losing his job, caused him major medical issues.

6. The commander tried to use his medical issues to remove him from the AGR program, but failed. His wife was also harassed at her job and at home with anonymous letters and “leaked” copies of the wing commander’s CDI. It was recommended this harassment be investigated; however, the wing commander decided not to take any action.

7. He was illegally detailed out of his position for more than 180 days, which is a violation of the governing Air National Guard instructions.

8. The commander had a history of undue command influence dating back to 2006, as shown in a previous BCMR Case (BC-2006-02700).

9. He was never read his rights, and his testimony was not recorded and transcribed as required, but rather “summarized” by the Investigation Officer (IO). The IO was also a member of the wing staff under the direct supervision of the wing commander and subsequently was given a full-time position during his investigation.

10. On 28 May 09, the wing commander called him into the wing conference room along with his former executive officer and the wing vice commander. In this meeting, the wing vice commander referred to him multiple times as “Sergeant R” not “Chief” and told him he already had the CDI and that the The Adjunctant General (TAG) would decide his fate. However, the legal review

of the CDI is dated 12 Jun. As such, the fact the commander already had a copy of the CDI violated his right to due process.

11. His command chief, supervisor, commander, and MSG/CC had already talked to him about the relationship in question; however, when the wing commander took control of his case, they were not allowed to participate in decisions regarding his NJP or were influenced by the wing commander and feared reprisal.

12. His attorney was unable to properly defend him because he was not granted access to the required information or even permitted to meet him face-to-face at any time during the process. His unit and the Headquarters, New York Air National Guard never responded to concerns regarding undue command influence, the CDI, and the harassment his wife experienced.

13. An e-mail communication from his previous MSG/CC states, “At the time of these allegations, the Wing/CC had removed my NJP authority and the NJP authority of all of my Mission Support commanders.” The email further states that, “At the time of these allegations, if I had NJP authority and the allegations were founded I would have taken into consideration your 24+ years of exemplary service. I would have ordered you to go for counseling and I would have considered a lesser punishment, i.e. reassignment and a letter of reprimand.”

14. On 8 Oct 09, the NY TAG denied the “AGR Removal for Cause” action stating in paragraph 4 that “The notice of recommendation for removal clearly states the recommendation is based on “careful review of the Commander Directed Investigation (CD)…” and “my recommendation is based on the evidence of this as provided in the CDI and the legal review…” However, the unit denied him the due process provided for in the ANGI 36-101” since he and his council were repeatedly denied access to the CDI. He was also told the referral EPR was being withdrawn.

15. On 9 Oct 09, the unit notified him of the “Intent to Terminate AGR Status and Employment.” No clearer case can be made that the base was willing to do whatever they could to get rid of him.

16. On 11 Dec 09, the LOD investigating officer (IO) submitted his report, of note is that he only spoke with him and one other person; however, the statement of the other 2 “witnesses” were actually statements taken from the CDI. His entire case is based on the CDI to which he was denied access. While the LOD IO’s recommendation was “not in the line of duty,” on 6 May 10, NGB

ruled that it was “In the Line of Duty.”

17. He was improperly extended for a period of 6 months and the reason given was for “pending LOD w/out determination from HQ-NY IAW ANGI 36-2002, T4.2, R9.” The rule has to do with airmen who are under investigation or awaiting trial. However, the document has since been removed from his records. Further, since his AGR

order was not completed until 5 days prior to his end-of-tour, he fell out of the pay system, causing him to not receive any pay.

18. He was not informed of the TAG’s decision until 35 days after the decision on his appeal had been made.

In support of his request, the applicant provides excerpts from his master personnel file, to include but not limited to, copies of his EPRs and award citation, NJP documentation, copies of letters of support, a redacted excerpt of the CDI, an excerpt of AFI 36-2909, e-mail communications, a copy of Record of Proceedings (ROP) pertaining to BC-2006-02700, excerpts of AFI 36-2909, Professional and Unprofessional Relationships, a personal statement, and a memorandum from his attorney.

The applicant’s complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is serving in the AGR program with the NYANG. The applicant’s commander initiated a Commander-Directed Investigated (CDI), which substantiated allegations the applicant had an unprofessional relationship. Specifically, the CDI, dated 27 Apr 09, found that between on or about Oct 08 through Mar 09, he disobeyed AFI 36-2909, a Lawful General Order or Regulation, by engaging in an inappropriate and unprofessional relationship with a female airmen married to a direct subordinate.

On 2 Jul 09, the applicant was notified of his commander's intention to recommend nonjudicial punishment (Article 15) for having an unprofessional relationship in violation of AFI 36-29, Professional and Unprofessional Relationship, and in further violation of New York State military law Section 130.88, Failure to Obey an Order or Regulation, and Section 130.115, General Section. On 2 Aug 09, the applicant acknowledged receipt of the notification of intent. The applicant and his attorney prepared rebuttal statements regarding the facts and circumstances surrounding the allegations. The rebuttal was provided to the NYANG commander who reviewed the matter; however, after due deliberation he elected to impose punishment.

The applicant was diagnosed with an anxiety disorder that was established when the CDI convened to investigate allegations that he was involved in an unprofessional relationship. An LOD was conducted and the LOD IO determined the applicant was "present for duty" but the injury was proximately caused by his own misconduct and accordingly "Not in the Line of Duty, Due to Own Misconduct." The legal review determined the LOD was legally sufficient, properly conducted in accordance with the governing instructions, and the stress and anxiety that he was suffering, was brought on by his own willful misconduct.

The commander determined the member's misconduct warranted NJP action and AGR removal. The first attempt to impose NJP was withdrawn; however, the second NJP action was imposed by HQ NYANG. The charge was for engaging in an "Unprofessional Relationship." The charge was sustained and the member was reduced in grade from chief master to senior master sergeant. The applicant's request to set aside the reduction was denied. For unknown reasons, the TAG withdrew the AGR removal actionn.

On 12 Jun 09, the NYANG/JA Liaison Officer reviewed the CDI and concluded it was legally sufficient and was supported by the evidence.

On 16 Jun 09, the 106th RQW/CC reviewed the CDI and subsequent legal review. The commander concurred with the findings and conclusions of the IO and reduced the applicant from the permanent grade of chief master sergeant (E-9) to the permanent grade of senior master sergeant (E-8), effective and with the date of rank of 4 Oct 09.

On 17 Dec 09, TAG approved the applicant's appeal for reconsideration to renew his continuation in the AGR program.

In a HQ NYANG/SJA letter, the Inspector General (IG) initiated an investigation against the 106 RQW/CC to include the Introduction, Background, Allegations, and Tab C: Findings, Analysis, and Conclusions, which found the following:.

a. Allegation #1: On or about 8 Feb 09 the 106 RQW/CC improperly ordered the demotion of SMSgt M in violation of ANGI 36-2503, Section 2.1. Findings: SUBSTANTIATED.

b. Allegation #2: The 106 RQW/CC improperly directed and allowed the use of voluntary reduction in grade of in place of NJP in violation of ANGI 36-2503, Section A 1.1, for one senior master sergeant and two master sergeants. Findings: SUBSTANTIATED for one senior master sergeant and one master sergeant; it was found UNSUBSTANTIATED for one master sergeant.

c. Allegation #3: The 106 RQW/CC used unlawful command influence to the detriment of good order and discipline by directing subordinate commanders to execute corrective actions in a certain manner as prescribed by him in violation of NYSML general article 130.115 by issuing two Letters of Reprimand (LORs) and an e-mail communication to another colonel regarding a master sergeant. Findings: SUBSTANTIATED.

AIR FORCE EVALUATION:

HQ NYANG/SJA recommends denial, and states in part, the CDI sustained findings which articulated the applicant was involved in an illicit affair with a very young and junior enlisted woman whose husband was under his supervision. The wing commander

initiated NJP action against both the applicant and the junior enlisted member; they were both served with AGR and technician removal actions. NYANG was not consulted on any of the actions contemplated by the wing commander; however upon review of the matters, it was determined that the first NJP documents prepared were legally insufficient. Consequently, the NJP charges were withdrawn and re-drafted. Although the wing commander served the NJP, the actions were actually that of the NYANG commander.

The timeline for the CDIs are out of sync. The CDI initiated by the commander regarding the unprofessional relationship was concluded before the CDI had been initiated against the applicant's commanders. Further, the applicant offers little credible evidence to support his assertion that his commander somehow knew or was aware of the fact that the applicant testified against him. The applicant contends that he was subjected to errors, injustices and inequities, but fails to submit documentary evidence to support his assertions. Once NYANG asserted itself in the matters at the 106 RQW, the original NJP charges were withdrawn and re-drafted. Further, the NYANG commander initiated the action and imposed punishment. The applicant also contends the punishment imposed was not warranted based on prior cases under similar accusations and conditions. While there may not be many cases similar in nature, there have been other senior NCOs in NYANG who have lost or had a strip suspended for less egregious misconduct. The applicant's attorney received relevant details with regard to the CDI which provided the basis for proving the charges alleged.

The applicant also fails to mention that the NYANG elected not to charge him with adultery, to avoid further pain and humiliation. In addition, NYANG reviewed the contemplated action to remove him from his AGR position; however, they withdrew that matter. With regard to the applicant's LOD, the wing commander determined that the applicant's subsequent LOD for stress-related illness, due to the various stressors in his life was not sustained by NYANG. NYANG respectfully disagreed with that determination and found that the applicant was present for duty and that his illness/injury contemplated was in the LOD. NGB/JA concurred. An error or injustice did not occur and does not warrant correcting his records. The NJP action was found to be legally sufficient. The applicant's procedural and due process rights were adequately protected. The punishment imposed was fair and reasonable, given the nature of the offense and the lack of remorse exhibited by the applicant.

The complete HQ NYANG/SJA evaluation is at Exhibit C.

NGB/HRT recommends denial. The applicant provides no justification to substantiate his contention that he was

subjected to NJP as retaliation for testifying against his wing commander in an IG investigation or that he was unjustly punished and not treated the same as other members in the wing, who committed the same offense. The applicant has not proved that his NJP was a result of the IG testimony, nor did he prove that he was treated more severely than others. Proper procedures were followed, as a matter of fact; the junior enlisted member he had the illicit affair with also was demoted and will most likely not be retained in her full time position.

Furthermore, the NJP action taken by the NYANG commander and served by the wing commander was legally sufficient and the TAG upheld the action upon appeal. Therefore, it does not appear to be any error or injustice that warrants corrective action.

The complete NGB/HRT evaluation is at Exhibit D.

NGB/A1PS recommends denial. A1PS concurs with the NGB Subject Matter Expert advisor.

The complete NGB/A1PS evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a six-page brief, the applicant makes the following key contentions:

a. His greatest concern is that the ANG and their respondents fail to address specific inequities, improprieties and evidence in this case such as IG findings, MEO testimonies,

and statements from both JAGs involved, official memorandums and FOIA responses. The ANG and the advisory do not provide any data other than their "opinion" to refute any of the evidence presented and substantiated and in many cases they do not even reference the actual evidence in support of their position or even acknowledge its existence.

b. He is not sure why the ANG "SME" who reviewed his application is someone that he has known and worked with for several years while he was assigned to the NGB. The NGB/HRT advisory writer may have a personal bias toward him. From his estimation HRT did a poor job of providing an SME review and justification for the ANG recommendation in his case. In his package, he provides specific information that shows he demonstrates his mistreatment as much as possible; to include the FOIA requests, formal investigations, etc. Specifically, he provides further detailed information that reiterates his original contentions and points-out how the HRT advisory fails to check the facts.

c. In responding to the ANG/SJA advisory, he contends that several statements made by the SJA are either false or misleading

and he will attempt to highlight them using only the evidence provided in his original package.

1) The advisory attempts to get around the fact that he and his attorney were never provided a copy of the CDI by saying things like "His counsel was provided relevant details of the CDI…" or in other words his attorney was provided only what they wanted them to see and not the entire file. It also fails to mention that the attempt to remove him from his AGR tour was denied by the TAG specifically for failing to turn over the CDI. The most disappointing and puzzling piece to him is that the advisory fails to address any of the concerns submitted about the CDI by him or his attorney. He lists five specific areas that were not provided by the advisory writer, which were provided in the original package.

2) The contention that "Although Col C served the re-drafted NJP charges, the actions were in fact initiated on behalf of the NYANG Commander…" is completely without merit and by making that statement SJA does not fully understand the JNP process or is attempting to confuse the issue.

d. SJA also states that he was able to consult "detailed military council" and does not make any mention of the fact that his JAG, who is a respected New York City attorney at law and still a JAG with the NYANG, makes a statement that he was not able to defend him properly.

e. The SJA advisory states that he testified in a CDI against the wing commander when, in fact, he testified in an IG investigation. Page 15 on the investigation listed above the second bullet shows that a CMSgt (name redacted) made an appointment with the colonel (name redacted) and CCM and "explained his concerns…and read to him para 1.1, 1.3, and 3.7 of ANGI 36-2503." He was the CMSgt that made the appointment, and his name is redacted, who as the personnel superintendent briefed the wing commander on the regulations. Although he cannot prove the wing commander was aware that he had testified, keeping in mind his position at the time, the conversations he had with him and knowing the commander's background of undue command influence, it is reasonable to assume he was completely aware of his involvement and in-turn, in his estimation, he decided to retaliate against him.

Finally, he is not sure how to respond to the SJA comment concerning HQ NYANG "electing" not to charge him with adultery or his "lack of remorse." He is disappointed that SJA would provide such a misleading or false statement and to suggest SJA knows what is in his heart or how he feels having never met him or spoken to him is shocking to say the least. He has been geographically separated from his family for over 2 years and placed away from his unit. He has been maintaining two

households in essence paying his own way to be at the NGB in DC since Jan 11. He believes that he has proven himself.

The applicant's complete submission is at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After thoroughly reviewing all the evidence provided, we are not persuaded that his demotion from chief master sergeant to senior master sergeant be vacated, his DOR be restored, he be returned to his former position and he receive back pay and allowances with 27 days of annual leave. Evidence has not been presented which would lead us to believe that the imposition of the Article 15 on the applicant was improper or disproportionate. By accepting the Article 15 forum, the applicant entrusted to his commander the responsibility to decide if he had committed the alleged offense. We find insufficient evidence that the applicant was denied any right entitled to under the Article 15 process, to include, his right to demand trial by court martial which would have required a different legal standard for his conviction. . In cases of this nature, the Board is not inclined to disturb the decisions of commanding officers absent a showing of abuse of that authority. Although the applicant argues that he was reprised against for testifying against his commander during the commander's investigation for unlawful command influence, we agree with NYANG/SJA's position that the NJP action was supported by legal sufficient evidence. Additionally, we find the commander's actions holding the applicant accountable for his misconduct to be reasonable. The applicant was entrusted in a position of leadership, his conduct was clearly inappropriate and disruptive to the health, welfare, morale of the unit, and was prejudicial to good order and discipline. Although we find the circumstances of this case regrettable, we do not find a basis to recommend granting the relief sought and must recommend that all requests be denied. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-03217 in Executive Session on 5 Apr 12 and 14 May 12, under the provisions of AFI 36-2603:

, Chair

, Member

, Member

The following documentary evidence for was considered:

Exhibit A. DD Form 149, dated 31 Jul 10, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, HQ NYANG/SJA, dated 28 Dec 11.

Exhibit D. Letter, NG B/HRT, dated 13 Jan 12.

Exhibit E. Letter, NGB/A1PS, 17 Jan 12.

Exhibit F. Letter, SAF/MRBR, dated 19 Jan 12.

Exhibit G. Letter, Applicant, dated 9 Feb 12.

Chair

ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-04023

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. He be reinstated to duty as commander of his former Air Force Reserve Squadron without prejudice or a documented break-in-service. He also requests the following:

a. Any records pertaining to his transfer to an "overage status" be deleted from all Air Force systems of records.

b. He be granted a transfer at his request to another suitable position within the Air Force Reserve.

c. He be given a proper transfer of command, including a change-of-command ceremony.

d. He receive a suitable "end-of-tour" award for meritorious service for presentation at the time of his transfer,

commensurate with his rank, and appropriate for his more than three years of successful performance as a squadron commander.

2. He be reconsidered for promotion to the grade of lieutenant colonel (Lt Col) USAFR for the 13-17 June 2011 Line of the Air Force Reserve Lieutenant Colonel mandatory promotion board (VO511B) and, if selected, his promotion be backdated, accordingly. As part of this request, he requests the following:

a. The AF Form 709, Promotion Recommendation Form (PRF), prepared for the VO511B board be removed from his record and, if a new PRF is required, be accomplished by his previous senior rater.

b. His PRF reflect "C21R3" as his duty Air Force Specialty Code (DAFSC) and "Commander" as his duty title.

c. His AF Form 707, Officer Performance Report (OPR), rendered for the period 30 October 2009 through 29 October 2010, be modified in block IV, line 6 and block V, line 5, as necessary to change or mask the intentionally-weakened "push lines."

d. His Fitness Assessment (FA) score, dated 6 March 2011, be invalidated and deleted from the Air Force Fitness Management

System (AFFMS) and any other applicable Air Force system of records it may be filed.

e. An AF Form 469, Duty Limiting Condition Report, and AF Form 422, Notification of Air Force Member's Qualification Status, be created for the period of 6 March-5 June 2011 to document his medical status and injury during this period.

2. He receive protection under the Whistleblower Protection Act.

RESUME OF CASE:

On 10 Apr 12, the Board determined the applicant had not presented sufficient evidence to conclude he had been the victim of an error or injustice (10 USC 1552) or reprisal (10 USC 1034). The applicant argued that his command's action to relieve him of his command, rendered him a faulty promotion recommendation form (PRF) and deprived him the opportunity for timely review, and refusal to invalidate his fitness assessment (FA) in the aftermath of an injury constituted a pattern of retaliation; however, the Board did not find these arguments or the documentation presented sufficient to recommend corrective action. However, in light of his serious allegations and his request for protection as a Whistleblower, the Board determined it prudent to request the IG conduct an investigation into his allegations in accordance with the provisions of DoD Directive 7050.06, Military Whistleblower Protection, and AFI 36-2603, Air Force Board for Correction of Military Records. Accordingly, the Board determined that a final decision in his case not be made until such time as an investigation could be completed and a report of the results of the investigation were provided for review. Accordingly, the applicant's case was administratively closed, without prejudice, and referred to SAF/IG for investigation. For a complete accounting of the facts and circumstances of the original case, see the Record of Proceedings at Exhibit G.

On 20 Jun 12, the applicant was notified of the Board's decision, accordingly.

On 29 Aug 12, DoD-IG approved the SAF/IG request to dismiss the applicant's reprisal complaint as their investigation revealed the applicant did not believe that he was reprised against for a protected communication; the responsible management official indicated that he had no knowledge of the applicant's protected communication; and the applicant's complaint to the AFBCMR did not meet the statutory 60-day filing requirement.

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. While we had previously determined the evidence provided by the applicant in support of his request was insufficient to convince us he was the victim of an error or injustice under 10 USC 1552, or reprisal under 10 USC 1034, we determined it appropriate to refer the matter to the IG and defer our final decision in this case until such time as the IG had an opportunity to look into the matter at hand. Having been informed of the results of the IG's efforts, we remain unconvinced the applicant is the victim of an error, injustice, or reprisal. In this respect, we note DoD-IG approved the SAF/IG request to dismiss the applicant's complaint, noting the applicant himself conceded that he was not subject to retaliation for making a protected communication – a prerequisite for a finding of reprisal. Therefore, in view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

2. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-04023 in Executive Session on 12 Mar 13, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit G. Record of Proceedings, dated 20 Jun 12, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-04023

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. He be immediately reinstated to duty as commander of the Air Force Reserve ____Logistics Readiness Squadron (LRS) without prejudice and without a documented break in service from 8 February forward. As part of this request, he also requests the following:

a. Any records pertaining to his transfer to an "overage status" be deleted from all Air Force systems of records.

b. He be granted a transfer at his request to another suitable position within the Air Force Reserve.

c. He be given a proper transfer of command, including a change of command ceremony, for the benefit of his squadron members and the incoming replacement commander.

d. He receive a suitable "end of tour" award for meritorious service for presentation at the time of his transfer, commensurate with his rank, and appropriate for his more than

three years of successful performance as a squadron commander.

2. He be reconsidered for promotion to the grade of lieutenant colonel (Lt Col) USAFR and, if selected, his promotion be backdated to coincide with the 13-17 June 2011 Line of the Air Force Reserve Lieutenant Colonel mandatory promotion board (VO511B). As part of this request, he requests the following:

a. The AF Form 709, Promotion Recommendation Form (PRF), submitted on him by his senior rater for the VO511B board be removed from his record and, if a new PRF is required, be accomplished by his previous senior rater.

b. His PRF reflect "C21R3" as his duty Air Force Specialty Code (DAFSC) and "Commander" as his duty title.

c. His AF Form 707, Officer Performance Report (OPR), rendered for the period 30 October 2009 through 29 October 2010, be modified in block IV, line 6 and block V, line 5, as necessary to change or mask the intentionally-weakened "push lines."

d. His Fitness Assessment (FA) score, dated 6 March 2011, be invalidated and deleted from the Air Force Fitness Management System (AFFMS) and any other applicable Air Force system of records it may be filed.

e. An AF Form 469, Duty Limiting Condition Report, and AF Form 422, Notification of Air Force Member's Qualification Status, be created for the period of 6 March-5 June 2011 to document his medical status and injury during this period.

2. He receive protection under the Whistleblower Protection Act.

APPLICANT CONTENDS THAT:

In a 16-page statement with 19 Exhibits, the applicant presents the following major contentions:

1. He was illegally and inappropriately relieved of command. The individual who relieved him is his commander and immediate supervisor when they are serving in a military capacity. This individual misrepresented their legal status, violated Air Force instructions, violated proper disciplinary procedure, violated accepted standards of both military officer and civilian professionalism and ethics, and possibly violated the Uniform Code of Military Justice (UCMJ) and other laws and provisions of the US Code. His commander and immediate supervisor is employed full time by his assigned Air Wing as a GS-13 civilian Air Reserve Technician (ART) and is the senior ART for the Mission Support Group. The individual also holds a part-time military position in the Air Wing as an Air Force Reserve colonel and commander of the Mission Support Group. The applicant indicates he will differentiate in his submission when his commander was serving in a civilian capacity or in a military capacity. He presents the following points in support of his argument:

a. He was never relieved of command by notification from competent military authority in military status under Title 10, United States Code.

b. Air Force Reserve Command (AFRC) Supplement to AFI 51-202, paragraph 3.6, specifically prohibits a reservist from being involuntarily called to a duty status solely for purposes of initiating or completing non-judicial punishment actions, regardless of their military or civilian status.

c. Air Force Manual (AFMAN) 36-8001V1, paragraph 1.7, requires that an Air Reserve Technician like his supervisor and commander be "off duty or in an official leave or compensatory status from civil service … when performing military duty" Taking punitive administrative action or administering non-

judicial punishment to a military member is "military duty" and must be done while in military status.

2. He was called and notified on 7 Feb 11 that his commander

wanted him to come in to meet with him either later that day or the next and that he would be placed in military status on a Reserve Management Period (RMP). Because he did not know and his supervisor did not disclose his justification for ordering him into military status, he obeyed what he believed to be a lawful order and reported for duty at 0800 on 8 February 2010 [sic]. His supervisor and commander took disciplinary action against him with written administrative, or possibly non-judicial, punishment and relieved him of command and his military position forcing him into an overage position in another unit. To the best of his knowledge, his commander was not in an active military status on 8 February 2011. The applicant makes the following contentions regarding the action taken against him:

a. In relieving him of command his commander while in civilian status represented himself in a military capacity. His commander used false written statements and allegations against him or events that occurred outside the limits of his authority, in violation of Article 134, and possibly 92 and 107 of the Uniform Code of Military Justice.

b. The written administrative, or possibly non-judicial, punishment was handed to him in the form of a printed email, in violation of specific formatting requirements stipulated by either AFI 36-2907, Unfavorable Information File Program, or AFI 51-202, Non-judicial Punishment. It was read to him in the presence of another ART,

c. The improper and unprofessional format did not give him an opportunity to acknowledge the action or allegations against him by signature, nor was he advised of his right to formally respond and provide a rebuttal, record his intent to challenge the allegations, or request legal counsel.

d. His commander manufactured “causes” for his removal in order to pursue his openly stated goal of replacing him, a part-time Traditional Reservist (TR), with a full time ART squadron commander. His removal coincided with the publication of a job advertisement on USA Jobs to fill the ART position in the Logistics Readiness Squadron.

3. The Air Wing Commander’s refusal to provide proper relief in his situation, or even address the specific points of his defense is one example of a pattern of retribution. The Air Wing vice

commander, serving temporarily at the time as commander, refused to engage in a point-by-point reexamination of the evidence he presented against his commander/supervisor. He was only advised that his allegations were not found to have merit.

4. His senior rater failed to provide him a copy of the PRF approximately 30 days before the board. In fact, he did not receive a copy of the PRF until 75 days after the conclusion of 13-17 June 2011 Line of the Air Force Reserve Lieutenant Colonel Mandatory Promotion Board. The PRF was poorly and unprofessionally written and rife with errors. According to the 28 September 2011 post-board counseling he received, the completely blank last line in block IV was a primary reason for his non-selection for promotion.

5. He was injured during his 6 March 2011 Fitness Assessment and reported his injury to the appropriate personnel in a timely manner. Proper procedures were not followed in the processing of his score. His injury, medical status, and duty status were never properly documented on AF Forms 469 and 422 for the period of 6 March -5 June 2011.

6. The applicant asserts he is requesting protection under the Whistleblower Protection Act due to a pattern of active and passive-aggressive retaliation and retribution, as well as professional indifference toward his requests for redress after he reported what he reasonably believed evidenced a violation of a law, rule or regulation, gross mismanagement, gross waste of funds, and/or an abuse of authority to various levels of his chain of command. His group and wing leadership bullied and marginalized him, turning him from a valued member of the Air Wing “inner circle” into a pariah, ultimately attempting to disgrace him by manufacturing causes for relieving him of his squadron command, sabotaging his opportunity for promotion, broadcasting his failure to get promoted, and forcing him to transfer units.

The applicant provides a detailed chronological sequence of actions and events he contends support his contention he is the victim of reprisal.

In support of his appeal, the applicant presents 17-page statement with 19 Exhibits consisting of various documents from his personnel record, multiple memorandums for record, and other documents related to his allegations.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

According to information extracted from the Military Personnel Data System (MilPDS), the applicant currently serves in the Air Force Reserve in the grade of major (O-4).

A search of available records did not reveal that the applicant had filed a complaint with the Inspector General (IG) related to the matter under review.

AIR FORCE EVALUATION:

The Commander of the applicant's assigned wing provided a response to the allegations leveled by the applicant, which the AFRC/JA approved for release to the Board.

The Wing Commander recommends the application be denied, indicating the actions taken by the Wing leadership regarding the applicant were appropriate and correct. The Wing Commander states he has personal knowledge of many of the issues raised by the applicant. He also received input for his response from the applicant's immediate commander/supervisor and the commander of the squadron to which the applicant was transferred. The Wing Commander provides the following information:

a. The applicant was appointed to the position of commander of the LRS on 6 Dec 2008 and remained in this position until he was transferred to the Aerial Port Squadron (APS) on 8 February 2011. Both units are part of the same Mission Support Group (MSG). The applicant's assignment to the APS was a temporary move to allow him to locate another position in the Air Force Reserves.

b. The Wing Commander indicates he had concerns about the applicant's performance during the first year of his assignment. The Wing was scheduled for an Operational Readiness Inspection (ORI) in December 2009. The entire Wing was focused on preparing for the critical inspection; however, the applicant was not as engaged with his squadron as his other squadron commanders. During the ORI, held from 4-11 December 2009, the Wing deployed to the Combat Readiness Center to demonstrate its ability to operate in a remote site. On the second day of the deployment, a senior member of the inspection team informed him the applicant did not understand critical elements of his job, and that he was failing in his leadership role as the LRS commander. In the final ORI report, LRS leadership was rated as "Marginal." The written "Findings" noted the failures of the LRS commander in several areas. It was clear from the report the applicant had significant deficiencies in his performance as the commander of the LRS. The Wing Commander indicates he personally counseled the applicant concerning his dismal performance in the ORI.

c. The commander/supervisor that is the primary subject of the applicant's complaint was assigned as the MSG commander in November 2010. In his first month in the position, he met individually with each squadron commander in the MSG and

discussed his expectations of them as leaders in the squadrons. He met with the applicant and expressed his expectations, which specifically included that he wanted the applicant and all members of his squadron to pass the Air Force fitness assessment.

d. The new MSG commander soon began to see problems with the applicant's leadership of the LRS. He determined the applicant was not engaged with his Airmen in a way that commanders should be and that he was uninformed about many squadron issues and did not sufficiently involve himself in addressing problems in his unit.

e. The applicant displayed a lack of judgment in some of

his decision making. The Wing Commander provides specific details of the applicant's approval of a two-week annual tour in Hawaii of a member just before retiring and of the applicant's selection of a member of his unit to fill a vacant position in his squadron, despite irregularities in the selection process.

f. According to the Wing Commander, the MSG Commander decided to remove the applicant from his position as commander based on the deficiencies in the applicant's performance. The decision was entirely within the discretion of the MSG Commander and had the full support of the Wing Commander. The Commander indicates it was not in the best interest of the LRS or the Wing for the applicant to remain in his position of command.

g. The PRF prepared on the applicant considered his failures as a commander and accurately reflected what his potential for service in a higher grade was. Regarding the applicant's allegation that his PRF had no input from the unit he was transferred to, the Wing Commander points out the applicant was only assigned to the new unit on a short-term basis after he was removed as commander of the LRS. The PRF was written based on inputs from the MSG Commander and the Wing Commander's own observations. Regarding the applicant's contention he did not receive a copy of the PRF prior to the convening of the promotion board, the Wing Commander notes that the unit responsible for sending out the PRFs indicate they did so, but cannot provide a date. Nevertheless, the Wing Commander points out the applicant was aware he was supposed to receive a copy of the PRF, but made no effort to notify anyone he had not received the PRF.

h. Regarding the applicant's request to remove the results of his Fitness Assessment from the AFFMS, the Wing Commander notes the applicant did not notify the monitor that he had injured his back until after the assessment. The applicant reported his injury to the Wing clinic and then requested the APS commander invalidate his score. The APS commander also received an email from a doctor at the clinic recommending the score be invalidated. She requested guidance from the MSG commander and was advised to invalidate the score. However, upon notification

of the fitness assessment monitor to invalidate the score for the sit-up requirement, the APS commander was advised that only the entire assessment could be invalidated, not just the sit-up requirement. Additionally, the APS commander was provided information of the applicant's history regarding the fitness assessment. After considering the totality of the circumstances related to the applicant's failure, it was decided not to

invalidate the score. The Wing Commander points out there was no pressure on the APS commander and that she made the decision of how to handle the applicant's fitness assessment score.

The complete evaluation by the Wing Commander, with an extract of the ORI results for the LRS, is at Exhibit C.

AFRC/JA recommends denial of the applicant's application. The applicant's contention that his commander had no authority to remove him from command is irrelevant because the requirement to be in a military status only applies to punitive actions under the UCMJ (e.g. Article 15 and Court Martial actions), not to administrative actions like letters of reprimand (LOR), administrative discharges, or removals from command. He also claims he never received the PRF that was mailed to him, but failed to bring that to the attention of the unit until after the results of the promotion board were released. Finally, with respect to his FA test, a commander may invalidate a test when a member is injured but is not required to do so by the AFI. Under these circumstances, where he did not notify anyone of the injury until after the test was over, and noting his two previous FA failures, the commander had valid reasons to exercise her discretion to not invalidate the FA.

The complete AFRC/JA evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS:

The new information from the Wing Commander is a fabrication and inconsistent with the facts. While the applicant indicates the Wing Commander did not take his application seriously enough to respond to every specific allegation, the applicant provides a point-by-point reply to each of the Wing Commander's explanations. The Wing Commander's assertion the applicant was not as engaged with his unit as other commanders ignores the fact that he attended numerous meetings in advance of the unit's ORI that were not attended by other traditional (part-time) commanders. Because he was serving on active duty in support of another organization, he was able to dedicate several hours per day on average helping his squadron and wing prepare for the ORI,

even though it technically violated an agreement between his unit and the other organization. As to the assertion that he was given feedback about these concerns, he was given no negative

feedback during this time; in fact, he was given no meaningful feedback at all, even when solicited. Additionally, this new information is also inconsistent with the actions of both the Wing and MSG commanders to support his candidacy for the Air Reserve Technician (ART) (full-time) LRS commander position during the matter under review. This action would be highly inconsistent with the Wing Commander's latest accusations. While the Wing Commander selectively cites a small section of the ORI Report as the basis of his current recommendation, he fails to indicate that his squadron received an overall "Satisfactory" score during the inspection and that he was personally responsible for 21 of 90 graded functions, which resulted in the Wing receiving an overall passing grade. Additionally, his post-ORI performance reports contain laudatory comments related to his efforts during the ORI, which are inconsistent with the Wing Commander's advisory opinion in the instant case. While the Wing Commander describes a portion of the feedback the applicant received from the new MSG commander, he was told that his decision to turn down the full-time ART position showed "poor judgment" after others had stuck their necks out to secure the position for him. He indicated this decision by the applicant showed poor judgment as a squadron commander and that he intended to convert his position into a full-time ART position. His MSG commander then manufactured causes for the applicant's removal from his traditional (part-time) command position to pursue his openly-stated goal of replacing him with a full-time ART commander. His removal from his position coincided closely with the advertisement of the full-time position through USA Jobs.

As for the remaining allegations which formed the basis of the action to relieve him of command (sending a member of his squadron to Hawaii for annual training shortly before her retirement and participating in racial discrimination by altering the conditions of a promotion selection process to deny a promotion to an African American member of his squadron), the applicant reiterates that these allegations are false and therefore undermine the propriety of the commander's decision to relieve him of command.

As for AFRC's position that his commander's status when he was relieved from command is irrelevant, AFRC and the command are trying to have it both ways without having to produce any hard evidence to support their position. While AFRC indicates the requirement for a commander to be in a military status only applies to Uniform Code of Military Justice (UCMJ) actions,

(rather than administrative actions), his commander stepped over the line when he accused him of a court-martial offense (gross dereliction of duty), and manufactured false causes for his removal (e.g., criminal accusations amounting to racial bias and fraud, waste, and abuse). It is one thing for a group commander to respectfully tell a squadron commander that his time is up, administratively speaking, but completely another when such a

commander, in civilian legal status, falsely accuses a squadron commander of crimes without the protection of due process, takes positive action (drafting inaccurate PRF) to destroy that commander's career, and orders a traditional reservist away from their civilian employment into military status outside of a scheduled Unit Training Assembly (UTA) – something only the National Command Authority has the authority to do.

While the Wing Commander correctly states that a group commander has the authority to remove a squadron commander within his or her group, they may not do so under false pretenses for the purpose of retribution and retaliation.

As for his contention he did not timely receive his PRF for review, the Wing Commander blame shifts to the Mission Support Squadron, then to the applicant, when the responsibility is solely his to provide a copy of the PRF to the applicant at least 30 days prior to the promotion board in accordance with the governing statute and Air Force instructions.

As for his fitness assessment, the applicant simply asks the Board to weigh the evidence surrounding his request to have his Fitness Assessment invalidated. As he has already explained, the unit's fitness assessment scoring and medical processes broke down and his chain of command took advantage of the situation by failing to intervene and ensure he received proper medical documents at the same time they were retaliating against him with an inaccurate PRF.

In support of his response, the applicant provides an eight page expanded statement.

The applicant's complete response is at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant alleges he has been the victim of an error or injustice (10 USC 1552) and that he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). Among his many allegations, he contends that his command retaliated against him for his reporting of what he believed were violations of law, rule or regulation; gross mismanagement; gross waste of funds; and/or an abuse of authority within various levels of his chain of command.

He argues the command's action to relieve him of his command, deliberately render him a faulty promotion recommendation form (PRF) and then deprive him of the opportunity for timely review, and refusal to invalidate his fitness assessment (FA) in the aftermath of an injury, constitutes a pattern of retaliation, which is inconsistent with his well documented superior duty performance and potential and the command's previous efforts to recruit him for full-time employment as an Air Reserve Technician (ART). In response to his many allegations, his Wing Commander and AFRC/JA have rendered comprehensive evaluations, to which the applicant has provided a lengthy rebuttal. After a thorough review of the evidence before us, and noting the applicant has not availed himself of the Inspector General (IG) process, we do not find his uncorroborated assertions or the documentation provided, sufficient to establish that he was the victim of an error or an injustice as defined in 10 USC 1552, or that he was the victim of reprisal as defined in 10 USC 1034. Nevertheless, the Board finds the allegations made by the applicant troubling and believes that to render a fair and equitable consideration of this case, an investigation should be conducted by the Inspector General. We do not know why the applicant failed to file a complaint with the Inspector General, but under the authority granted to this Board on this issue, we find that an investigation appears warranted. Therefore, it is our determination that a final decision not be rendered on the applicant's requests until such time as the Inspector General

conducts an investigation at our request and the report of investigation (ROI) is provided to us for review. Upon receipt of the IG ROI, or if for some reason, the IG should determine an investigation cannot be conducted, we will reopen the applicant's case and resume consideration of his requests. Therefore, it is our determination the applicant's case be administratively closed, without prejudice, until appropriate action by the IG has concluded and this Board and the applicant, has been so advised.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-04023 in Executive Session on 10 Apr 12, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 6 Nov 11, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, XXX AW/CC, dated 7 Feb 12, w/atchs.

Exhibit D. Letter, AFRC/JA, dated 24 Feb 12.

Exhibit E. Letter, SAF/MRBR, dated 1 Mar 12.

Exhibit F. Letter, Applicant, dated 30 Mar 12.

Panel Chair

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-00929
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He receive the following relief based on being the victim of a substantiated case of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 Jul 07, and Title 10, United States Code, Section 1034:

1. He be directly promoted to the grade of colonel and be retired in the grade of colonel.

2. He be financially compensated or credited with additional years of service due to the fact he was left in the reprisal situation, and had no recourse but to retire early.

RESUME OF CASE:

In an application, dated 7 Mar 12, the applicant requested the following relief:

1. He receive appropriate relief based on the standards outlined in the Government Accountability Office (GAO) Report to the Senate Judiciary Committee, dated February 2012.

2. His AF Forms 707, Officer Performance Reports (OPRs), rendered for the periods of 11 May 09 through 10 May 10, 11 May 10 through 5 Dec 10, and 6 Dec 10 through 5 Dec 11, be corrected to reflect the Agency Commander as the additional rater and the reports reflect appropriate stratification or, in the alternative, the reports be acknowledged as invalid.

3. His AF Forms 709, Promotion Recommendation Forms (PRFs), viewed by the P0610C and P0611B Colonel Central Selection Boards (CSBs) be corrected to reflect appropriate stratification.

4. He be reconsidered for Senior Development Education (SDE).

5. He be given Special Selection Board (SSB) consideration for promotion to the grade of colonel for the P0610C and P0611B CSBs with the corrected reports or in the alternative be directly promoted to the grade of colonel.

6. His retirement grade be changed to colonel (O-6) if the corrections he requests are partially or wholly substantiated and would have affected past or future boards.

On 23 Aug 12, the Board considered the applicant's requests and recommended the following partial-relief:

1. The Assignment History in the Officer Selection Brief (OSB) prepared for the P0611B CSB be amended to delete the entry "Test & Evaluation Branch Chief" effective 6 Dec 10.

2. The AF Form 707, OPR, rendered for the period 6 Dec 10 thru 5 Dec 11 be declared void and removed from his record.

3. The AF Form 709, PRF, viewed by the CY11B Lieutenant Colonel CSB be declared void and substituted with the PRF viewed by the P0610C Lieutenant Colonel CSB.

4. It was further recommended the applicant's record be considered for promotion to the grade of colonel by a SSB for the P0611B Colonel CSB with the above corrections to his record.

On 18 Sep 12, the Board's recommendation was approved.

In the letter of notification of the Board's decision, the applicant was advised of his right to appeal the Board's findings to the Under Secretary of Defense for Personnel and Readiness (OUSD P&R) within 90 days of the Board's decision.

For an accounting of the facts and circumstances surrounding the applicant's appeal and the rationale for the Board's earlier decision, see the Record of Proceedings at Exhibit I.

In a memorandum, dated 30 Oct 12, (Exhibit J), which was attached to an email, dated 30 Oct 12, sent to the SECAF, the applicant requests reconsideration of the relief granted by the Board. The applicant states that he again asks for "just relief" before he exercises his right to appeal to the "SecDef." The applicant indicates that he continues to be concerned that "pertinent information, including congressional inquiry information" has been excluded from the Board's analysis in determining a finding and recommendation. The applicant requests the Board specifically indicate why it excluded information he submitted for analysis so he may factor this into his appeal to the DoD.

By memorandum, dated 4 Dec 12, (Exhibit K) the applicant was notified that his case would be processed back to the Board for reconsideration. The memorandum contained seven attachments (Exhibit J) and the applicant was asked to review and confirm in writing that these attachments constituted the additional evidence he wanted added to his case for the Board's consideration. The seven attachments sent are as follows:

1. An email, dated 23 Nov 10, advising the applicant that the Air Force ISR Agency (AFISRA) Director of Staff (DS) was not available to meet with the applicant that morning and the appointment had been adjusted for him to meet with the Deputy Director of Staff.

2. Email string starting 29 Nov 12, with an inquiry from the DS to A7 functions asking whether the applicant possessed a "G" pass (a pass to park in the "G" lot). A response was sent asking the DS if the applicant required a "G" pass. The DS responded the applicant did not need one.

3. Email to the applicant dated 2 Dec 12, Unauthorized Parking. The applicant was advised he did not meet the requirements for parking in the "G" lot and that he was using an outdated parking pass (grey).

4. Email string regarding updates for an upcoming Unit Compliance Inspection (UCI), dated 19 May 11. By email to the DS, dated 5 Jul 11, the applicant expressed his concern regarding the tracking of ancillary training stats by A1. The DS responded to the applicant on 5 Jul 11 explaining his view of the tracking of ancillary training and advised the applicant he would be glad to sit down and discuss the issue further if the applicant desired.

5. A memorandum from SAF/LL to Congressman Francisco Canseco regarding the allegation of reprisal against the applicant. The memorandum discusses the following four points:

a. Advised the Congressman of the requirement in AFI 90 301, Inspector General Complaints Resolution, to notify the Major Command Commander (or civilian equivalent) of the results of substantiated allegations for the purpose of taking command action. However, the memorandum went on to state that cases involving senior civilians were handled by the Executive Resources Board (ERB) and that upon completion of the applicant's case, a letter was sent to the ERB asking them to initiate action and that the action was now complete.

b. A discussion of the recognition by SAF/IG of the shortfall in the process in that a subject's commander is not directly notified until the appointed individuals have completed reviewing appropriate disciplinary action. It noted as an example that the command chain is not in a position to timely assist the complainant. It noted that SAF/IG has worked

with the SECAF General Council to change the notification procedures to the ERB and is now requesting the Vice Chief of Staff simultaneously notify the ERB and the subject's command chain.

c. The applicant's request for a low/no cost PCS was denied by his supervisor, not the current AFISRA commander nor the former AFISRA commander, nor the DS. It noted the decision to deny the PCS was due to the fact that AFISRA was very short on field grade officers and the decision maker, a civilian deployed to Afghanistan at the time of the memorandum, could see no compelling reason to give up an officer in a good position to contribute to the mission.

d. Advised that due to the pending disciplinary process, it would be a violation of due process and the Privacy Act to disclose to anyone the process or the outcome of any disciplinary action. It went on to advise that privacy laws constrained the Air Force from describing to the applicant what action was taken in response to the substantiated allegation of reprisal.

6. Email string starting on 13 Jul 12, from the applicant to the SECAF complaining about the AFBCMR's handling of his application.

7. An email, dated 30 Oct 12, sent to the SECAF, from the applicant requesting reconsideration of the relief granted by the Board.

In a response dated 18 Jul 12, the SECAF's Military Assistant advised the applicant his concerns had been forwarded to SAF/MRB for response.

In an email, dated 16 Oct 12, to the SECAF, the applicant stated that he had not yet received any advice from the Air Force in regards to various questions he asked of his chain-of-command (AFISRA/CC), SAF/IG, or SAF/MRB. At the time of this email, the applicant had received the Board's decision in his case and he raised the following issues:

a. The Board excluded various additional discrepancies and questionable actions by the Air Force in its decision analysis.

b. The relief granted by the Board may have been reasonable a year ago when he was on active duty, but not in light of his retiring and how AFISRA and the Air Force mishandled his situation and case.

c. AFISRA denied his request for a no cost, local PCS as a way out of the reprisal situation, which caused him to then apply for retirement to be effective at the earliest date possible, utilizing most of his saved leave.

d. SAF/IG failed to notify the AFISRA commander and follow its own notification timelines as mandated in its regulations, which left him without guidance after he notified his commander of the substantiated reprisal concern, subsequent reprisal concern, and the fact his no cost PCS had been denied.

e. The AFISRA commander "purposely" did not meet with him for five months, despite his documented multiple efforts to get scheduled to see him. He was not seen until one week before his retirement.

f. When he asked his local Congressman to find out why he was not being provided any guidance, the Air Force submitted responses that were both false and what appeared to "purposefully" be incomplete and misleading.

g. He petitioned the Air Force to review his records for relief and was treated as an adversary and informed he was "not that stellar" an officer as they looked to discredit his petition.

h. He did not receive any guidance after requesting it multiple times and as told he would by the SECAF Military Assistant.

i. The Air Force did not correct the previous commander's "illogical and detrimental" rating scheme affecting multiple individuals (for 16 month period despite repeated protests by multiple individuals) used only for the A2 staff as

compared to the remainder of the numbered staff.

7. The applicant's memorandum dated 30 Oct 12, as discussed above, makes the following points:

a. Regarding the Board's comments about a direct promotion, the applicant states, 1) he believes he will not receive "fair and equitable consideration" in an SSB since they will be utilizing information that excludes the pertinent information of the Air Force having placed him in a reprisal situation, continued harassment, and having essentially forced his hand into an earlier retirement for which he ended his Air War studies; and 2) if he is promoted to the grade of colonel after the date of his retirement, it will avoid additional compensation and he believes justice will be done.

b. He was unaware during the reprisal investigation of who specifically denied his request for a no-cost, local PCS (which forced him to stay in the reprisal situation another year until he retired). He notes the email discussed above regarding a parking pass and notes the DS sent it to various individuals. He believes this constitutes "poisoning of the water" and is a likely reason for why his no cost, local PCS was disapproved. He also notes an email forwarded by the DS to his new director after his move, which lead to him being issued a verbal reprimand. He believes the action by the DS constitutes continued harassment. The applicant notes he provided the email to the AFISRA commander and noted that he felt this constituted additional harassment. To his knowledge, the commander did not do anything.

The applicant confirmed in a letter, dated 5 Dec 12, that the seven attachments constitute the items he would like the Board to review. The applicant also restated his "continued concern that the previous Board finding as the initial recommended finding excluded without comment previously submitted information in the final analysis utilized in the Board's final decision."

AIR FORCE EVALUATION:

SAF/IG was asked to comment on the appropriateness of the corrective actions made by the AFBCMR based on the substantiated reprisal allegation. The IG found the Board accurately addressed all issues raised, and where necessary, corrected the military records impacted by the reprisal actions taken against the applicant.

The complete IG evaluation is at Exhibit L.

The AFISRA commander prepared an advisory for informational purposes, providing a summary of events which are as follows:

1) On 19 Oct 11, he first became aware of a substantiated reprisal filed by the applicant. Shortly thereafter, he contacted the AFISRA IG to determine who, if anyone, within the AFISRA had been informed of the substantiated complaint. He was informed by the IG that the notification had been sent by SAF/IG to the Assistant Deputy Chief of Staff for Intelligence, Surveillance and Reconnaissance for Headquarters, USAF (HAF/A2). He was told to hold off on any action taken on the matter until HAF and SAF/GC had completed their involvement with respect to the findings, the proposed punishment, and any appeal of the proposed punishment. The Assistant Deputy Chief of Staff for Intelligence, Surveillance and Reconnaissance for Headquarters, USAF (HAF/A2) was responsible to consider the findings and impose punishment as appropriate for the substantiated reprisal. He instructed his staff to let the applicant know that he would meet with him after SAF/GC had completed their involvement in the matter (including any appeal of the punishment). He was informed this had been done.

2) He was informed by SAF/GC in early to middle Feb 12 that the resolution of the appeal of the proposed punishment was very near completion. Around the same time he was asked to provide any details he had to help prepare an Air Force response to a congressional inquiry. One item in particular, was the applicant's request for a no-cost/low-cost reassignment. He was unaware of any details behind the reassignment request having arrived at the Agency in Jul 11, so he reached out to his predecessor as AFISRA/CC, the applicant's direct supervisor and the former A5/8/9 civilian Director. Both were unaware of the reassignment request. The former A5/8/9 Director told him that he recalled the A5/8/9 directorate was very shorthanded on field grade officers at the time and the applicant was needed to

contribute to the Directorate's tasking and missions.

3) In middle to late Feb 12, he was informed by SAF/GC that the subject's appeal had been denied by the appellate authority, and that the punishment was upheld and remained unchanged.

4) Near the end of Feb 12, he met with the applicant and informed him that the subject of the substantiated reprisal had been punished. He also mentioned to the applicant that he could apply to have his military records corrected if he felt they were in error based upon the effects of the substantiated reprisal allegation.

5) Unfortunately, at this stage of the matter he did not see any actions the Agency could take to address in particular the no-cost/low-cost move requested by the applicant, inasmuch as he was to begin terminal leave in early Mar 12, with an effective date of retirement in Jun 12.

He requested the AFISRA Staff Judge Advocate (SJA) review the materials provided by the Board and provide feedback concerning information that the Board may find helpful or useful for their consideration of this case.

The following are the AFISRA commander's recommendations:

a. He does not recommend the applicant be promoted to the grade of colonel outright: The lack of having AWC completed, not being a school select, and not having commanded a squadron militate against an outright promotion, in his opinion as his senior rater.

1) Completion of AWC is well within an officer's ability and control. The memorandum from the SJA provides a detailed discussion and timeline concerning the progress made by the applicant beginning with his enrollment in the course in 2007.

2) He does not consider it a foregone conclusion that the applicant would have completed AWC in time for his IPZ board, his assertions to the contrary notwithstanding. From his perspective if AWC is incomplete at the time the PRF is being finalized it negatively impacts his recommendation.

3) Promotion statistics in the attached SJA memorandum highlight the likelihood of promotion if AWC is not completed. Even if AWC had been completed, records with a "Promote" recommendation for the IPZ board have around a 27 percent opportunity for selection.

b. If the Board finds some aspect of this case that merits granting relief, he recommends the Board consider allowing the applicant to return to active duty and provide him either 15 months or 12 months before he meets an 06 IPZ promotion board. Both options presume he returns to the same point in the AWC course curriculum on the "trigger" dates in 2011. These options also presume he will be assigned to a unit outside the AFISR Agency.

1) 15-Month Option: This uses the date the applicant submitted his retirement request to the date he would have met his IPZ board—had he chosen not to submit his retirement request but remain on active duty. He submitted his retirement request on 26 Jul 11. His IPZ board was held on 5 Nov 12. The PRF for the board was finalized on 21 Sep 12.

2) 12-Month Option: This uses the date the applicant provided him a copy of the SAF/IG ROI (which brought his attention for the first time that there was a substantiated reprisal complaint) to the date he would have met his IPZ board—had he chosen not to submit his retirement request but remain on active duty. He received a copy of the SAF/IG ROI from the applicant on 18 Oct 11. His IPZ board was held on 5 Nov 12. The PRF for this board was finalized on 21 Sep 12.

c. Either option provides the opportunity to:

1) Demonstrate beyond speculation that the applicant can finish AWC prior to his IPZ board within the same time constraints he faced on those dates in 2011,

2) Compete at the IPZ 06 board, generally thought to be the best opportunity for selection,

3) Have enough time on active duty to generate an OPR from a new organization as his top report for the IPZ board's consideration, and

4) Have a different senior rater provide his promotion recommendation.

The complete AFISRA/CC evaluation, with attachments, is at Exhibit M.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 23 Apr 13, copies of the Air Force evaluations were forwarded to the applicant for review and comment within 30 days. At the same time the applicant was also informed that his request for a Formal Hearing to consider his case was approved and tentatively scheduled for 1000 hours on 10 Jul 13 (Exhibit N).

On 3 Jun 13, the applicant was advised that the AFBCMR staff had not received acknowledgement from him regarding the hearing date. He was also advised that the AFBCMR was moving forward and made plans to conduct the hearing on that date.

On 5 Jul 13, via email, the applicant responded and essentially reiterated most of his earlier contentions and comments that a lot of the information provided was misleading and incomplete.

The IG's defense of his organization's failure to ensure the board met its mandated suspense and the delay it caused was indeed relevant, as he was forced to sit in the reprisal billet for approximately an entire year, since his request for a no-cost PCS was denied, and an additional four months by their own accounting after their 45-day suspense was not met. This forced him to continue walking the same halls as his abuser and those additional directors that his abuser coordinated with in effecting the reprisal move.

In the 5-page memorandum, the AFISRA commander uses one sentence to address the inaction on his part and why the applicant had to remain in the reprisal billet until retirement. He stated, "Unfortunately, at this stage in the matter that he did not see any actions the "Agency" could have taken to address in particular the no-cost move, inasmuch as he was about to begin terminal leave in early Mar 12. The commander essentially ignores all the other issues, and spends the remainder of his 5-page submission defending why he was waiting for the punishment board to finish their review, trying to justify why he should not receive relief.

His argument for needing to wait is without merit, as the punishment board had no bearing upon normal advice and counsel that he could have provided. He could have at his own discretion as the AFISRA commander, moved him out of the reprisal billet into another more suitable opening even if it was only 4 plus months. He could have inquired as to whether an exception to policy could have been granted to allow the applicant to start terminal leave early.

The applicant points-out that neither the AFISRA commander nor his staff judge advocate provide any comments relating specifically as to why, he the victim, should receive some "relief" from Air Force for the substantiated reprisal. The AFISRA staff judge advocate, on behalf of the AFISRA commander, spends nine full footnoted pages and 17 attachments discussing why he should not receive relief.

The applicant's complete response, with attachments, is at Exhibit O.

APPLICANT'S APPEARANCE AT FORMAL HEARING:

The following additional information was provided in response to specific inquiries by the Board members:

a. When asked about the specific relief he was seeking from the Board, he stated that what he originally put in his BCMR request he is no longer seeking, he does not believe a records correction at this point would be beneficial. He believes that the Air Force forced him out by keeping him in the reprisal situation, and making him walk the halls with the same individuals that reprised against him. He said that he would be willing to accept a separation bonus if that was possible. He said that he was not interested in coming back into the Air Force, that he was a GS-14 and has a nice job in Colorado Springs and would like to stay retired.

b. He noted that the relief previously granted, i.e., changes to his duty title, OPRs, PRFs, and a Special Selection Board came back with negative results. He emphasized that he had a zero percent chance of being promoted at an SSB and that a records correction is for someone who planned to stay in the Air Force.

c. The applicant stated that he was not trying to get his records corrected and felt that was his only option, thus why he asked for corrections to his OPRs and PRFs.

The applicant's complete sworn testimony and his responses to the Board's questions are contained in the Transcript of Proceedings at Exhibit F.

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of an error or an injustice to warrant the applicant's direct promotion to the grade of colonel through the correction of records process. In this regard, the Board observes that officers compete for promotion under the whole person concept whereby many factors are carefully assessed by selection boards. An officer may be qualified for promotion but, in the judgment of a selection board vested with the discretionary authority to make the selections, may not be the best qualified of those available for the limited number of promotion vacancies. Therefore, in the absence of evidence that he would have been a selectee had he not been the victim of reprisal we find no basis to direct his promotion to colonel. Moreover, we believe that a duly constituted selection board applying the complete promotion criteria is in the most advantageous position to render this vital determination, and that its prerogative to do so should only be usurped under extraordinary circumstances. In the applicant's case, based on the corrections to his records, he was provided such supplemental consideration by a Special Selection Board (SSB) and was not selected for promotion. In the absence of evidence the SSB process was flawed or that he was denied fair and equitable supplemental promotion consideration, we find no basis to disturb the decision of the SSB. Further, while it is uncontested the applicant is the victim of reprisal, this does not result in our inescapable conclusion that but for the reprisal action, he would have been selected for promotion to the grade of colonel, as he never completed Air War College – a prerequisite for promotion to the grade of colonel. That being said, the Board wishes to commend the applicant for his unwavering service to this country. The Board was moved by the professionalism and dedication shown by the applicant during his military career, which we believe was terminated early due to the ramifications of the substantiated reprisal and associated adverse personnel action. The Board feels that the actions of a few members at his former headquarters do not reflect the feelings of the Air Force about his accomplishments as an officer, the culmination of a highly successful career and his potential for continued service to his country. However, in view of the above and in the absence of evidence to the contrary, we find no basis upon which to recommend his direct promotion to colonel.

2. Notwithstanding the above, we find sufficient relevant evidence has been presented to demonstrate the existence of an injustice. In this respect, it appears there were shortfalls in the SAF/IG notification process wherein the applicant's chain-of-command was not directly notified of the results of the substantiated reprisal in a timely manner. Consequently, the applicant's chain-of-command was not in a position to assist the applicant and he was forced to remain in the reprisal billet for approximately 14 months which ultimately ended his career earlier than expected. According to SAF/LL's letter dated 27 Feb 12, SAF/IG recognized the shortfall in their process and has worked with SAF/GC to change the notification procedures to simultaneously notify the Executive Resources Board and the subject's chain-of-command when an allegation is substantiated. We note the applicant previously requested to move out of the

reprisal situation; however, his request was denied. The specific reason for the denial was due to the fact that AFISRA was short on field grade officers and the decision maker could see no compelling reason to give up an officer in a good position to contribute to the mission. Unfortunately, it appears this decision, when coupled with a lack of assistance from the applicant's chain of command, was not in the overall best interest of the applicant or the Air Force. The applicant has indicated that at this point he felt he was only left with the option of ending his Air Force career. We believe the circumstances leading to his decision to retire rise to the level of an injustice. In considering the appropriate level of relief, we take note of the applicant's stated position that he does not wish to return to active duty. While we, as stated above, do not believe the circumstances of this case support a direct promotion, we find it reasonable the applicant would have likely served on active duty for an additional period of time. Based on our interview of the applicant during his hearing, we believe that an additional 14-months of creditable service for retirement provides full and fitting relief on this point. Additionally, since we are advised this additional service will cause the applicant to incur a debt to the government, based on this service overlapping with his civilian employment and receipt of military retirement pay, we find it would further be in the interest of justice to provide relief that would avoid any debt. As such, we recommend his record be corrected to show that he applied for a waiver of all debts created as a result of the Board's action to extend the applicant's period of active service and his request was approved by competent authority, in accordance with 10 U.S.C. § 2774 and 5 U.S.C. § 5584. While our ability to craft relief that will make the applicant completely whole is limited by the very circumstances of his case, we believe overall our recommended corrective action provides him full and fitting relief. In view of the foregoing and in the interest of justice, we recommend his record be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. He was not relieved from active duty on 31 May 12 and retired for length of service on 1 Jun 12, but on that date he was continued on active duty.

b On 31 Jul 13, he was relieved from active duty and retired effective 1 Aug 13.

c. He applied for a waiver of all debts created as a result of the Board's action to extend the applicant's period of active service for the period noted above and his request was approved by competent authority, in accordance with 10 U.S.C. § 2774 and 5 U.S.C. § 5584.

The following members of the Board considered AFBCMR Docket Number BC-2012-00929 during a Formal Hearing on 10 Jul 13 and 27 Sep 13, under the provisions of AFI 36-2603:

, Panel Chair
, Vice Chair
, Member
, Member
, Member

All members voted to correct the records, as recommended. The following documentary evidence pertaining to Docket Number BC-2012-00929 was considered:

Exhibit I. Record of Proceedings, dated 18 Sep 12, w/atchs.
Exhibit J. Letter, Applicant, dated 30 Oct 12.
Exhibit K. Letter, AFBCMR, dated 4 Dec 12.
Exhibit L. Memorandum, SAF/IG, dated 1 Apr 13 (withdrawn).

Exhibit M. Memorandum, AFISRA/CC, dated 19 Apr 13.
Exhibit N. Letter, SAF/MRBC, dated 23 Apr 13, w/atchs.
Exhibit O. Electronic Mail, Applicant, dated 8 Jul 13.
Exhibit P. Transcript of Proceedings, dated 5 Sep 13.

Panel Chair

ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-01472

COUNSEL: NO

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. Her official military records be corrected to show she was not involuntarily discharged from the Air Force.

2. She be reinstated onto active duty in her last Air Force Specialty Code (AFSC) of 8R000 (Enlisted Accessions Recruiter).

APPLICANT CONTENDS THAT:

1. She was unfairly denied an Administrative Discharge Board (ABD) during her involuntary discharge. Her Area Defense Counsel (ADC) told her she did not qualify for an ADB because she had not served the minimum of six years of active duty which is required to warrant an ABD. However, per AFI 36-3208, Administrative Separation of Airman, she was entitled to an ADB because she had over six years of total service. She served 5 years, 1 month, and 10 days of active duty, and 5 years, 11 months, and 20 days of inactive duty.

By amendment the applicant contends:

2. Her discharge from the Air Force was an act of reprisal, in violation of the Whistleblowers Protection Act, for making a protected communication while at Air Force Recruiting School regarding a classmate who had been unfairly advanced through a particular portion of the course curriculum. Because of the protected communications, she was subjected to a hostile work environment at her new duty station, which included delays in receiving advanced Basic Allowance for Housing (BAH) and access to software required to perform her duties, being assigned a government vehicle with a history of maintenance problems, being given an old computer, and having a flight mate who made persistent unwanted sexual advances toward her. As a result of this reprisal, she went Absent Without Leave (AWOL) to find resolution outside of the Air Force.

3. Her Article 15 was ineffective for the following reasons:

a. The charges reflected were erroneous. While her Flight Chief requested the Article 15 be initiated for her being AWOL, the actual charges reflected the following: "Without authority, failed to go at the time prescribed to her appointed place of duty," and "Without authority was absent from her place of duty at which she was required to be." Additionally, the period of AWOL described is incorrect as she attempted to surrender on 21 Dec 10, but was told that she must return to her home station to do so.

b. The ultimate sentence was crafted in such a way as to give her the false perception she would be granted probation and rehabilitation until 11 Jul 11, without further action, but instead she was demoted.

c. The bases of the action included two Letters of Reprimand (LOR), but the LORs for "improper use of a government owned vehicle" and for "making unauthorized phone calls" were too harsh. Each LOR states she was "derelict in her duties," but "derelict" is too harsh a word for unintentional misuse.

4. She was improperly denied her right to test for promotion to the grade of Staff Sergeant (SSgt) in 2010. Her adjusted date of rank (DOR) to Senior Airman (SrA) was 26 Jul 09, making her eligible to test for SSgt in the 2010 cycle after she had completed six months' time-in-grade (TIG). However, her leadership told her she could not test until 2011.

The applicant's complete submission, with attachments, is at Exhibit A.

RESUME OF CASE:

On 29 Mar 12, the applicant applied to the Board seeking the same relief and presenting the same contentions delineated above. On 9 Jan 13, the Board concluded sufficient relevant evidence had been presented to demonstrate the applicant was unjustly denied her right to meet an Administrative Discharge Board (ADB) in conjunction with her involuntary discharge. This determination was based upon the fact that she had served more than six years of combined active and inactive service, which qualified her to meet an ADB. Concerning the applicant's contention in her rebuttal that she had been the victim of reprisal in violation of the Whistleblower Protection Act, the Board found the required Inspector General investigation (IG) into her reprisal allegations had never been completed. In order for the Board to render full and fair consideration of the application, the case was referred to the IG and administratively closed until such time that the IG could look into the applicant's allegations of reprisal and provide a final investigative report to the Board. For an accounting of the facts and circumstances surrounding the applicant's original request and the rationale of the earlier decision by the Board, see the Record of Proceedings (ROP) at Exhibit G.

On 21 Aug 14, DoD-IG approved the Air Force IG's findings that the applicant's allegations of reprisal against responsible management officials assigned to the USAF Recruiting School and her Recruiting Squadron (RCS) were not substantiated and DoD-IG agreed with the Air Force IG's conclusion her commander issued her two Letters of Reprimand, gave her an Article 15, and recommended her for administrative separation based on her substantiated acts of misconduct and a pattern of minor disciplinary infractions, and not because she made protected communications (Exhibit O).

On 25 Sep 15, SAF/MRBC forwarded a redacted copy of the final IG Report of Investigation (ROI) to the applicant and notified her that her case had been reopened (Exhibit P).

AIR FORCE EVALUATIONS:

AFPC/DPSOE does not make a recommendation regarding the applicant's promotion opportunities, but addresses the applicant's contention she was denied the opportunity to test for SSgt during cycle 10E5. A review of her records reveals no indication she was denied testing. The applicant was a prior service member who was accessed onto active duty on 25 Jan 10 as a SrA with a DOR of 26 Jul 09. She was eligible for promotion consideration to SSgt during promotion cycle 10E5 based upon her DOR alone. However, she was "nonweighable" based on the fact that she did not have a current Enlisted Performance Report (EPR) within the past five years, and she did not have a control AFSC (CAFSC) updated in the system. Members are considered "nonweighable" if a promotion factor (test, EPR, AFSC, etc.) is either missing or incorrect. Therefore, if a member does not have an EPR on file, they cannot be considered for promotion until their next projected EPR closes out or until an EPR directed by Headquarters Air Force is completed for promotion consideration. In addition, she did not have a CAFSC established. Members compete for promotion in the CAFSC they hold as of the promotion eligibility cutoff date (PECD). The PECD for 10E5 was 31 Mar 10. The applicant's control AFSC was not updated until she completed her technical training on 9 Apr 10. She should have been assigned CAFSC 9A000 (student) until completion of her recruiter technical training. Had the 9A000 CAFSC been assigned she would have tested PFE-only as a retrainee, and still remained nonweighable until she had at least 60 days supervision and an EPR rendered. However, because the applicant received an Article 15 on 12 Jan 11 and was reduced in rank to A1C, even if she were selected for promotion, she would have lost her line number for promotion due to the Article 15 punishment if she was to be promoted after Jan 11.

A complete copy of the AFPC/DPSOE evaluation is at Exhibit H.

AFLOA/JAJM addresses the applicant's nonjudicial punishment (Article 15), and determines the applicant's commander did not act arbitrarily or capriciously in making the decision to punish the applicant under Article 15. While the applicant does not allege an error or injustice in her receipt of this Article 15, she is protesting her administrative discharge, which was based upon the Article 15 and two LORs. Nonjudicial punishment is authorized by Article 15, Uniform Code of Military Justice (UCMJ). This procedure permits commanders to dispose of certain offenses without trial by court-martial unless the service member objects. Accepting Article 15 proceedings is simply a choice of forum; it is not an admission of guilt. A member accepting Article 15 proceedings may submit matters to, and have a hearing with, the commander imposing punishment. The commander must consider any information offered by the member and must be convinced by reliable evidence that the member committed the offenses before imposing punishment. Members who wish to contest their commander's determination or the severity of the punishment imposed may appeal to the next higher commander. On 4 Jan 11, the applicant was offered nonjudicial punishment under Article 15, UCMJ. She was charged with failing to go to her appointed place of duty and for being absent from her place of duty for eight days, both in violation of Article 86, UCMJ. The applicant was afforded the opportunity to consult with defense counsel, accepted the Article 15 and waived her right to demand trial by court-martial. She submitted a written presentation and elected to make a personal appearance before her commander. The commander decided the applicant committed the charged offenses and imposed punishment consisting of a reduction to the grade of airman, with a reduction below airman first class suspended for six months, and a reprimand. The applicant did not appeal her commander's decision. The Article 15 action was reviewed and determined to be legally sufficient. The commander at the time of the Article 15 had the best opportunity to evaluate the evidence for this action, and found nonjudicial punishment appropriate. The legal review process showed the commander did not act arbitrarily or capriciously in making this decision.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Through three separate letters, dated 8 Jun 13, 15 Jun 13, and undated, the applicant takes exception to both the AFPC/DPSOE and AFLOA/JAJM advisories and submits a timeline of events:

1. In response to the AFPC/DPSOE advisory, the applicant makes the following arguments:

a. In accordance with AFI 36-2101, Table 3.10, Classifying Military Personnel (Officer and Enlisted), the effective date of a new control AFSC (CAFSC) for a retrainee is the date departed current duty station to accomplish required training.

b. In accordance with AFI 36-2406, Officer and Enlisted Evaluation Systems, Table 3.7, Rule 11, Note 13, that

AFPC/DPSIDE directs an evaluation if the evaluation is necessary for promotion consideration.

c. Test Control Officers/Test Examiners are required to maintain a list of all nonweighable examinees and update it monthly.

d. She had a CAFSC uploaded in the system effective 25 Jan 10, and claims that a 9A000 CAFSC would have been inappropriate for her situation.

e. She only received one Article 15 in her career.

f. Had she been given the proper CAFSC, been allowed to test, and received a Headquarters directed EPR, she would not have committed the offense she committed.

g. In accordance with AFI 36-2502, Airman Promotion/ Demotion Program, Para 2.8.1., an Airman missing one or more testing cycles is considered retroactively by using scores from the next available WAPS test (Exhibit K).

2. In response to the AFLOA/JAJM advisory, the applicant:

a. Reemphasizes she was denied her right to an administrative discharge board (ADB).

b. Points out one of the purposes of NJP is to "promote positive behavior changes in service members," but she was discharged without probation or rehabilitation.

c. Indicates she was actually assigned in Oak Creek, WI, not Scott AFB, IL.

d. States when she tried to surrender after going AWOL, she was initially advised to sneak back into her duty station and resume her daily duties.

e. States she was no longer AWOL after 21 Dec 10, when she attempted to turn herself in at Moody AFB, GA, but was incorrectly told she must return to Scott AFB, IL, to surrender.

f. Highlights she did allege an injustice in the receipt of her non-judicial punishment by stating that her commander disregarded evidence she provided him in her response to this offer of NJP on 12 Jan 11 (Exhibit L).

3. In her undated letter, the applicant emphasizes the AFPC/DPSOE statement that she could have tested for SSgt during the 2010 May-Jun Test Cycle (PFE-only as a retrainee), and submits a timeline of events (Exhibit M).

ADDITIONAL AIR FORCE EVALUATION:

AFPC/JA recommends the Board set aside the basis and character of her 2011 discharge and substitute an honorable discharge based on Secretarial authority. Having been discharged from the Air Force on 4 Mar 11, the applicant's status today is that of a civilian. As a consequence, she could not be "recalled" to active duty for the hearing, as recommended by AFPC/DPSOS in the original consideration of this case as she is not in a capacity (like Reserve or retired) that would permit recall. Thus, the only means for the Board to afford the applicant a discharge board would be to set aside the 2011 discharge as having been accomplished in error, and reinstate her to active duty, effective 4 Mar 11. However, this option does not come without some serious legal and practical problems. First, there is the problem of High Year of Tenure (HYT) restrictions. Per the AFRX/RSO/CCU advisory the applicant is no longer qualified to serve as a recruiter. In addition, because of the extensive delays in this case resulting from multiple IG investigations, such a solution would entitle the applicant to back pay for more than four years of Air Force service which she did not, in fact, perform—a tremendous undeserved windfall. This option would also bring with it questions of promotion eligibility and potential HYT problems for this period of time. In addition, there are considerable practical problems with trying to run a board four plus years after the fact. Therefore, even though an ADB would likely not have recommended an honorable discharge, given the time, problems, and all of the circumstances associated with this case, the Board should set aside the basis and character of her 2011 discharge and substitute an honorable discharge based upon Secretarial authority.

A complete copy of the AFPC/JA evaluation is at Exhibit Q.

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION:

Since she did not ask for the AFPC/JA advisory she refuses to respond, adding "this decision is final and it stands."

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice warranting corrective action. While there are admitted errors in the case, we find it more likely than not that the applicant would have received the same outcome she ultimately did even if the processing of her case had been error-free. As such, we decline to recommend any correction to her record. We took notice of the applicant's complete submission, to include her rebuttal responses to the advisory opinions, in judging the merits of the case; however, regarding her contentions, we believe the denial of an ADB was harmless error; reprisal was not a motive in her disciplinary actions; her Article 15 was legally sufficient; and, given her substantiated misconduct, denying her the opportunity to test for promotion in 2010 had no effect on her advancement.

In particular, we agree with AFLOA/JAJM that the applicant's commander did not act arbitrarily or capriciously in rendering non-judicial punishment, and with the finding of the Air Force IG that her commander recommended her for administrative separation based on substantiated acts of misconduct and a pattern of minor disciplinary infractions, and not because she made protected communications. After a thorough review of the evidence of record and the applicant's complete submission, we do not find the evidence presented sufficient for us to question the underlying basis for command's actions or to persuade us she is the victim of an injustice. It does appear the applicant was improperly denied an ADB during her discharge process, and we note the recommendation from AFPC/JA to change the character of the applicant's discharge to Honorable; but we also share AFPC/JA's belief that an ADB would likely not have recommended an honorable service characterization. Moreover, the review of the applicant's case at the Department of Defense level, through the DOD/IG process, represents a far higher level of scrutiny than most airmen discharged for misconduct ever receive. Therefore, we are not convinced the denial of the ADB, in and of itself, constitutes a sufficient basis to recommend granting the relief sought, particularly when there was a legitimate basis for the applicant's involuntary separation and general service characterization. Additionally, after a careful review of the applicant's misconduct which formed the basis of the discharge, we find it more likely than not that even if she had been provided an ADB, she would have received the same discharge characterization she now holds. Therefore, in our view, the fact she was not provided an ADB constitutes a harmless error. As such, it would be unfair to all those who served honorably to furnish the same coveted Honorable discharge to someone whose service was terminated for substantiated misconduct.

In addition, while the Board notes the applicant was denied the opportunity to test for promotion during the 10E5 promotion cycle, the fact she did not test also constitutes a harmless error because she was not otherwise qualified to meet a promotion Board during that cycle. The applicant was not on active duty for an extensive period of time between 21 Mar 04 through 25 Jan 10, and arrived at her Recruiter duty station in Apr 10 after the 31 Mar 10 Promotion Eligibility Cutoff Date (PECD) for promotion cycle 10E5, so she did not have a current EPR on file and therefore was "non-weighable" for promotion purposes. Further, even if she had been qualified to meet a promotion board and been selected for promotion during cycle 10E5, we find it more likely than not that having received two LORs, gone AWOL, and received nonjudicial punishment by Jan 11, she would have been disqualified for promotion.

In sum, while we acknowledge that certain errors were made in the processing of the applicant's discharge for

misconduct, we are not convinced that these errors constituted an injustice under 10 USC 1552, or that the command's actions in response to the applicant's misconduct were motivated by reprisal in violation of 10 USC 1034. Accordingly, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-01472 in Executive Session on 9 Jan 12, 11 Dec 14, and 18 Mar 15 under the provisions of AFI 36-2603:

Chair

Member

Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01472 was considered:

Exhibit A. DD Form 149, dated 29 Mar 12, w/atchs.

Exhibit B. Master Military Personnel Records.

Exhibit C. Memorandum, AFPC/DPSOS, dated 14 May 12.

Exhibit D. Memorandum, AFRS/RSO/CCU, dated 2 Aug 12.

Exhibit E. Letter, SAF/MRBR, dated 3 Aug 12.

Exhibit F. Letter, Applicant, undated.

Exhibit G. Record of Proceedings, dated 23 Jan 13, w/atchs.

Exhibit H. Memorandum, AFPC/DPSOE, dated 20 May 13.

Exhibit I. Memorandum, AFLOA/JAJM, dated 4 Jun 13.

Exhibit J. Letter, AFBCMR, dated 6 Jun 13.

Exhibit K. Memorandum, Applicant, dated 8 Jun 13, w/atchs.

Exhibit L. Memorandum, Applicant, and 15 Jun 13, w/atchs.

Exhibit M. Memorandum, Applicant, undated, w/atch.

Exhibit N. Letter, AFBCMR, dated 15 May 15.

Exhibit O. Report of Investigation, DOD/IG, dated
21 Aug 14, w/atch.

Exhibit P. Letter, SAF/MRBC, dated 25 Sep 15.

Exhibit Q. Memorandum, AFPC/JA, dated 18 Feb 15.

Exhibit R. Memorandum, SAF/MRBR, dated 20 Feb 15.

Exhibit S. Letter, Applicant, dated 27 Feb 15.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-01473

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His nonselection for promotion by a Special Selection Board (SSB) for the Calendar Year 2009C (CY2009C) Major Central Selection Board be voided.

2. The AF Form 709, Promotion Recommendation Form (PRF), from June 2011 be removed from his records.

3. His second non-selection for promotion to Major be removed from his records.

4. He be reinstated into the Air Force and granted a direct promotion to major with all back pay and allowances.

APPLICANT CONTENDS THAT:

In December 2007, he volunteered for a deployment to Kandahar Air Base. In early 2008, he filed equal opportunity (EO) and Inspector General (IG) complaints to stop the computer circulation of pornography by unit officers and enlisted members, as well as to investigate other systemic misconduct within the unit. In reprisal, he was branded as not a team player, uncooperative and ill-motivated.

The EO and IG complaints resulted in a Commander-Directed Investigation (CDI) into the allegations of abuse of authority, intimidation, inappropriate use of government computers, dereliction of duty and harassment.

While the CDI was pending, his rating officials, in reprisal, released him early from deployment and referred him for a mental health exam. The exam results were favorable to him as there was no finding of mental illness or personality disorder. He was returned to duty.

On 31 March 2009, he received a referral officer performance report (OPR) for the period of 12 November 2007 through 27 September 2008. The additional rater completed her portion in November 2009. He filed an appeal through the Evaluation

Report Appeals Board (ERAB) in September 2009. It was returned without action stating the OPR was not yet a matter of record. Despite the referral OPR not being a matter of record, the senior rater issued a "Do Not Promote" Performance Recommendation Form (PRF). In November 2009, the referral OPR and PRF were forwarded to the promotion board. In February 2010, he was non-selected for promotion to major by the CY09 Central Selection Board (CSB).

In May 2010, he received two outstanding OPRs. In July 2010, he submitted ERAB #1 to void the referral OPR and request an SSB. While the ERAB was pending, he received a "Promote" PRF. On 30 September 2010, the ERAB approved his request to void the referral OPR and his case was forwarded for SSB consideration. However, ERAB #1 did not remove the "Do Not Promote" PRF referencing the referral OPR. An ERAB official suggested he request an amended ERAB. On 19 October 2010, the Air Force Personnel Center (AFPC) granted an SSB for CY09. On 29 November 2010, ERAB #2 voided the 2009 PRF.

Through no fault of his own, he was prejudiced before the CY10 Major Board. The Board considered his 2010 "Promote" PRF. His supervisor told him that the referral OPR, that had not yet been voided, adversely affected the PRF narrative and the promotion recommendation. He was prevented from timely removing the referral OPR as it was not filed until over 20 months after its September 2008 close-out.

In January 2011, the SSB reconsidered him for CY09. There was no PRF in his record prior to the SSB. The SSB could not look at the favorable OPR closing in May 2009 as it was delayed until March 2010 and not a matter of record before CY 2009.

In May 2010, the CY10 Major Board nonselected him for promotion. On 1 June 2010, the SSB CY09 results were released and he was again, nonselected for major. As a two time nonselectee, he was scheduled to separate on 30 September 2011.

The failure to provide the PRF, violated procedures for both regular promotion boards and SSBs. The SSB lacked the PRF which provided a performance based differentiation to assist the selection board. Therefore, results of the CY09 SSB that convened in January 2011 must be set aside.

AFPC failed to coordinate with their subordinate AMC promotion officials. It was an AFPC promotion official that informed him to submit a letter to the SSB stating that his senior rater refused to rewrite the PRF.

After the senior rater learned that the lack of a PRF may invalidate the 2011 SSB, he rewrote the PRF in June 2011. In mid-July, the ERAB returned his memo without action because it was not in effect a minor, administrative correction; rather, it constituted an appeal of the new PRF. In late July 2011, he

again asked about the PRF. In August 2011, he began terminal leave.

Remedy by the Board is available where the promotion process has proven unfair or unworkable, the error or unfairness for non-selection is identified and the officer is likely to have been promoted but for the error or unfairness. There is an AFBCMR case involving a Force Shaping Board process that was not fair or equitable because of an adverse retention recommendation form; similar to a PRF. The officer was reinstated without a relook SSB. The Board found there was a lack of fair and equitable consideration and that the adverse action was consistent with a retaliatory act for the officers filing of an IG complaint. The officer's records were otherwise outstanding and she was granted direct reinstatement without an SSB.

Letters of support have been provided from three lieutenant colonels and a GS-14, all within the intelligence career field. They independently reviewed his records and concluded that he would have received at the least a "Promote" PRF for CY09. They also concluded that he would have been promoted under the selection rate for "Promote" PRF's which was 97 percent.

This case has proven the remedial SSB process was unfair. Further the SSB proceedings are unworkable because the senior rater circumvented reaccomplishing the PRF by disguising the derogatory comments from the voided OPR. He requests the Board grants the relief requested.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former member of the Air Force who served from 27 September 2001 through 27 September 2011.

On 21 October 2009, the AMW/IG received a complaint from the applicant alleging reprisal. The investigation found there was no abuse of authority and no reprisal. The allegation was dismissed.

On 10 February 2010, ACC/IG responded to a complaint filed with SAF/IG in November 2009 alleging a cover-up by 9 AF/IG and the handling of the applicant's concerns. A thorough review was conducted and it was determined his allegations were addressed in a fair and unbiased manner.

On 22 February 2010, HQ AMC/IG notified the applicant that they conducted an investigation into his allegations of reprisal and found that the responsible management official did not reprise against him, nor did they abuse their authority. As a result,

they recommended his allegations be dismissed.

The remaining relevant facts pertaining to this case, extracted from the applicant's master personnel records, are described in the letters prepared by the Air Force offices of primary responsibility which are included at Exhibits C through F.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial of removing the PRF for the CY2009C Major CSB from the applicant's records.

On 23 September 2009, the applicant submitted a request to void the 27 September 2008 OPR to the ERAB; however, due to no response to a request for additional information, the case was closed. On 3 September 2010 the applicant again requested the ERAB void the 27 September 2008 OPR, which was approved on 30 September 2010 and an AF Form 77, Letter of Evaluation, was placed into the applicant's record in place of the OPR. Additionally, the applicant filed another request to the ERAB on 19 October 2010 requesting the CY2009C PRF be removed and he be provided SSB consideration. That request was approved on 29 November 2010. The SSB convened on January 2011, with the contested OPR and PRF not present in his Officer Selection Record (OSR).

The applicant filed another ERAB on 2 July 2011 to void his 21 December 2009 OPR; due to a lack of response for additional information, the application was closed. On 6 July 2011, his senior rater, who wrote the original contested PRF, petitioned the ERAB to substitute the AF Form 77 with a newly revised PRF that eliminated any reference to the applicant's referral OPR. This action is authorized under AFI 36-2401, para 2.2, if someone other than the ratee finds error in the report, he or she may initiate corrective action. In this case, the senior rater initiated the appeal on the applicant's behalf. The applicant was given a reasonable amount of time to acknowledge and or respond with a memorandum, which the applicant provided for use in the appeal. This application was approved by the ERAB on 31 October 2011, which voided the AF Form 77 present in the record and replaced it with a new "Do Not Promote" PRF. The applicant was notified of this decision by telephone.

The applicant contends that he was done an injustice when he was approved for a January 2011 SSB without the voided PRF. He believes that the successful removal of his 2008 OPR and CY2009C PRF should have resulted in a new PRF. He also does not understand why the ERAB did not, at the time of the ERAB, decide to void the CY2009C PRF. The ERAB considers specific relief as requested by applicants. It is not an investigative body and does not seek relief other than what is requested. The applicant had to specifically request the ERAB void his PRF. As

stated above, he successfully appealed to the ERAB and the PRF was removed. Therefore, the applicant was provided the relief sought in time for his January 2011 SSB.

The applicant later submitted a PRF justification sheet to his new Senior Rater requesting a new PRF be written to replace the existing AF Form 77 in the evaluation record. That request was in violation of AFI 36-2401, para A1.5.22.1, in that the reaccomplished evaluation report, or in this case PRF, must be signed by the original evaluator who signed the original PRF. Only under extremely circumstances would it have been appropriate for his new rater to rewrite the document.

The applicant feels his original rater's ERAB request constituted an injustice. The senior rater's comments and recommendation are required. The applicant feels the senior rater ignored requests to write his PRF in time for his 10 January 2011 SSB. The original senior rater took appropriate action after learning the applicant approached his new senior rater requesting his PRF be rewritten. The fact that these actions took place after the January 2011 SSB is irrelevant to the applicants overall case and has no merit. There is also a presumption that the PRF was quality reviewed and properly completed prior to its submission to the ERAB for substitution on 31 October 2011.

The applicant also contends he is the victim of reprisal due to filing EO and IG complaints against several fellow unit members while deployed. The applicant was released early from this deployment and was ultimately given a referral OPR at his home station. The applicant has failed, within this case, to prove that this was reprisal with regard to the PRF. The SAF/IG report does not substantiate a single incident of reprisal or that could have cast doubt on the impartial preparation or execution of the contested PRF. The SAF/IG report also identified that a previous Commander-Directed Investigation completed prior to the SAF/IG report did not substantiate any of those allegations. Therefore, the CY2009C PRF that was prepared, quality reviewed and approved for substitution by the ERAB is a legitimate document which corroborates the findings of the CDI and SAF/IG investigation. The applicant's contentions of improper processing or consideration of the contested report is without merit.

The applicant has not provided any substantiating evidence to prove his assertions that the approved substitute PRF that was placed into his records was rendered unfairly or unjustly. Air Force policy dictates that an evaluation report is accurate as written when it becomes a matter of record. To effectively challenge an evaluation, it is necessary to hear from all the members in the rating chain; not only for support, but also for clarification and explanation. The burden of proof is on the applicant and he has not substantiated the contested PRF was not rendered in good faith by all evaluators based on knowledge

available at the time. To void this evaluation would not give any potential future supplemental selection board an accurate and complete picture of the applicant's overall duty performance.

The complete DPSID evaluation is at Exhibit C.

AFPD/DPSOO recommends denial of the applicant's request to void his nonselections to major and to directly promote him to major.

The applicant was considered and not selected for promotion to the grade of major by the CY09C and CY10D major CSBs that convened on 2 November 2009 and 6 December 2010, respectively. Additionally, he was considered and not selected for promotion by the SSB that convened on 10 January 2011 for the CY2009C CSB.

An SSB convened for the purpose of having a relook based on an error or injustice is just that, a relook. Any nonselection for that purpose does not constitute another nonselection. Therefore, there is nothing to be voided. The nonselection was based on a complete review of the applicant's record. There is no evidence to suggest the applicant was prejudiced by this board. The applicant received a "Promote" recommendation with no negative comments. Without proof of error or injustice, the nonselection should not be voided.

The results of the original CY2009C promotion board were based on a complete review of the applicant's entire selection record, assessing the whole person factors, such as, job performance, professional qualities, depth and breadth of experience, leadership, and professional development. Although the officer may be qualified for promotion, he may not be the best qualified of other eligible officers competing for the limited number of promotion vacancies in the judgment of a selection board with the discretionary authority to make such selections. To grant a direct promotion would be unfair to all other officers who have extremely competitive records, but did not get promoted.

Additionally, both Congress and DoD have made clear their intent that errors ultimately affecting promotions should be resolved through the use of SSB's. When many good officers are competing for a limited number of promotions, it is extremely competitive. Without access to all the competing records and a review of their content, we believe sending approved cases to SSBs for remedy is the fairest and best practice. However, in this case, direct promotion and SSB consideration would be inappropriate.

The complete DPSOO evaluation is at Exhibit D.

AFPC/DPALO3 does not make a recommendation and provides information regarding assignments, should the applicant be reinstated.

The 14N career field is manned at 71.88 percent at O-3 and 61.98 percent at O-4. Upon meeting his first major's board in 2009, the applicant was in the 2001 year group. The 14N career field is currently 17 officers below sustainment for that year group. The career field also requires a top-secret clearance; therefore, his clearance must be revalidated prior to assuming 14N duties.

Should the applicant be reinstated with a valid security clearance, he would be matched to an assignment based on his previous qualifications and the needs of the Air Force.

The complete DPALO3 evaluation is at Exhibit E.

AFPC/JA recommends denial of the application. The CY2009C and CY2010D central selection boards were conducted in accordance with the law and governing instructions. The applicant failed to prove any injustice with respect to those boards, or that any additional SSB consideration is required. He has similarly failed to establish any error or injustice that would warrant a direct promotion to major.

Therefore, his discharge pursuant to 10 U.S.C 632 and AFI 36-3207, para 3.4, for having been twice passed over for promotion to O-4 was proper. That determination moots the applicant's request for reinstatement in the Air Force as he has established no basis that would mandate or justify doing so. The applicant failed to prove any error or injustice with respect to any of the actions he challenges.

The complete JA evaluation is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Through counsel, the applicant states the factual assertions are baseless, irrelevant sideshows to the merits. The two primary claims are: prejudicial SSB CY2009 relook, without any PRF despite his due diligence; and the rewritten PRF in 2011 was improperly presented as a performance based differentiation, but instead was based on alleged performance that bypassed the OPR process. The new PRF resurrects the same performance comments from the voided OPR and resulted in the same effect as if the original OPR and PRF were never removed.

With regard to DPAL03's advisory, should he be reinstated, he has an active top secret clearance and is undergoing a periodic reinvestigation.

With regard to DPSID's assertion that he never requested a new PRF prior to his SSB, he repeatedly requested a new PRF, but his senior rater refused to rewrite the 2009 PRF. His supervisors also requested a new PRF, but the senior rater again refused.

He further addressed the instances in which a new PRF was requested, yet, never written. He now contends the senior rater forfeited his right to 10 months later; provide input to correct the same PRF.

DPSID also states that he never requested a substitute PRF before the SSB and that it was the senior rater's own initiative in 2011 to rewrite the PRF after learning the new senior rater was approached. He was told the lack of a PRF was a material error and requested a new PRF through the command and the Air Force Personnel Center. The advisory misleads the Board by asserting that he never requested a substitute PRF; however, the advisory writer was informed of the senior rater's refusal in June 2011.

The JA option offers conclusive statements without discussion of the facts. There is no explanation for any conclusions which suggests the intent to unduly influence the Board. The JA opinion should be ignored.

DPSID's argument is that the senior rater's substituted PRF can still adversely comment on performance that covers an unrated period not a matter of record. They failed to comprehend the dilemma in this case. How can evaluators convert their voided ratings to an unapproved PRF? The senior rater used the PRF to make an end-run around the OPR process after the ERAB decision to void the evaluator's original referral OPR and PRF. The rewritten PRF was still adverse with a "Do Not Promote." It was the senior rater's way to bypass the OPR rating to then include derogatory performance allegations.

The applicant's response, with attachments, is at Exhibit H.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After a thorough review of the evidence of record, the applicant's submission and counsel's response to the Air Force advisories, we are not persuaded that his CY 2009C SSB should be voided, his second non-selection to major be removed and he be reinstated and granted a direct promotion to major with all back pay and allowances. His contentions in this regard are duly noted; however, in our opinion, the Air Force offices of primary responsibility have adequately addressed these contentions and we are in agreement with their assessment of his case. We agree with AFPC/DPSOO that a special selection board is simply a

relook and does not constitute a non-selection; accordingly, the request to void the SSB is not favorably considered.

4. Additionally, the applicant requests his June 2011 PRF be removed from his records. The applicant, through counsel, contends that the June 2011 PRF is an end-run around to the OPR process; we disagree. The governing regulation states that senior raters may request subordinate supervisors provide information based on the officer's duty performance. The applicant has not provided substantial evidence that his senior rater's comments were based on unreliable information as contended. Therefore, we do not find the June 2011 PRF should be removed from his records. In view of the above, we find no basis to recommend granting the applicants request to be reinstated into the Air Force and receive a direct promotion to major.

5. The applicant alleges that he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). We reviewed the evidence of record to reach our own independent determination of whether reprisal occurred. Based on our review, we do not conclude the applicant has been the victim of reprisal. The applicant was provided relief, as appropriate, by the ERAB. Therefore, it is our determination the applicant has not been the victim of reprisal based on the evidence of record in this case.

6. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of an error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-01473 in Executive Session on 4 February 2013, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01473 was considered:

Exhibit A. DD Form 149, dated 21 Mar 12, w/atchs.
Exhibit B. Applicant's Master Personnel Record.
Exhibit C. Letter, AFPC/DPSID, dated 21 May 12.
Exhibit D. Letter, AFPD/DPSOO, dated 31 July 12.
Exhibit E. Letter, AFPC/DPALO3, dated 17 Aug 12.
Exhibit F. Letter, AFPC/JA, dated 20 Sep 12.
Exhibit G. Letter, SAF/MRBR, dated 1 Oct 12.
Exhibit H. Applicant's Response, dated 1 Nov 11 [sic], w/atchs.
Exhibit I. Unredacted SAF/IG investigation withdrawn.

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-01522

COUNSEL: XXX

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

The following documents be declared void and removed from his records:

1. AF Form 911, Enlisted Performance Report (MSgt thru CMSgt) covering the period 16 Jan 09 through 15 Jan 10.

2. AF IMT 174, Record of Counseling, dated 18 May 10.

3. DA Form 4856, Developmental Counseling Form, dated 26 May 10.

4. AF IMT 174, Record of Counseling, dated 3 Jun 10.

5. AF Form 469, Duty Limiting Condition Report, dated 27 Jul 10.

6. DA Form 3349, Physical Profile, dated 27 Jul 10.

7. Physician's Counseling Notes, dated Aug 10 [sic].

APPLICANT CONTENDS THAT:

He has been the victim of reprisal in violation of 10 USC 1034 for making protected communications. Specifically:

1. The Commander of the Army National Guard (ARNG) unit to which he is assigned referred him for an improper mental health evaluation (IMHE) in reprisal for making protected communications to members of his chain of command. The Commander and unit medical officer violated the MHE procedural requirements of DoD Directive (DODD) 6490.1, Mental Health Evaluations of Members of the Armed Forces, and DoD Instruction (DODI) 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces.

2. The Deputy Commander of the ARNG unit to which he is assigned restricted the applicant from communicating with a

Member of Congress and provided false statements during an official investigation.

3. Unfavorable information was unjustly entered into his official personnel records.

The Department of Defense Inspector General (DOD/IG), in DOD/IG Report of Whistleblower Reprisal Investigation, dated 16 Feb 12,

substantiated all three of the applicant's allegations and substantiated reprisal against the applicant.

In support of his request, the applicant provides copies of the DOD/IG Report of Whistleblower Reprisal Investigation with
transmittal letter, and copies of the contested documents.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently a Master Sergeant (E-7), Active Guard Reserve (AGR), Montana Air National Guard (MTANG), and during the period in question was working under Montana Army National Guard (MTARNG) supervision at the Joint Force Headquarters (JFHQ), Montana National Guard (MTNG).

On 7 Mar 10, the applicant informed his JFHQ leadership about a Nov 09 government vehicle accident involving potential alcohol use by the driver and assistant driver.

On or about 11 May 10, the applicant informed the JFHQ purchasing office personnel of an alleged improper use of his unit's government purchase card.

On 18 May 10, the applicant was issued a counseling statement citing his failure to accomplish his fitness assessment (FA) in accordance with previous direction to do so. He was also instructed in writing to "utilize the chain of command in all circumstances except when utilizing the IG or the Chaplain" regarding any issues that related to his official duties.

On 26 May 10, the applicant was issued a counseling statement

citing him for failure to answer his government cellular phone.

On 28 May 10, the applicant filed a complaint with the JFHQ/IG alleging that on 18 May 10 he received written counseling in reprisal for reporting the aforementioned communications on 7 Mar 10 and 11 May 10.

On 3 Jun 10, the applicant was referred by his leadership for a Mental Health Evaluation (MHE).

On 6 Jun 10, the applicant received an AF IMT 174, Record of Individual Counseling, for departing from group Physical Training (PT) early.

On 21 Jul 10, the applicant filed a complaint with the JFHQ/IG alleging that he was referred for a MHE in reprisal for his having contacted them on 28 May 10.

On 27 Jul 10, the applicant was provided a DA Form 3349, Physical Profile, limiting his duty by restricting him from assignment to a hot zone pending evaluation by behavioral health.

On 14 Feb 11, the applicant was furnished the contested EPR, rendered for the period 16 Jan 09 through 15 Jan 10.

On 16 Feb 12, DoD/IG, Director, Whistleblower Reprisal Investigations, notified the applicant of their finding that he was referred for the MHE in reprisal for his protected communications in violation of 10 USC 1034 and the MHE referral was not carried out in accordance with the procedural requirements of DODD 6490.1 and DoDI 6490.4. In addition, the written guidance he received on 28 May 10 to restrict his communications to his chain of command failed to include Members of Congress as an exception, thus constituting restriction in violation of Title 10 USC 1034.

The remaining relevant facts pertaining to this application are

contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibits C and D.

AIR FORCE EVALUATION:

AFMOA/SGAT recommends approval, indicating there is evidence of an error or injustice. The applicant requests the removal of all documents related to the IMHE. The available documents from the DoD/IG investigative report confirm he was referred for an IMHE in reprisal and appropriate procedures had not been followed. Based on the documentation in support of the applicant's claim, the Board should approve the request to remove the notes for the 3 Jun 09 counseling session, the DA Form 3349, and the AF Form 469. As the applicant's remaining requests are related to personnel actions, any recommendation must be deferred to the appropriate OPR.

The complete AFMOA/SGAT evaluation is at Exhibit C.

NGB/A1PS recommends partial approval indicating there is evidence of an error or injustice. As it is clear the member's rights were violated, the notes dated Aug 10 [sic] recorded by Capt A-, DA Form 3349, and AF Form 469 should be removed from the applicant's records. However, recommend the EPR for the period of 16 Jan 09 through 15 Jan 10 remain in the applicant's

records because it does not mention the members IMHE and does not appear to be related to the IMHE. Recommend the DA Form 4856 (developmental counseling) also remain in the member's record because it does not show the IMHE violation and appears to be before the IMHE. The applicant did not provide any documentation to show the performance report and developmental counseling were "tainted."

The complete NGB/A1PS evaluation, with attachment, is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reiterates that all of the contested actions were tainted in reprisal for his protected communications. In addition, he provides further detail on each of the incidents which were investigated by the JFHQ/IG and DoD/IG and were the basis of the DoD/IG report. In addition, he submits significant documentation in support of each contention.

A complete copy of the applicant’s response, with attachments, is at Exhibit F.

On 14 Jul 12, the applicant submitted another expanded statement in which he again reiterates his rationale for requesting the identified documents be removed from his records. He believes his leadership was trying to entrap him in order to provide themselves with sufficient supporting documentation to write a referral EPR in Jan 11.

A complete copy of the applicant’s additional response, with attachments, is at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to

demonstrate the existence of an error or injustice. The applicant contends he was the victim of reprisal in violation of 10 USC 1034 in response to making protected communications. After a thorough review of the evidence of record and the applicant's complete submission, to include his responses to the advisory opinions rendered in this case, we agree. In this respect, we note the DOD/IG report, dated 16 Feb 12, indicates the applicant was the victim of an unfavorable personnel action, specifically, the referral for a mental health evaluation (MHE),

in reprisal for making protected communications to officials within his chain of command and was improperly restricted from communicating with members of Congress, both in violation of 10 USC 1034. Based upon these findings, we agree with Air Force offices of primary responsibility (OPR) and adopt their rationale as the basis for our conclusion that any documents related to the MHE referral (e.g. physicians notes, DA Form 3349, AF Form 469, and AF IMT 174) should be declared void and removed from his records. As for the applicant's remaining requests, we note that DoD/IG did not make a specific finding with respect to the contested counseling statements and enlisted performance report (EPR); however, based on our own independent review and notwithstanding the comments of NGB/A1PS indicating the counseling statements and EPR do not appear to be directly related to the primary reprisal activity, we believe the preponderance of evidence indicates that it just as likely as not that these actions were influenced and/or motivated by this substantiated reprisal motive. In this respect, we note the counseling statements were issued to the applicant in quick succession and within very close proximity to his protected communications in what appears to be an attempt by his leadership to build a record of substandard performance. As for the contested EPR, while it was rendered for the period closing 15 Jan 10, months before the applicant's first protected communication; it was not concluded or presented to the applicant until well after the events in question. Therefore, given the evidence before us and in light of the applicant's otherwise exemplary service, we believe reasonable doubt has been established that the counseling statements and EPR were rendered in good faith or are accurate descriptions of the applicant's duty performance. As such, we elect to resolve any doubt regarding this issue in the applicant's favor. Therefore, we recommend the applicant's records be corrected as indicated below.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that the following documents be declared void and removed from his records.

a. AF Form 911, Enlisted Performance Report (MSgt thru CMSgt), rendered for the period 16 Jan 09 through 15 Jan 10.

b. AF IMT 174, Record of Counseling, dated 18 May 10.

c. DA Form 4856, Developmental Counseling Form, dated 26 May 10.

d. AF IMT 174, Record of Counseling, dated 3 Jun 10.

e. AF Form 469, Duty Limiting Condition Report, dated 27 Jul 10.

f. DA Form 3349, Physical Profile, dated 27 Jul 10.

g. Physician’s Counseling Notes, dated Aug 10 [sic].

The following members of the Board considered AFBCMR Docket

Number BC-2012-01522 in Executive Session on 16 Aug 12, under the provisions of AFI 36-2603:

Panel Chair

Member

Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 12 Mar 12, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFMOA/SGAT, dated 11 May 12.

Exhibit D. Letter, NGB/A1PS, dated 4 Jun 12.

Exhibit E. Letter, AFBCMR, dated 27 Jul 12.

Exhibit F. Letter, Applicant, dated 25 Jun 12.

Exhibit G. Letter, Applicant, dated 14 Jul 12.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-02087

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Vacate her demotion to the grade of Senior Airman.

APPLICANT CONTENDS THAT:

The procedures used by her unit for the recommended demotion does not follow the procedure outlined in the regulation.

In support of her request the applicant submits a copy of a personal memorandum which includes her counsel's legal analysis and copies of documents pertaining to the demotion actions.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Air National Guard (ANG) in the grade of E-4, Senior Airman. Her date of rank (DOR) is 14 April 2012.

On 24 February 2012, the applicant received notification from the unit wing commander that he was recommending her for demotion to the grade of E-4, Senior Airman. The specific reason for the demotion was; the applicant did on 2 February 2012, knowingly and willfully made a false accusation of unethical behavior against several members of her unit to include her squadron commander.

On 24 February 2012, the applicant acknowledged receipt of the notification and her rights to legal counsel and to concur or non-concur with the demotion action.

Subsequent to the demotion package being found legally sufficient on 6 April 2012, the applicant was demoted to the grade of Senior Airman, E-4, by special order AQ-49, dated 14 April 2012.

AIR FORCE EVALUATION:

NGB/A1PP recommends denial. A1PS states available documentation does not support the applicant's request. Their interpretation of the instruction is the unit commander "may" recommend demotion of an enlisted ANG member under his/her command. It does not state the unit commander "must" take this action. They feel the wing commander made the demotion recommendation based on the fact that the squadron commander was one of the unit members of whom the applicant knowingly and willfully made a false accusation of unethical behavior against. A recommendation for demotion made by the squadron commander could have reasonably been seen as a form of reprisal against the applicant.

The complete NGB/A1PP evaluation is at Exhibit C.

NGB/A1PS states they concur with the NGB subject matter expert (SME) and therefore, do not recommend relief for the applicant. The demotion package was reviewed and found to be legally sufficient by the state's ANG staff judge advocate.

The complete NGB/A1PS evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 17 September 2012 for review and comment within 30 days (Exhibit E). To date, this office has not received a response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force offices of primary responsibility and adopt

their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel

will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application BC-2012-02087 in Executive Session on 23 January 2013, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit A. DD Form 149 dated 5 May 2012, w/atchs.

Exhibit B. Applicant’s Master Personnel Records.

Exhibit C. Letter, NGB/A1PP, dated 27 June 2012.

Exhibit D. Letter, NGB/A1PS, dated 2 July 2012.

Exhibit E. Letter, SAF/MRBR, dated 17 September 2012.

Panel Chair
, Panel Chair

, Member

, Member

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-02734

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His Enlisted Performance Report (EPR) with the close-out date of 15 January 2011 be removed from his records.

APPLICANT CONTENDS THAT:

The EPR was not a fair and impartial assessment of his performance. There are substantial inconsistencies and violations of AFI 36-2406, Officer and Enlisted Evaluation Systems.

On 18 November 2010, his rater was removed to prevent possible retaliation and he was assigned a new rater. Yet, Section V of the EPR shows the EPR feedback date as 28 September 2010. This feedback was conducted by the same rater that was removed. His new rater never conducted a feedback. When his original rater was removed, a mandatory comment should have been entered in Section V. Additionally, his new rater did not meet the

required number of days of supervision to accomplish the EPR.

The official change of rater was not submitted to the Force Support Squadron until 25 February 2011; 97 days after the appointment and 4 days after the close-out of his EPR. His new rater was flagged as having less than 120 days of supervision. A timely reporting of change of rater (COR) did not occur in accordance with the AFI.

The new rater used the performance feedback of the removed rater to determine his rating. The consideration of this feedback in violation of AFI 36-2406 which states certain items are inappropriate for consideration in the evaluation process and may not be commented on the evaluation form i.e. conduct based on unreliable information. Additionally, actions taken by individuals outside the normal chain that represent guaranteed rights of appeal, such as Inspector General and congressional inquiry.

He understands that a single error does not invalidate an EPR; however, his rater and additional rater did not comply with the

AFI to ensure a fair, accurate and impartial EPR. This EPR was false and included errors.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of staff sergeant.

On or about 28 September 2010, he filed a complaint with the Office of the Inspector General (IG) alleging that his commander

failed to investigate his allegation of Fraud, Waste and Abuse (FWA). The IG met with the Air Force Office of Investigations (AFOSI) regarding his claims. AFOSI investigated the complaints; however, the allegations were not substantiated. The complaint was closed on 1 November 2010.

On 23 August 2011, the applicant filed a complaint with the Inspector General alleging his division chief marked down his EPR in reprisal for the FWA complaint. The IG examined the facts and on 12 April 2012, notified the applicant that the responsible management official did not reprise against him or abuse their authority. The IG recommended the allegation be dismissed.

On 11 June 2012, the Evaluation Report Appeals Board (ERAB) notified the applicant that after considering his application, they were not convinced the contested EPR was unjust or wrong. They did, however, administratively correct the EPR by adding a comment in Section V. The contested EPR was removed from his records and replaced with the ERAB corrected report.

The following is a resume of his EPR ratings:

RATING PERIOD PROMOTION RECOMMENDATION

15 Jan 13 5

15 Jan 12 5

*15 Jan 11 4

15 Jan 10 (SSgt) 5

15 Jan 09 (SrA) 5

15 Jan 08 5

15 Jan 07 5

15 Jan 06 (AIC) 5

* Contested Report

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial. The applicant filed an appeal through the Evaluation Reports Appeals Board (ERAB); however, the appeal was denied.

The applicant contends that the date of the recorded feedback, 28 September 2010, was improper as the rater who conducted that feedback was removed on 18 November 2010. The new rater assumed the rater duties and rendered the report on 15 January 2011, shortly thereafter. The recorded feedback date merely reflects the feedback by the original rater prior to the assumption of rating duties.

The second allegation expands the first allegation and contends the new rater improperly used a prior feedback. The action was not a change of rater, but removal of rater and the feedback date as recorded was valid for use in the contested EPR.

The applicant also contends that a mandatory comment was missing from Section V of the EPR. The ERAB administratively corrected the EPR by adding "the rater was removed from the rating chain effective 18 November 2010."

The applicant states the number of supervision days as reflected (365) is inaccurate as his new rater did not assume rating duties until 18 November 2010. The assumption of duties, as opposed to starting new responsibilities does not restart the clock.

He also contends that the change of rating official was not timely and the action took place after the close-out of his EPR.

The CRO update was not timely. The CRO action was taken to correct a deficiency in his evaluation record, the result of which corrected the MILPDS record so that is was accurate and in agreement with the already closed out EPR. This discrepancy does not provide a valid reason to void the entire report.

The applicant further contends that the new rater used the performance feedback from this original rater to determine his EPR rating. The applicant inappropriately cites AFI 36-2406 para 3.7.7 which references rater comments on unreliable information. He does not provide any supporting evidence to support that any unreliable information, to include his feedback, was used by the rating chain in preparation of the contested EPR. The rating chain is in the best position to determine the relevancy of any written matters they may have considered when preparing this report. Without input from these evaluators, it is not possible to determine what the rating chain did or did not consider. Therefore, the assumption is that any comments and or ratings reflected on the contested EPR are fair, accurate and in accordance with all published Air Force policies.

The applicant also contends that the contested EPR portrays that his newly appointed rater conducted 365 full days of supervision. When an additional rater assumes the raters responsibility, the entire period of supervision carries over and the clock does not restart. In this case, the assumption of the rating responsibility caused the period of supervision to reflect for the entire calendar year of the annual report.

The most effective evidence to rebut an evaluation consists of statements from the evaluators who signed the report or from other individuals in the rating chain when the report was signed. Without the benefit of these statements, it can only be assumed that the EPR is accurate as written. To effectively challenge an EPR, it is necessary to hear from all members of the chain – not only for support, but for clarification/explanation. In the absence of information from evaluators, official substantiation of error or injustice from the IG or Military Equal Opportunity and Treatment is appropriate, but not provided in this case. Again, in the absence of such evidence from the applicant, there is no valid justification for removing this contested EPR from his permanent evaluation record.

An evaluation report is considered to represent the rating chain's best judgment at the time it is rendered. Only strong evidence warrants correction or removal of a performance report from an individual's record. The burden of proof is on the applicant. He has not substantiated the contested report was not rendered in good faith by all evaluators based on the knowledge available at the time. The applicant has not provided evidence that the report is inaccurate or unjust.

The complete DPSID evaluation is at Exhibit C.

AFPC/DPSOE defers recommendation to AFPC/DPSID. The first time the contested report was used in the promotion process was during cycle 12E6 to technical sergeant. Should the Board remove the contested report, the applicant would be entitled to supplemental promotion consideration. It would, however, serve no useful purpose as his total score would not increase significantly enough to meet the promotion cutoff score required for selection for promotion. The applicant's total score was 291.08. The required score for selection for promotion was 320.16; a difference of 29.08 points. Removing the contested report would increase his weighed score by 6.75 points.

The complete DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant contests several statements made by the advisory writer. He states his position to have the contested report

removed is based solely on the failure to adhere to the Air Force Instruction. He was not provided feedback to justify a markdown from the overall rating of "truly among the best." The only feedback given was from the rater that was removed.

He has provided specific inconsistencies with cited references from the AFI, accompanied with substantiated documentation to

reinforce his position that the EPR was handled outside of Air Force standards. The Air Force Personnel Center's assertion that the EPR is valid is not substantiated. They did not cite any Air Force instruction supporting their claim the contested EPR was conducted within Air Force standards.

He understands the burden of proof rests with the individual. He has provided email traffic from his chain outlining their refusal to correct his EPR. He also asked his chain to provide justification/explanation about the EPR. The chain has declined to provide this supporting documentation.

His appeal to have this EPR removed is not because he disagrees with the rating. It is on the basis of the governing guidelines to safeguard against improper, inaccurate and unfair practices during the evaluation process which was not followed.

The applicant's complete response, with attachments, is at Exhibit F

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of AFPC/DPSID and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Additionally, since we find no basis to remove the contested EPR from the applicant's record, we find no basis to consider supplemental promotion consideration. While

we note the applicant's arguments that the contested EPR was not accomplished in accordance with governing policy, in our view the administrative correction effected by the ERAB resolved the error made in the report and the report does, in fact, meet the requirements of AFI 36-2401. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-02734 in Executive Session on 26 March 2013 under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 15 Jun 12, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSID, dated 4 Sep 12.

Exhibit D. Letter, AFPC/DPSOE, dated 14 Sep 12.

Exhibit E. Letter, SAF/MRBR, dated 5 Nov 12.

Exhibit E. Applicant's Response, dated 3 Jan 13, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-02987

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her AF Form 911, Enlisted Performance Report (EPR) (MSgt thru CMSgt), rendered for the period 19 Feb 11 thru 7 Jul 11, be declared void and removed from her records.

APPLICANT CONTENDS THAT:

In a four-page statement the applicant presents the following major contentions:

1. She was notified the 693rd Intelligence, Surveillance and Reconnaissance Group Commander (693 ISRG/CC) had directed she be removed from her current position as the Mission Support Flight Superintendent and be placed under the direct supervision of the 693 ISRG/CC because the position required someone that was focused on the mission and people during a time of war.

2. During the contested EPR reporting period she was not sure who her actual supervisor and rater were. She was undergoing a medical evaluation board (MEB) for inflammatory bowel disease,

status-post ilealplasty chronic abdominal pain, and status post lysis of adhesions major depressive disorder-moderate

3. Her rater had an insufficient number of days supervision to render a report because of her frequent absences from the unit (98 days) during the rating period, due to hospitalization, leave (convalescent, emergency and ordinary), as well as normal weekend and holiday passes. Some of the absences were for more than 30 consecutive days in length.

4. She never received any performance feedback or counseling from her rating chain during the reporting period due to the vagueness of who her actual supervisor was.

5. The EPR was the result of her rating chain reprising against her for filing an Article 138, Uniform Code of Military Justice (UCMJ) action and an Inspector General (IG) complaint against her additional rater and another service member.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of senior master sergeant (SMSgt).

On 26 Apr 11, the applicant filed a complaint with the 86th Airlift Wing Inspector General (86 AW/IG) alleging the 693 ISRG/CC removed her from her position as the 693 ISRG Superintendent, as a reprisal for her conversation with the

480 ISR Wing/Command Chief (480 ISRW/CCC) on 29 Mar 11.

In accordance with (IAW) 90-301, Inspector General Complaints, the 480 ISRW/IG reviewed the complaint and determined the allegations of reprisal should be dismissed; there was no evidence of abuse of authority, and that further inquiry or investigation under Title 10 United States Code (USC), 1034 was not warranted. The case was formally referred to the AF ISR Agency IG's office who, in turn, reviewed the case and transferred it to the Secretary of the Air Force (SAF) IG (SAF/IG). The SAF/IG, in turn, reviewed the case and referred it to the Department of Defense (DoD)/IG office.

On 4 Jul 11, the applicant submitted a DoD Hotline complaint via email. In this complaint, the applicant alleges that since the submission of the IG complaint in Apr 11, she believes an unauthorized disclosure of that complaint was made to her commander and that adverse personnel actions were taken against her.

On 13 Jul 11, the DoD/IG office completed their review of the applicant's reprisal case and determined that there was no evidence of reprisal/abuse of authority. The DoD/IG stated that an investigation into the allegations of reprisal is not warranted under 10 USC 1034, and the case was closed.

On 29 Jul 11, the applicant was notified of the DoD/IG's decision.

On 19 Jan 12, the DoD/IG completed their review of the applicant's complaint dated 4 Jul 11, and determined that there was no evidence of reprisal by her former commander. The DoD/IG stated that an investigation into the allegations of reprisal were not warranted under 10 USC 1034 and the case was closed.

On 19 Mar 12, the applicant was notified of the DoD/IG's decision.

On 14 Sep 12, the AF ISR Agency/IGQ reviewed the applicant's complaint dated 3 Jan 12 and determined the allegation did not

meet the definition of reprisal under 10 USC 1034. In considering the abuse of authority/abuse of power and unfair treatment by the commander, AF ISR/IGQ concluded the commander's actions were appropriate considering the applicant's performance and conduct. Further, AF ISR/IGQ noted the allegations of unfair treatment, reprisal/abuse of authority have been reviewed in previous IG complaints, on multiple occasions and at all levels to include SAF/IG and DoD/IG, and each time, the findings have been found not substantiated

The applicant filed an appeal through the Evaluation Report Appeals Board (ERAB) under the provisions of AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. The ERAB considered the applicant's appeal and was not convinced the report was unjust or inaccurate and denied her request for relief.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibit B and C.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial of the applicant's request to remove the contested EPR. DPSID states that Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all the members of the rating chain, not only for support, but also for clarification/explanation. The applicant has failed to provide any information/support from either the rater or additional rater on the contested evaluation. DPSID determined the report was accomplished in direct accordance with applicable regulations. DPSID contends that once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record.

Based upon the lack of corroborating evidence provided by the applicant and the administrative sufficiency pertaining to the IG complaint findings, there is no compelling evidence to show that the report is unjust or inaccurate as written.

The complete DPSID evaluation is at Exhibit C.

AFPC/DPSOE defers to the recommendation of DPSID regarding the removal of the report and its validity. DPSOE states should the Board void the report as requested; they could direct the applicant be provided supplemental consideration for cycle 11E9. The next senior noncommissioned officer (SNCO) supplemental board is scheduled to convene in Jun 13. Should the applicant become a select, she would incur a three-year active duty

service commitment (ADSC) from the date of pin-on. Since the applicant has been approved for retirement effective 1 Feb 13, she would need to petition the Board to waive the ADSC or be returned to active duty.

The complete DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 23 Oct 12, for review and comment within 30 days (Exhibit E). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice to warrant the removal of the contested EPR from her records. We took careful notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of DPSID and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. We do not find her assertions, in and by themselves, sufficiently persuasive in this matter. Additionally, we are not persuaded that the contested report is not a true and accurate assessment of her demonstrated potential during the specified time period or that the comments contained in the report are in error or contrary to the provisions of the governing instruction. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant alleges she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC § 1034). We note, the applicant filed several IG complaints; however, SAF/IG, DoD/IG, and AF ISR Agency all reviewed the allegations, and each time, the findings were unsubstantiated, to include alleged reprisal. Nevertheless, in accordance with 10 USC § 1034, we reviewed the evidence of record to reach our own independent determination of whether reprisal occurred. The applicant has not established that she ever made a protected communication and the EPR was rendered in retaliation to making a protected communication. Other than her own assertions, she has provided no evidence that

would convince us the EPR was not an accurate description of her performance during the reporting period. Therefore, it is our determination the applicant has not been the victim of reprisal based on the evidence of record in this case. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-02987 in Executive Session on 26 Feb 13, under the provisions of AFI 36-2603:

Panel Chair

Member

Member

Although was the Panel Chair, in view of his untimely death, has signed as Acting Panel Chair. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 2 Jul 12, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSID, dated 4 Sep 12.

Exhibit D. Letter, AFPC/DPSOE, dated 15 Sep 12.

Exhibit E. Letter, SAF/MRBR, dated 23 Oct 12.

Acting Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-03031
XXXXXXX COUNSEL:
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He receive the following relief based on being the victim of a substantiated case of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, and AFI 90-301, Inspector General (IG) Complaints Resolution.

1. His records be corrected to expunge any and all verbiage related to his improper release from the Arizona Air National Guard (AZANG) such as his DD Form 214, NGB 22 and Special Order P-003739).

2. He be reinstated into a similar Air Guard Reserve (AGR) position in the United States Air Force Reserve (USAFR) at Davis-Monthan AFB, AZ through June 2015, or later if promoted to the grade of colonel (O-6).

3. He be considered for a Secretarially directed promotion to the grade of colonel. In the alternative his records be corrected to reflect command credit and he receive supplemental promotion consideration to the grade of colonel.

4. He receive full entitlement to the 44.5 days of terminal leave he was forced to sell due to his reprisal based discharge from the AZANG. Alternatively, the leave balance be reinstated to his leave account.

5. He receive pay and point credit for the period he was illegally discharged from the AZANG to the date he was assessed into the USAFR (from 16 July 2011 to 5 August 2011).

6. His terminated Aviator Continuation Pay (ACP) contract dated 27 September 2009, be reinstated and he be reimbursed for missed ACP bonus installments on 27 September 2011 and 27 September 2012.

7. He receive a separation date commensurate with a mandatory retirement date of 27 May 2015.

8. He be continued with the 2d Special Operations Squadron in an additive AGR billet, or in the alternative he receive continuation as a Traditional Reservist with active duty retirement protections or alternatively, he receive a TERA retirement.

9. He requests protection against any future breaks in service through 20 years of service.

APPLICANT CONTENDS THAT:

In a 6-page statement the applicant's counsel presents the following major contentions:

1. He was selected as the highest scoring candidate for a supplementary AGR tour with the AZANG. However, he was denied placement into the AGR Vacancy.

2. He requested a review of the assignment irregularities by the AZ National Guard (NG) State IG. On 20 April 2011, he elevated his case to SAF/IGS. The AZNG State IG attempted to formally dismiss the case the day after he informed the State IG Inquiry Officer (IO) that the case was elevated to SAF/IGS.

3. Based on the facts supported by the attached IG findings and the referenced AFBCMR precedents, the career injuries associated with the reprisal and hiring violations should be corrected.

4. Had the events not occurred he would have earned command experience, and would likely have been extremely competitive for promotion to the grade of colonel.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The AFBCMR's recommendation regarding disciplinary action is considered For Official Use Only (FOUO), is separate and aside from its recommendations regarding relief, and will not be described in the Record of Proceedings (ROP), or conveyed to the applicant by any other means.

Information extracted from the Automated Record System (ARMS) indicates the applicant is currently serving in the Air Force Reserve in the grade of lieutenant colonel (Lt Col, O-5), having assumed that grade effective and with a date of rank of 1 October 2005. On 15 July 2011, he was released from the ANG and on 5 August 2011, he was transferred to the Air Force Reserve. At the time of his separation from the ANG, he had 24 years, 1 month, and 19 days of satisfactory Federal military service. His Mandatory Separation Date (MSD) is 1 June 2015

On 25 March 2011, the applicant filed the first of eight AF IMTs 102, Inspector General (IG) Report Personal and Fraud, Waste &

Abuse Complaint Registration, to the AZNG State IG IAW AFI 90-301, Inspector General Complaints Resolution, complaining about the process of hiring against a newly vacated commander position.

All eight complaints constituted protected communications (PC). The third of the eight complaints described previous PCs by the applicant, specifically, a 13 July 2009 IG complaint, a 3 August 2009 communication with the Adjutant General (TAG), AZ National Guard, a 5 February 2010 communication with an auditor, and a 20 August 2010 IG complaint supplemented on 9 December 2010. Furthermore, he met with the TAG in May 2011. As the applicant communicated information about a violation of a regulation to the TAG during the meeting, it constituted a PC.

On 6 May 2011, he met with the TAG to discuss alleged violations of DEMA Directive 25-6 during the hiring process of the commander position.

On 3 June 2011, the Assistant TAG (ATAG) issued him a Notice of Appointment, forcing him to leave the AZANG on 15 July 2012.

On 5 June 2011, he filed an AF IMT 102 that complained about the Notice of Appointment. In June 2011, The Inspector General (TIG) directed an investigation of the additional allegation of reprisal against the ATAG. The applicant claimed that two favorable actions were withheld when he was not selected for the group commander position in 2010 or for the squadron commander position in 2011.

In regards to his non-selection for group commander, the State IG found the ATAG properly filled the position as a "key staff appointment." He did not use and did not have to use the formal vacancy announcement procedure. As there was nothing improper about how the group commander position was filled, his non-selection did not constitute a favorable personnel action withheld from him.

In March 2012, a SAF/IGS ROI into the applicant's allegations against the ATAG determined the following:

Allegation 1: That he received a downgraded OPR in reprisal for his protected communications.

FINDING: Not substantiated

Allegation 2: That he received a Notice of Appointment and subsequent separation from the ANG in reprisal for his protected communications.
FINDING: Substantiated. According to the ROI, the preponderance of evidence supported the conclusion that the ATAG did reprise against the applicant by issuing him a Notice of Appointment on 3 June 2011 which led to his separation from the AZANG on 15 July 2011. The applicant made multiple protected

communications prior to June 2011. The ATAG knew of these communications and would not have issued the Notice of Appointment had the applicant not made them.

In a 21 July 2012 letter to the applicant, SAF/IGS advised him that an investigation of his allegation was conducted under the provisions of Title 10, United States Code, Section 1034, Protected Communications; Prohibition of Retaliatory Personnel Actions. The investigation substantiated his allegation of reprisal. The IG also found that several "procedural violations" of DEMA Directive 25-6 were committed in the hiring of AGR Vacancy Announcement 2011-091A (214 RS/CC).

The IG of the Air Force reviewed the ROI and approved its findings. Additionally, the DoD IG conducted a thorough review of the report, found that it adequately addressed his allegations, and concurred with its findings.

The remaining relevant facts pertaining to this case are contained in the evaluations prepared by the appropriate office of the Air Force and National Guard Bureau (NGB) and can be found at Exhibits C-G, and K-L and the ROI at Exhibit R.

THE AIR FORCE EVALUATION:

NGB/A1PF recommends denial of the applicant's request for ACP. A1PF states that he was previously approved and awarded a correction for ACP and the documents are included in the Case Management System (CMS) under case number 2455742. The case was originally adjudicated by the AFBCMR on 22 December 2009 and he was granted relief to back date his agreement and be retroactively paid for three months. According to the records he received the additional payment on 25 February 2010 in the amount of $3,750.

The complete A1PF evaluation is at Exhibit C.

NGB/A1PO states that they cannot comment on nor make recommendations regarding the applicant's request that he be considered for a Secretarially directed promotion to the grade of colonel. He was transferred to the USAFR on 15 July 2011 and met the promotion board as a USAFR officer not as an ANG officer.

The complete A1PO evaluation is at Exhibit D.

NGB/A1PP recommends denial of the applicant's requests regarding his improper AGR separation, TERA and correction of his records related to the improper release. A1PP states that the State met the criteria for removal. IAW ANGI 36-101, AGR Program, the TAG is the final authority for determining whether an individual will be separated from the AGR program except for officers

within the sanctuary zone. In this case, the separation must be approved by the Secretary of the Air Force. At the time of his separation from the ANG, he had 17 years and 3 months of Total Active Federal Military Service (TAFMS), which does not qualify for sanctuary.

Even though AZNGR 20-3, Retention and Separation Policy for Members of the Army and Air National Guard, does not reference ANGI 36-101, documentation provided by the state and the member showed the state followed the guidance established in ANGI 36-101 regarding involuntary tour curtailment.

While eligible for Selective Retention consideration, his NGB Form 27, Federal Retention Evaluation/Recommendation, and consideration under the Selective Retention Review Board (SRRB) was removed and he was not considered under this program. Moreover, he was not protected by career status as he was on his initial AGR tour which is considered a probationary period.

His claim regarding improper removal from AGR status was not substantiated by A1PP. He submitted an appeal upon his Notice of Appointment for involuntary tour curtailment to the TAG for consideration which was disapproved.

In regards to retirement under TERA, the authority to implement TERA by the ANG has not been granted by the Secretary of the Air Force.

The complete A1PP evaluation is at Exhibit E.

ANGRC/JA recommends denial. JA states that based on the facts presented in the NGB opinions, JA finds their responses to be legally sufficient and concurs with the recommendations to deny the applicant's requests for corrective action related to ACP payments, Board# V0611A, AGR separation from ANG Selective Retention Review Board (SRRB) consideration, and TERA.

The complete JA evaluation is at Exhibit F.

NGB/AIPS concurs with the NGB advisories and does not recommend relief for the applicant’s requests regarding AGR separation, reinstatement as an AGR or traditional reservist, retirement (Sanctuary IAW 10 USC 12686), TERA IAW 10 USC 12302, back pay Leave, ACP, promotion to colonel, and Special Selection Board (SSB) consideration. A1PS has looked into each matter and finds his complaints do not substantiate an error or injustice. Based on the facts that were presented for consideration, A1PS finds that the ANG met the criteria for involuntary separation as outlined in ANGI 36-101, therefore does not recommend relief to his requests.

The complete A1PS evaluation is at Exhibit G.

COUNSEL'S REVIEW OF THE AIR FORCE EVALUATIONS:

The applicant's area defense counsel (ADC) states the NGB advisory opinions completely ignored the legal analysis in their advisory opinions.

On 3 June 2011, the ATAG issued the applicant a Notice of Appointment. The ATAG did not actually cite what authority in AZNGR 20-3 he was relying upon to fire him. AZ Revised Statute, Title 26, Military Affairs and Emergency Management, Section 26-102, Powers and Duties of the Adjutant General, Paragraph B2, states that "the Adjutant General, as the Military Chief of Staff, shall... Adopt methods of administration for the national guard that are not inconsistent with laws and regulations of the United States department of defense or any subdivision of the United States department of defense."

AZ Statute states in part that the TAG of the AZANG may not publish instructions or policies that are inconsistent with any laws or regulations of the US DoD.

ANGI 36-101 applies to the ANG because it is an Air Guard specific Instruction, and it is an instruction/regulation that is superior to AZNGR 20-3, and thus, to the extent it speaks to the issue of tour curtailment and separation, it supersedes AZNGR 20-3, to the extent there is an inconsistency or non-compliance. To this point then, they are aware the default is that members must serve the entirety of their tour, but may be relieved of so doing, either voluntarily or involuntarily, as long as it is IAW the subparagraphs in AZNGR 20-3. It also states a member can be separated from service by issuing a new Notice of Appointment, and said Notice of Appointment can even involuntarily curtail the tour. However, ANGI 36-101, paragraph 8.5 states that it is mandatory to use quality force management tools (Letters of Counseling, Letters of Reprimand, Article 15's, etc.) prior to taking steps to involuntary curtail a member's tour. In this case, no derogatory actions were ever taken against the applicant, and therefore, the ATAG was not permitted to involuntarily curtail his tour — doing so was in direct violation of ANGI 36-101, which is superior to AZNGR 20-3, and for which compliance was mandatory.

He takes significant issue with the NGB advisory opinions and is at a loss to understand how the NGB is ignoring the findings of a very thorough and exhaustive investigation by the IG and essentially taking a position contrary to the findings of the IG. Moreover, the NGB just seems to be completely ignoring the requirements of ANGI 36-101. In the military, there are specific types of commanders that are referred to as "convening authorities." Convening authorities are the only commanders authorized to "convene" courts-martial and also the only commanders with the authority to "discharge" or "separate"

members from the service. All other subordinate commanders simply make recommendations to the convening authority. The TAG is the ultimate convening authority for the AZANG. He does not have special authority to completely ignore the mandatory provisions of ANGI 36-101. The unlawful tour curtailment issued by the ATAG is not magically cleansed just because the TAG denied the applicant's appeal.

The tour curtailment by the ATAG was unlawful and the TAG's denial of the appeal does not solve the unlawful problem. The unlawful problem is that none of the mandatory steps in ANGI 36-101, paragraph 8.5 were followed, not to mention that it was reprisal based.

The counsel of record fully concurs with the analysis of the applicant's ADC. The findings by the ANG are clearly contradictory to the facts of the case, Air Force and ANG regulations, common sense, fairness and due process. He is well aware of the abundant relief this Board has and can grant.

The opinion of the NGB continues an illegal abuse of power which has incidentally tarnished the image of leadership of the AZANG and its ability to serve its citizens in a legal and effective way.

Counsel's complete response, with attachments, is at Exhibit J.

ADDITIONAL AIR FORCE EVALUATION:

ARPC/CV recommends denial of the applicant's request for direct promotion to the grade of colonel. CV states that he has only competed for one USAFR promotion opportunity and apparently was deemed not yet ready for promotion. The promotion board is the sole recommending authority for promotion and his record did not score high enough to fall above the cut line for promotion.

The objective of the Reserve promotion process is to promote fully qualified officers to serve in the next higher grade based on past performance and future potential. Performance, participation, professional qualities, job responsibility, leadership, specific achievements, and education, are factors taken into consideration during the board's review. Board members, using the whole person concept, base their determination of the member's potential to serve in the higher grade on the factors reflected in the officer selection folder and on the officer selection brief. Promotion is a competitive process and the final recommendation is determined through a fair and equitable process by the board members. It cannot be assumed that filling all the squares will guarantee promotion. The applicant applied for and received non-select counseling. A review of the counseling secession notes show that his AF Form 709, Promotion Recommendation, was marked "P" for Promote, and

did not contain any stratification; his ANG OPR contained the statements "Ready for increased responsibilities" and·"Continue to challenge," but did not include stratification or strong recommendation for future leadership positions. He had not received any USAFR performance reports; he did complete all developmental education commensurate with his grade; and had received a Meritorious Service Medal in 2011.

The results of the CY 2011 board for Line of the Air Force (LAF) officers showed only a 13 percent select rate: 196 selected out of 1502 considered. No LAF officer was selected with a "P" recommendation on the PRF.

His date of rank indicates he was eligible for ANGUS position vacancy promotion opportunity as of 1 October 2008. CV finds no indication the applicant was nominated or considered for promotion in the ANG to the grade of colonel.

The complete CV evaluation is at Exhibit I.

ANGRC/JA states that it is possible that the Board may adopt the SAF/IG findings in ROI S6875P and find that the applicant has suffered an injustice. If accurate, the SAF/IG ROI S6875P findings support the conclusion that some of the personnel actions on which NGB/A1PF, NGB/A1PO and NGB/A1PP based their opinions, while procedurally accurate, were a mere pretext for improper action. It is appropriate for A1P to examine and comment on the procedural actions at issue. It would, however, be inappropriate for A1P to examine the motives behind the actions of the AZANG based on the SAF/IG findings. A determination on the intent and possible remedy of the ANG's actions in this matter are beyond the purview of A1P.

The collective opinions from AlPF, AIPO, and AIPP summarized in the 14 September 2012, JA Memorandum to AlPP address the applicant's request to the Board. These opinions did not address the allegations raised by him regarding the "findings of SAF/IG," due to the fact that the documentation did not contain the complete SAF/IG ROI. Upon receipt and review, the SAF/IG ROI S6875P reveals two findings relevant to his application to the Board:

1) That the ATAG reprised against the applicant by taking action to remove him from the ANG for having made several protected communications, in violation of Title 10 U.S.C. 1034.

2) That six separate procedural violations of DEMA Directive 25-6 were made during the selection process of the Active Guard Reserve (AGR) 214 RS/CC, and that the 214 RG/CC, more likely than not, changed the scores of candidates in order to achieve an outcome more to his liking.

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In sum, the findings contained in SAF/IG ROI S6875P challenge

the assumption that all personnel actions relevant to this case were conducted IAW applicable regulations and guidance.

The complete JA evaluation is at Exhibit K.

NGB/A1P recommends that the applicant be returned to active status for what would have been the remainder of his preexisting order. Expertise resides within policy, and the state followed prescribed policy regarding the applicant as it exists within ANGI 36-101 and AZNGR 20-3. IAW both instructions, the applicant was properly notified of noncontinuation/curtailment of his tour, he was not in sanctuary, he was retirement eligible, and in his initial/probationary tour. He was notified of this action within the prescribed timeframe and his appeal was considered and disapproved by the appropriate authority. However, while A1PS states they are not trained in the IG or Equal Employment Opportunity (EEO) arena, it is difficult to discount the substantiated IG complaint alleging his non-retention was reprisal based. As such, and if possible, the A1P recommendation is to return the applicant to an active status for what would have been the remainder of his preexisting order - 30 September 2013.

The complete A1P evaluation is at Exhibit L.

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION

Counsel concurs with the JA conclusion that the ANG violated 10 USC 1034 by reprising against the applicant and that the hiring process precipitating his firing included violations of DEMA Directive 25-6, with emphasis on the admission that the 214 RG/CC appears to have changed the hiring board member's scores to achieve a result more to his liking. It is essential to emphasize that the 214 RG/CC was not a board member and had no authority to alter the scores. The actions by the 214 RG/CC resulted in the withholding of a favorable personnel action with the non-selection as the commander. More importantly, these improper actions also denied him from starting a new four-year AGR tour, one that the hiring board appears to have selected him for as the highest scoring most qualified candidate. Withholding of this favorable personnel action in effect denied a command opportunity that would have reflected favorably for future promotion boards, not to mention a subsequent AGR tour through 2015.

Counsel believes the advisories did not fully address the issues, nor did they accurately portray SAF/IGS findings with respect to the procedural correctness of his discharge. Specifically, in "Allegation 2" of the SAF/IGS report on case S6875P, the DoD/IG findings specifically found that the discharge process was not procedurally correct based on the fact that AZNGR 20-3 required that any Notice of Appointment must

have been processed consistent with the regulations of the respective services. Counsel made this point in their previous response that AZ Revised Statute, Chapter 26, section 102, also required DoD regulations to be adhered to. Since the IG found that the discharge did not follow the strict rules related to ANGI 36-101 regarding involuntary tour curtailments, contrary to the advisories, the discharge was not procedurally correct in addition to the personnel action violating reprisal laws under 10 USC 1034. The SAF/IG also determined that the ATAG did not have the authority to issue the Notice of Appointment in the first place. Both advisories significantly omitted the analysis of the procedurally incorrect discharge process as found in SAF/IGS ROI for case S6875P.

While the AlP advisory does recommend that he be returned to active status, NGB only addresses the involuntarily curtailed tour that he was illegally discharged from, i.e., the existing tour ending in September 2013. NGB does not address the subsequent four-year AGR tour that he was denied as a favorable personnel action that would have taken him from the spring of 2011 to the spring of 2015. This subsequent tour would have guaranteed career status based on NGB's contention that he was on probation, though counsel believes that he was in fact on his second AGR tour, and therefore was already granted career status, as explained in the previous rebuttal. Nevertheless, he has requested to be reinstated to the entire denied tour length through 2015 as well. He was the highest scoring candidate for this position, notwithstanding Col I--‘s apparent alteration of the scores. Any reinstatement to active status should in all fairness include service through 2015, which would have been the expiration of his subsequent AGR tour, and is also commensurate with his mandatory retirement date.

The advisories also do not address his lost pay, lost points and terminated bonus (ACP contract) resulting from the illegal termination from his AGR tour, nor do they address his claim for reinstatement of leave. Counsel requests that any decision related to his case make him whole by restoring his leave, less the basic pay allotment, plus reimburse him for his denied pay and points during the approximately one month period prior to his accession into the USAFR. Moreover, his contractually satisfied, but terminated, final two ACP bonus installments should be paid. He dutifully continues to serve on an uninterrupted basis as an MQ-lB Predator pilot, and therefore he continues to make good on his contractual ACP commitment.

Regarding the CV advisory, it is entirely possible the author was not privy to the SAF/IGS ROI for case S6875P. Therefore, counsel requests that CV review the SAF/IGS ROI and prepare a supplemental advisory. Any evaluation by ARPC of his potential for promotion would benefit from understanding the reality that he was denied a favorable personnel action for a command position.

Counsel requests the Board thoroughly review this case and consideration of the past precedent cases included with his original submission. In that case an ANG Lt Col was recommended for a Secretarially directed promotion to the next higher grade based on an evaluation of the magnitude of injustice suffered by the complainant. This case represents an equal or greater magnitude of injustice where an officer's illegal termination and the apparent denial of an earned and previously recommended command opportunity effectively represent the only deficits in this officer's promotion potential.

Counsel's complete response is at Exhibit N.

ADDITIONAL AIR FORCE EVALUATION:

NGB/A1PF recommends denial of the applicant's request to have his terminated ACP contract dated 28 September 2009, reinstated and he be reimbursed for missed payments improperly denied. A1PF states that after a re-review of his application for correction of military records, A1PF concluded that he should not be paid the remaining balance of his ACP agreement effective 27 September 2009 through 26 September 2013 because he separated from the ANG effective 15 July 2011. IAW the AZANG/CC memorandum dated 3 June 2011, he was informed of the decision to separate him from the ANG based on force management/selective non-retention (not for cause). He was in a probationary tour, eligible for a Drill Status Guardsman (DSG) retirement and was not in sanctuary. Per the FY 2009 ANG ACP policy paragraph 2.5.1.3 regarding involuntary separation due to selective non-retention, "Prior payment is not recomputed or recouped. No future payments are authorized." Although he states that he remained in service with the AF Reserves, the ACP agreement he signed was with the ANG and the commitment can only be fulfilled through service in the ANG. Once affiliated with the AFRC, he may or may not have been eligible to apply for ACP under the AFRC policy, but the ANG agreement was terminated on the day he separated from the ANG. In keeping with his date of separation, he should have received two ACP payments effective 27 September 2009 and 27 September 2010 as payments are made prior to the effective period of service. Therefore, his 27 September 2010 payment was effective through 26 September 2011, thereby covering his service through his 15 July 2011 separation date.

The complete A1PF evaluation is at Exhibit O.

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APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION

In an initial A1PF advisory, dated 20 August 2012, the ANG office responsible for aviation bonuses responded negatively on

his ACP contract reinstatement request, while incorrectly denying the existence of the 2009 four year ACP (bonus) contract in question.

A1PF now admits there was a 2009 four year ACP contract, and that two payments were made; however, they continue to recommend denying relief, basing this denial on his involuntary termination from the AZANG.

A1PF does so without addressing the fact that the termination of the AGR position violated the law according to SAF/IGS, despite the fact that the higher directorate, A1P, is now aware of the existence of those findings and without regard to the fact that A1P altered its previous denial recommendation in his case.

More specifically, initially A1P, in their 19 September 2012 advisory, recommended denying his requests for relief, but on 1 November 2013 [sic], after being compelled to review the SAF/IGS findings in his case, they reversed their previous opinion based on the fact that he was reprised against in violation of 10 USC 1034. Therefore, they recommended he be returned to active status.

Were the same logic to be applied to the ACP matter, the ACP bonus contract should similarly be recommended for reinstatement if indeed A1PF were compelled to reevaluate the requested lost bonus payments given the fact that he was illegally removed from his previous position, i.e., the ACP contract was improperly terminated as a result of an illegal personnel action.

Such a positive and informed recommendation would be in line with the spirit of the corrections case process, and therefore if A1PF could not come to this conclusion, perhaps because they were unaware of the SAF/IGS findings, or because they do not have the authority to address ACP bonus following illegal personnel actions, he respectfully requests the Board utilize its authority to correct the withheld bonus.

He renews his request that the ACP contract be reinstated, particularly since he continued to perform the contracted duties. Specifically, he requests the two missing payments, from 27 September 2011 and 27 September 2012, be paid since the contract was wrongfully terminated due to illegal reprisal and improper AGR position termination.

The applicant's complete response is at Exhibit Q.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice in regard to the applicant's request that he be considered for a secretarially directed promotion to the grade of colonel or that his record be corrected to reflect that he be given command credit with SSB consideration. While we note the applicant has been the victim of substantiated reprisal, we are not persuaded that he has been the victim of an error or injustice warranting a direct promotion to the grade of colonel. In this regard, we note that a direct promotion should be granted only under extraordinary circumstances; i.e., a showing that the officer's record cannot be reconstructed in such a manner so as to permit him/her to compete for promotion on a fair and equitable basis; and that had the applicant not been involuntary released from the ANG, the probability of his being selected for promotion would have been extremely high. After carefully reviewing all the evidence we do not find these factors present in this case. The applicant asserts, in essence, that based on the irreparable harm to his career due to the events in question, his appeal is similar to AFBCMR 2001-03128 and that relief is warranted using the same rationale for a direct promotion to the grade of colonel. However, we disagree. In this regard, every case before this Board is considered on its own merit since the circumstances of each case are seldom identical. In view of this, although we strive for consistency, we are not bound by precedent and evaluate the merits of each individual case to determine whether the applicant has been the victim of an error or injustice. After a careful review of AFBCMR 2001-03128, it was noted that the applicant in this case was the only fully qualified applicant for the vice wing commander position and it was evident that he would have been appointed to the colonel position and recommended for promotion to the grade of colonel as affirmed by his wing commander's high professional opinion of him as an outstanding officer. Additionally, the testimonies of the assistant adjutant general and another senior officer also verified their intent to promote the applicant to vice wing commander. In the end, the previous Board determined that there were extraordinary circumstances to warrant a direct promotion to the grade of colonel. However, as noted above, we do not find these same circumstances in this case. Therefore, we do not find the case he references supports his request for a direct promotion to the grade of colonel. The applicant also contends that the command position he was erroneously denied would have made him extremely competitive for promotion to the grade of colonel and in the alternative is requesting that his records be corrected to reflect command credit and that he be considered for promotion to the grade of colonel by an SSB. In this regard, we note that ANG officers are only considered for promotion to the grade of colonel if their State puts them in a colonel position and obtains Federal Recognition. Additionally, the State also determines who gets nominated for promotion to

the grade of colonel and a member has no right to that promotion consideration, promotion, or even nomination. While the applicant's contentions and the circumstances surrounding his improper release from the ANG are duly noted, unfortunately, there are situations wherein the ability of the Board to craft relief that will make an applicant completely whole is often times limited by the very circumstances of the case. In this instance, there is no way to completely restore the career opportunities the applicant may have lost. While this Board has authority to direct an SSB for the applicant is his status as an AFR officer, we note that he has already met a promotion board for colonel. The applicant has not claimed an error or injustice in this recent AFR Board, therefore an SSB is not warranted. Regarding his alternative request for a TERA retirement, we note that TERA authorizes members with over 15, but less than 20 years of total active duty service to apply for early retirement. However, as pointed-out by NGB/A1PP, the authority to implement TERA by the ANG has not been granted by the Secretary of the Air Force. In view of this, we find no basis to grant the applicant's request for a TERA retirement. With respect to his request that he be continued with the 2d Special Operations Squadron in a new AGR billet, the AFBCMR is empowered only to correct records and has no authority to create AGR billets. In regard to his request for reinstatement in the ANG until his MSD on 1 June 2015, this Board lacks the authority to reinstate members into the ANG given the sovereignty of the State over the ANG. However, in view of the circumstances of this case, we believe the relief recommended that includes extended active duty until 1 June 2015 in the Air Force Reserve, provides the applicant full and fitting relief. In view of the foregoing and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this portion of his request.

6. Notwithstanding the above, sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice in regards to the applicant's other requests. In this respect, we note that the ATAG reprised against the applicant by issuing him a Notice of Appointment which led to his involuntary separation from the AZ ANG. In view of this, the applicant has requested that his records be corrected to expunge any and all verbiage related to his improper release from the AZ ANG, he receive full entitlement to the 44.5 days of terminal leave he was forced to sell, he receive pay and point credit for the period he was illegally discharged from the AZ ANG to the date he was assessed into the USAFR and his terminated ACP contract be reinstated and he receive missed ACP installments. After a careful review of the evidence in this case and noting that the applicant was the victim of reprisal we believe that partial relief is warranted. We note that NGB/A1P recommends the applicant be returned to active status for what would have been the remainder of his preexisting order (30 September 2013); however, we believe he should be returned to active status through his MSD (1 June 2015). With this recommendation, the

applicant will receive full entitlement to his leave, pay and point credit for the period he was illegally discharged from the AZ ANG, entitling him to sanctuary protection through 20 years of service. In regard to his ACP contract, we recommend his records be corrected to reflect that per Fiscal Year 2009 ACP contract, he was issued a lump sum payment before separation, thereby ensuring he was paid for missed ACP bonus installments on 27 September 2010 and 27 September 2012. Finally, we recommend that his Federal records be corrected to expunge any and all references to his improper release from the Arizona ANG. In view of the totality of the circumstances in this case, we believe our recommendation constitutes full and fitting relief. Accordingly, we recommend his records be corrected to the extent indicated below.

7. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. His Federal records be corrected to expunge any and all references to his improper release from the Arizona Air National Guard.

b. On 27 September 2009, competent authority approved a single lump sum payment of $100,000 in consideration of the execution of a 4-year Aviation Continuation Pay (ACP) agreement.

c. On 15 Jul 2011, competent authority waived recoupment of any unearned ACP in accordance with Section 303(a) of Title 37, United States Code.

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d. On 15 July 2011, he was released from the Air National Guard, and was accessed into the Air Force Reserve on 16 July 2011, ordered to active duty for operational support in accordance with Section 12301 (d) of Title 10, United States Code and assigned to Davis-Monthan Air Force Base, Arizona until 1 June 2015.

The following members of the Board considered Docket Number BC-2012-03031 in Executive Session on 18 April 2013, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

All members voted to correct the record as recommended. The following documentary evidence pertaining to Docket Number BC-2012-03031 was considered:

Exhibit A. DD Form 149, dated 20 August 2012, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, NGB/A1PF, dated 20 August 2012.
Exhibit D. Letter, NGB/A1PO, dated 22 August 2012.
Exhibit E. Letter, NGB/A1PP, dated 10 September 2012.
Exhibit F. Letter, ANGR/JA, dated 14 September 2012.
Exhibit G. Letter, NGB/A1PS, dated 19 September 2012.
Exhibit H. Letter, SAF/MRBR, dated 24 September 2012.
Exhibit I. Letter, ARPC/CV, undated.
Exhibit J. Letter, Applicant's Counsel, dated 20 October 2012.
Exhibit K. Letter, ANGR/JA, dated 19 September 2012.
Exhibit L. Letter, NGB/A1P, dated 1 November 2012.
Exhibit M. Letter, SAF/MRBR, dated 5 November 2012.
Exhibit N. Applicant's Counsel, dated 3 December 2012.
Exhibit O. Letter, NGB/A1PS, dated 17 January 2013.
Exhibit P. Letter, AFBCMR, dated 22 January 2013.
Exhibit Q. Letter, Applicant, dated 23 January 2013.
Exhibit R. Report of Investigation - WITHDRAWN

Panel Chair

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ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-03031

XXXXXXXXXX COUNSEL: XXXXXXXXXX
XXXXXXXXXX

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His records be corrected to reflect command credit.

2. He be considered for a Secretarially directed promotion to the grade of colonel (O-6) with a date of rank (DOR) of 17 February 2012, unless an earlier date is granted.

3. If promoted to the grade of colonel, he be approved for a two-year time in grade (TIG) waiver in accordance with (IAW) Title 10 United States Code (U.S.C.) Section (§) 1370, Commissioned officers: general rule; exceptions paragraph (a)(2)(A), Rule for retirement in highest grade held satisfactorily.

4. In the alternative he receive Special Selection Board (SSB) consideration for promotion to the grade of colonel using the revised Promotion Recommendation Form (PRF).

5. His retirement order be changed to 31 May 2015 to ensure the three-year TIG threshold is met.

RESUME OF CASE:

On 18 April 2013, the Board considered and denied a similar appeal. Based on the substantiated SAF/IG findings, the Board granted partial relief and changed the applicant's record to expunge any and all references to his improper release from the Arizona Air National Guard (ANG); approved a single lump sum payment of $100,000 for Aviation Continuation Pay (ACP) and the unearned recoupment of the ACP was waived. His record was also corrected to show that on 15 July 2011, he was released from the ANG and accessed into the Air Force Reserve (AFR) on 16 July 2011, ordered to active duty for operational support and assigned to Davis Monthan Air Force Base, Arizona until 1 June 2015. However, the Board denied the applicant's request for a Secretarially directed promotion to the grade of colonel and his alternative requests that his records be corrected to reflect

command credit and that he receive supplemental promotion consideration to the grade of colonel. The Board noted that a direct promotion should only be granted under extraordinary circumstances; i.e., a showing that the officer's record could not be reconstructed in such a manner so as to permit him to compete for promotion on a fair and equitable basis; and that had the applicant not been involuntary released from the ANG, the probability of his being selected for promotion would have been extremely high. After carefully reviewing all the evidence the Board did not find these factors present.

The Board also disagreed with the applicant's assertions that based on the irreparable harm to his career due to the events in question, that his appeal was similar to another Air Force Board for Correction of Military Records (AFBCMR) case and that relief was warranted using the same rationale for a direct promotion to the grade of colonel. In the end, the Board determined that there were extraordinary circumstances to warrant a direct promotion to the grade of colonel in the other case (BC-2001-03128); however, did not find the same circumstances in the current case.

The Board also denied the applicant's request to correct his records to reflect command credit and that he be considered for promotion to the grade of colonel by an SSB. The Board noted that ANG officers are only considered for promotion to the grade of colonel if their State puts them in a colonel position and obtains Federal Recognition and that a member has no right to that promotion consideration, promotion, or even nomination. The Board noted the circumstances surrounding the applicant's improper release from the ANG and stated that unfortunately, there are situations wherein the ability of the Board to craft relief that will make an applicant completely whole is often limited by the very circumstances of the case. The Board stated there was no way to completely restore the career opportunities the applicant may have lost.

For an accounting of the facts and circumstances surrounding the applicant's request for relief based on being the victim of substantiated reprisal pursuant to DoD Directive 7050.6, Military Whistleblower Protection and AFI 90-301, Inspector General (IG) Complaints Resolution, and the rationale of the earlier decision by the Board, see the Record of Proceedings at Exhibit S (with Exhibits A through R).

In response to the Board's decision, the applicant exercised his right under Title 10, U.S.C., § 1034, to request review by the Secretary of Defense of the Board's decision on his application. Subsequently, in a letter dated 20 June 2014, the Office of the Under Secretary of Defense (OUSD) reversed the Board's determination on the issue of the denial of applicant's request that he be granted SSB consideration to the grade of colonel with command credit for the 2011 colonel promotion board. The OUSD concluded that there was little discussion in the Record of

Proceedings of whether or not an SSB should be granted. Additionally, the OUSD memorandum states the Board did not sufficiently address whether the applicant's military records should be corrected to reflect command credit due to alleged irregularities in an Arizona ANG squadron commander selection process.

The OUSD also found that the Board's limited focus on the ANG selection process created an incorrect impression that a promotion to the grade of colonel was solely a matter of the applicant's career in the ANG. Rather, the evidence presented to the AFBCMR asserted that the substantiated reprisal which resulted in the applicant's separation from the Arizona ANG had a continued effect on his career in the AFR, where he soon met two 0-6 promotion boards. Based on this lack of clarity and specificity, it was determined that the Board's denial of SSB consideration was arbitrary and capricious, in that the Board's findings and conclusions were not supported by substantial evidence. Therefore, it was directed that the applicant's petition be reconsidered by the Board on the issue of granting an SSB for the 2011 Colonel Promotion Board and to determine whether his records should be corrected to reflect command credit, and that the Board provide justification for its decision as to whether further relief is appropriate. The Board should also determine, in its discretion, whether to grant a formal in-person hearing to the applicant.

Alternatively, the memorandum stated that if the Board does not reconsider the issue, it was directed that an appropriate Air Force decisional authority take action to grant the applicant an SSB for the 2011 Colonel Promotion Board, unless the justification required above demonstrates that such relief is not appropriate.

On 1 June 2015, the applicant retired from the AFR in the grade of lieutenant colonel (O-5).

APPLICANT CONTENDS THAT:

If the Board does not definitively settle the command credit controversy, he will potentially meet an SSB with the administrative record "vague and incomplete." As such, it is likely that his promotion record "cannot be fairly considered by a duly constituted selection board," and that "a directed promotion to the grade of colonel is fairer, both to the applicant and the Air Force, than ratifying his nonselection" (BC-1996-02325). Therefore, if the Board supports command credit for the applicant, counsel requests re-consideration for the Secretarially directed promotion to the grade of colonel based on the 'magnitude of injustice' standard (BC-2001-03128). As with the above cited case (BC-1996-02325), the attached revised PRF for 2011 supports a Definitely Promote (DP) recommendation. The draft PRF was prepared for the present

Board's remand review by the applicant's previous squadron commander, drafter of the original 2011 PRF. Although the directed promotion remedy was denied in the initial OUSD appeal ruling, the new information brought forth by a positive finding on the command credit issue, as well as this revised PRF, may justify fresh consideration as a means to grant "thorough and fitting relief" once the "true nature of the alleged injustice" is adjudicated, since the record "[may not] be fairly considered by a duly constituted selection board" (BC-1996-02325).

As clarified in the OUSD memorandum dated 20 June 2014, the central issue upon review is whether or not the applicant's promotion record merits "command credit." Counsel asserts the command credit for promotion purposes is justified given the "six separate procedural violations made during the 214th Reconnaissance Squadron commander selection process," or the "irregularities" as the OUSD implementation memorandum describes the violations. Despite those infractions, the applicant was still rated as the highest scoring candidate of seven certified applicants according to the judgment by all (emphasis added) board members in the competitive hiring process. Regarding this core issue of the command credit, counsel believes the Board has full authority to adjudicate this issue independent of IG findings regarding the alleged, and unresolved, reprisal for the withholding of a favorable personnel action. The SAF/IGS findings and the ANGRC/JAG advisory dated 25 October 2012, both confirm that hiring violations occurred. Further, the applicant states that the ANGRC Advisory revealed that the preponderance of evidence shows that an official, "more likely than not," altered board members' scores to achieve a result more to his liking. Yet despite the suspect scoring, and even the affirmed rule breaking, the applicant still prevailed over all other candidates as the top candidate. Therefore, the totality of the evidence upon review should support the command credit and potentially a directed promotion to the grade of colonel.

Should the Board grant the applicant's alternative request for SSB consideration, counsel requests the accompanying revised 2011 PRF be approved by the Board and submitted to an SSB. Past precedents demonstrate that based on similar cases the rater "reaccomplished the PRF," and increased the promotion recommendation to "Definitely Promote" (BC-2003-00258). The facts of the applicant's case appear to be such that the substantiated findings of the IG "significantly altered the information available at the time the PRF was written." In such cases, the "distorted picture of the applicant's performance level," at the time of the original PRF, resulted in a candidate being "ranked in a manner that did not reflect his relative promotion potential." As with the aforementioned cases, the "new insight" resulting from review by the IG and the Board in the applicant's case appears to similarly support "changing the overall promotion recommendation to a 'Definitely Promote.'" Counsel trusts the Board will be "convinced by the evidence submitted that had the senior rater been properly aware of the

applicant's accomplishments he would have awarded the 'Definitely Promote'" initially and the applicant would have met the [2011] Selection Board with an accurate record (BC-2003-02036)."

Command credit can only be fully restored through the correction of the applicant's 2011 Officer Performance Report (OPR), his 2011 PRF, his 2011 Officer Selection Brief (OSB), and, if necessary, his 2012 OPR, PRF and OSB. Because of the magnitude of injustice, and negative impact on his career, involving the denied command opportunity and subsequent missing personnel file documentation, he again respectfully requests consideration for a Secretarially-directed promotion to the grade of colonel with the earliest possible DOR. He has met the standard for a directed promotion because his record most likely "cannot be reconstructed to permit him to compete for promotion on a fair and equitable basis, and that the probability of being selected for promotion would have been extremely high" (OUSD memorandum dated 4 June 2014). The probability he would have been promoted exceeds 93 percent based on consideration of all his professional qualitative promotion factors according to Air Reserve Personnel Center statistics. The AFBCMR Reading room is replete with additional examples where the Board ensured the promotion record submitted to an SSB fairly represented a member's promotion potential. Should the Board correct the applicant's record, the 2011 colonel select rate for an officer with the applicant's record was 93 percent. Additionally, he was also awarded the Meritorious Service Medal (MSM) and served in multiple contingency deployments, which further increased his promotion probability. Given the magnitude of injustice demonstrated by this, counsel again respectfully requests the Board make the applicant "whole."

In support of his appeal, the applicant provides memorandums and a copy of a revised PRF.

In an email dated 7 June 2015, the applicant states in part that there are two issues he recently became aware of following the receipt of Freedom of Information Act documents related to his reprisal complaint. The first issue relates to claims of his declining performance during the time frame surrounding the selection process of the 214 RS/CC position, and the second issue refers to allegations of disrespect that emerged after he filed an IG complaint. Should the Board have any concerns relating to the aforementioned matters, he invites the Board to meet with him or to consult with other members of his chains of command outside the Arizona ANG. The applicant provides another email dated 9 June 2015 stating that if there are any concerns about the issues noted above, he is confident that he can dispel these concerns in person or through a memorandum.

The complete response, with attachments, is at Exhibit U.

THE AIR FORCE EVALUATION:

On 14 July 2014, ARPC/PB received a request from SAF/MRBR to address SSB consideration if the applicant were to receive command credit. PB responded stating if the Board directs the applicant be given command credit, they recommend SSBs be directed for the CY 2011, CY 20l2 and CY 20l3 AFR Colonel Line and Nonline Participating Reserve (PR) Promotion Selection Boards. Additionally, because the applicant transferred from the ANG into the AFR on 1 August 2011, the duty history entry for command credit will only be for the period 15 June 2011 to 31 July 2011. Due to the short period of time as a commander, this may be viewed as a negative factor by board members during their scoring. If the applicant's OPR reflects "commander" in the duty title and there is no reference to command in the supporting documentation contained in the officer selection record, the board members may question the disparity during the scoring. If this occurs and a board member brings it to the recorder's attention, the board recorder will advise them to score the record "as is" and can offer no explanation for the disparity. ARPC/PB also noted that in October 2012, ARPC/CV recommended denial of the applicant's request for a direct promotion.

A complete copy of the ARPC/PB evaluation is at Exhibit V.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

The advisory opinion affirmed that should he be awarded command credit, he would be given SSB consideration. However, PB omitted mentioning that the PRF would have to be modified as his former chain of command has coordinated with the attached draft DP PRF. PB also cautioned the Board on "negative" factors that could impact a SSB review of his promotion potential based on the unavoidable "disparity" in his selection record. Overall, it appears that PB is now deferring to the Board on the command credit adjudication decision. He is grateful that PB pointed out the potential negative perceptions by a SSB based on the inevitable disparities in his record. It is also important to supplement PB's review by highlighting relevant case facts since they reiterated the recommendation against a "direct promotion" from their advisory. First, ARPC's original advisory from the initial case did not fully depict his promotion potential due to their omissions of significant past leadership responsibilities, e.g., his service as Director for Operations and Deputy Group Commander. Second, ARPC omitted mentioning his recommendation for command on the two OPRs preceding the 2011 timeframe of substantiated reprisal. Third, ARPC did not review the quality factor related to graduate education, and the fact that he received honors from the Naval Postgraduate School (while on a Department of Homeland Security Master's degree scholarship). Fourth, ARPC did not fully review the statistics from their

Calendar Year (CY) 2011 promotion board. Those statistics support a greater than 93 percent probability for promotion based on the quality factors of a Master's Degree, Air War College, a DP on his revised PRF, and a command credit, should the Board grant one. As well, his probability for promotion to the grade of colonel would have likely been even higher than 93 percent based on other unpublished, yet often considered, quality factors such as his previous Air Guard Reserve (AGR) status, a recent MSM and multiple contingency deployments. Finally, ARPC did not in 2012, and does not appear to in their 2014 advisory, review the circumstances of his case from a magnitude of injustice standard. In that regard, though he concurs with PB's comments about negative factors and disparities associated with reconstructing his record for an SSB, the advisory was "vague and incomplete" by not analyzing IG findings, quality factors and statistics. Therefore, the applicant respectfully requests that the AFBCMR now adjudicate the command credit issue based on the facts revealed by SAF/IGS. Those facts include various violations in the accepted hiring practices, and most significantly the fact that he was the highest scored candidate by all the hiring board members in that competitive process. Had the violations not occurred, he would have served as the unit commander, and he would have received command credit. Non-selection for the position was harmful to his career based on the fact that command credit is considered for promotion to the grade of colonel. The magnitude of the injustice was then increased based on the fact that his chain of command made a historically unprecedented decision to fire him after he objected about the hiring irregularities. The three AFBCMR precedent factors he is aware of in granting a directed promotion include: a high magnitude of injustice, a high probability for promotion, and the potential that records cannot be fairly reconstructed for promotion board review. In addition to the magnitude of injustice standard potentially warranting a directed promotion, PB has now validated the problems with reconstructing his professional record for an SSB in an equitable manner, and he attempted to clarify why he believes his record also reflected the quality factors exemplifying a high probability of promotion. It seems that the only unresolved issue for the Board is the adjudication of the command credit issue.

He respectfully requests that he be granted command credit for the position he fairly earned the opportunity to serve in were it not for the violations documented by SAF/IGS. While this case appears to pivot on that fundamental issue, the Board also now possesses new information based on the PB advisory regarding the negative record correction disparity issues. He is hopeful this new information will support reconsideration for a directed promotion to the grade of colonel.

In further support of his requests, the applicant provides memorandums, dated 1 July 2014, 2 September 2014 as interim responses regarding the renewed review of this case, as well as

a new draft PRF previously provided that was coordinated by the same commander who submitted the original 2011 colonel PRF based on "new insights" in this case. He also provides relevant promotion rate data from the ARPC CY 2011 Colonel Line Promotion Selection Board, OPRs, his MSM, and Notice of Appointment Appeal Regarding Involuntary Tour Curtailment to the Adjutant General and various other documents associated with his requests.

The applicant's complete submission, with attachments, is at Exhibit X.

ADDITIONAL AIR FORCE EVALUATION:

ANGRC/JA provides a summary of the Command Directed Investigation (CDI) report on the allegations against the former 214 RG/CC. The CDI stemmed from a SAF/IG memorandum dated 26 April 2012 to the ANGRC/CC stating in relevant part, that SAF/IG had completed an IG investigation involving the Arizona ANG regarding procedural violations in the Referral and Selection Process undertaken for a specific Arizona ANG AGR Vacancy Announcement (214 RS/CC). SAF/IG advised that the Investigative Officer (IO) who conducted the investigation had concluded the former 214 RG/CC potentially made false statements to the IO during his IG interview. In addition, SAF/IG also determined the 214 RG/CC, as the selecting supervisor for the subject AGR Vacancy Announcement had intentionally altered the tally sheets on the Interview Evaluation Packages used for ranking the candidates. The specific allegation was the 214 RG/CC, as the selecting official altered the tally sheets to select another desired candidate and not the applicant as the new 214 RS/CC. SAF/IG referred the allegations against the 214 RG/CC to the ANGRC/CC for investigation as a potential military justice issue.

On 5 June 2012, the ANGRC/CC appointed an IO to conduct a CDI. The ANGRC and not the Arizona ANG conducted the investigation due to the possibility that the former 214 RG/CC was in Title 10 duty status during a majority of the relevant time periods of the alleged misconduct. The IO conducted the CDI from 24·-28 June 2012. The CDI reviewed the following allegations based on SAF/IG's memo: (l) Violation of Article 123, UCMJ: Forgery. This allegation related to the altering of tally sheets by the former 214 RG/CC; (2) Violation of Article 107 UCMJ: False Official Statement. This allegation involved the former 214 RG/CC making certain statements to the IO involving his role in the subject AGR vacancy selection process for the 214RS/CC position that he knew were false and that he made the statements to the IO with the intent to deceive: (3) Violation of Article 92, UCMJ: Willful Dereliction of Duty. This allegation also relates to the former 214 RG/CC's alleged inappropriate actions during the subject AGR vacancy selection process for the 214 RS/CC position. Using the preponderance of the evidence standard, the IO unsubstantiated all three allegations.

Subsequently, the CDI was found legally sufficient and the ANGRC/CC approved the IO's unsubstantiated findings.

A complete copy of the ANGRC/JA evaluation is at Exhibit Y.

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION:

He alleged reprisal due to hiring violations of Department Of Emergency and Military Affairs (DEMA) Directive 25-6 during the selection process of the 214 RS/CC position. Therefore, according to AFI 90-301, Inspector General Complaints Resolution, a CDI cannot be used to evaluate reprisal. The IG found that several "procedural violations" of DEMA Directive 25-6 were committed in the hiring of the 214 RS/CC position. The CDI complicates this case by creating more questions than answers.

The hiring violations are known based on the comprehensive SAF/IGS ROI. The CDI ignored suspected violations, such as possible alterations of the board president's score sheets. The selecting supervisor improperly completed the board's Interview Summary Score Sheet. The board did not determine or recommend a "best fit" officer. Therefore, since he was the best qualified and highest scoring candidate, he was the "best fit". The CDI did not review the DEMA Directive 25-6 source rules completely or accurately. The hiring officials did not know or follow the rules, despite the fact that they were collectively "responsible" for assuring that the hiring process in its "entirety" was "adhered to" (DEMA Directive 25-6, section 7-4). The Arizona ANG failed to provide oversight, which resulted in SAF/IGS' "Additional Issue" hiring violation (ROI, pages 31-40). And finally, SAF/IGS determined that absent the "intervention" by the Selecting Supervisor, the applicant" was the "only possible choice for the selection process that was underway" (ROI, page 37). Therefore, based on the preponderance of evidence, and the documented errors and omissions, it may be fair and reasonable for the Board to conclude the "highest scoring" and "best qualified" officer would have earned a command credit had the violations not occurred.

A command credit for his case is justified based on the known violations, and the fact that he was "highest scored" and "best qualified" in a merit-based hiring process. The CDI omitted reference to the majority of the violations and rules, and did not address the unsolved issues. As a result, IAW his 3 November 2014 response to the ARPC advisory dated 25 September 2014, he respectfully reiterates that a command credit would have significantly increased his probability of a subsequent promotion to the grade of colonel. This fact, combined with the known injustices and improbability of equitably correcting personnel records, should weigh favorably in the adjudication of the resulting promotion issue. He is grateful for the opportunity to comment on the errors and omissions in the

ANGRC/JA advisory opinion and CDI, and sincerely appreciates the Board's thorough review of this case.

The applicant's complete response, with attachments, is at Exhibit AA.

ADDITIONAL AIR FORCE EVALUATION:

The AFBCMR legal advisor requested an additional advisory opinion to discuss whether the changes directed to the applicant's record in the 23 October 2013 AFBCMR directive would result in supplemental promotion consideration.

ARPC/PB states there was no information concerning the applicant's release from the ANG, his ACP, nor his pay and allowances presented to any of the promotion boards that considered the applicant for promotion (CY 2011, CY 2012 and CY 2013 AFR PR Colonel Line and Nonline Promotion Selection Boards).

Each promotion board had the applicant's transfer date from the ANG to the AFR, as noted in the assignment history section of the officer selection briefs by the effective date as 1 August 2011 instead of 16 July 2011. However, this minor error is not considered "matter material to the decision of the board or a material error of fact" as outlined in Title 10, U.S.C., § 14502(b), Officers Considered, But Not Selected; Material Error and thus would not qualify for an SSB.

Additionally, despite the 23 October 2013 AFBCMR direction that the applicant remain on extended active duty through 1 June 2015, a projected retirement was put in the system in the June 2014 timeframe and a retirement order was issued. Because of this, the applicant was determined ineligible for the CY 2014 AFR PR Colonel Line and Nonline Promotion Selection Board. The removal of the applicant's erroneous retirement qualifies him for supplemental promotion consideration as outlined in Title 10, U.S.C., § 14502(a), Officers Not Considered Because of Administrative Error. Therefore, ARPC/PB will process the appropriate paperwork for the applicant's supplemental consideration for the CY 2014 AFR PR Colonel Line and Nonline Promotion Selection Board.

A complete copy of the ARPC/PB evaluation is at Exhibit AB.

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APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION:

ARPC/PB affirms that he met three promotion boards in CYs 2011, 2012 and 2013, and recommended he meet an SSB for CY 2014. Further, ARPC/PB recommends against SSBs based on the "minor" transfer date error in his personnel record, because it "does

not meet the threshold of a being a material error" IAW with Title 10, U.S.C., § 14502.

Of note, the OUSD remand memorandums, dated 4 June 2014 and 20 June 2014, reversed this case regarding the "sole" matter of adjudicating a possible command credit and an SSB based on documented hiring and firing violation findings from the full investigation by SAF/IGS. The remand decision appeared to direct an SSB for the CY 2011 promotion board, and ARPC/PB's September 2014 advisory, appeared to similarly recommend SSBs for the CYs 2011, 2012 and 2013 AFR PR Colonel Promotion Selection Boards - if the AFBCMR granted the command credit. Unlike ARPC/PB's most recent focus on the seemingly irrelevant minor transfer date anomaly, he is hopeful the AFBCMR would agree that if the missing command credit is adjudicated favorably that would then qualify as a "material" issue in favor of SSB reconsideration IAW Title 10, U.S.C., § 14502. Absent the command credit, as with the minor transfer date error, and based on the number of promotion boards to date, an SSB may not be warranted, and an SSB would not correct the injustice if it rendered the same result. ARPC/PB's earlier advisory also commented about the potential disparity involved with correcting his promotion records to reflect a command credit. Therefore, if the command credit is granted, the inability to reconstruct the record equitably may warrant a directed promotion to the grade of colonel over an SSB due to this disparity, as well as the increased probability of selection and the magnitude of injustice represented by the hiring and firing violations.

In further support of his request, the applicant provides "precedent case" AFBCMR Docket Number BC-2012-04795, which may be helpful based on supportive similarities and differences regarding favorable command credit adjudication. In this case two AGR members applied for a position and "both were tied as the top candidates." However, no violations of the hiring practices were noted. A "constructive credit" for the AGR position was granted, and the only reason an SSB was not held in this cases appeared to be at the applicant's request. In contrast, he has requested an SSB or a directed promotion to the grade of colonel. Additionally, there were multiple hiring violations, and finally, he did not 'tie' for the position. He was the highest scored candidate by all the hiring board members. Based on the doctrine of the presumption of regularity, since the board did not determine or recommend a "best fit" candidate, IAW the hiring directive (DEMA Directive 25-6, section 7-2, Selection Boards), he was the "only possible choice for the selection process that was underway" as affirmed in the SAF/IGS ROI at page 37. As such, it appears that a constructive credit for the AGR position, that in turn would have earned him a command credit, is in line with AFBCMR precedent. A constructive command credit should support an SSB, or potentially a directed promotion, for the CY 2011 Colonel's promotion board.

The applicant's complete response, with attachment is at Exhibit AD.

On 20 January 2016, the applicant sent an email essentially requesting the Board's renewed attention to an element he included in his rebuttal. His intention is to ensure that the Board is aware of the CDI's erroneous examination of the facts. He states in part that the CDI ignored analysis of the actual SAF/IGS suspected forgery of the board president's score sheets, and instead analyzed the two sets of score sheets by the other two board members that were not suspected of forgery. The applicant also highlights the failure of the CDI to identify and evaluate violations of the DEMA Directive.

The applicant's complete response is at Exhibit AD.

THE BOARD CONCLUDES THAT:

In an earlier finding, the Board determined that the preponderance of evidence supported the conclusion the applicant was the victim of reprisal and granted the appropriate relief as noted above. However, the panel determined there was insufficient evidence to warrant a direct promotion to the grade of colonel or to grant his alternative request to be awarded command credit and receive supplemental promotion consideration to the grade of colonel. Subsequently, the applicant appealed to the OUSD and the case was remanded to the Board. An OUSD memorandum dated 20 June 2014, directed the applicant's requests for an SSB be reconsidered for the 2011 Colonel Promotion Board and to determine if his records should be corrected to reflect command credit and to provide justification as to whether further relief is appropriate. The Board was also directed to determine whether to grant the applicant a formal in-person hearing. As noted by counsel, the central issue in this case is whether or not the applicant's promotion record merits command credit. Counsel asserts in essence that the command credit for promotion purposes is justified given the six separate procedural violations made during the 214 RS/CC selection process. Further, the applicant states that the preponderance of evidence shows that an official, "more likely than not," altered board members' scores to achieve a result more to his liking and despite the suspect scoring and the affirmed rule breaking, the applicant still prevailed over all other candidates as the top candidate. Therefore, counsel believes the totality of the evidence should support awarding command credit and potentially a direct promotion to the grade of colonel.

We note the applicant believes AFBCMR Docket Number BC-2012-04795 supports his request for command credit because there were procedural violations in the selection process for the 214 RS/CC position. However, we do not find substantial evidence that absent the violations the applicant would have been selected for

the command position at issue. It would seem reasonable that selection for a position as important as that of a commander may involve intangible considerations not easily captured in a scoring process. The Board has not been provided evidence that it was the prevailing practice that the only choice for a selecting official is to select that individual with the highest overall score. Based on the evidence available to us, we have no basis to conclusively determine that the selecting official did not act within the parameters of his discretion. There is also no evidence provided that the individual selected was not highly qualified for the position. To provide the applicant the relief he is seeking, we would have to conclude that only he should or could have been selected for the position and that his nonselection was a clear violation of applicable policies and procedures. The evidence provided does not substantiate that conclusion. We further note the applicant's argument that IAW AFI 90-301, a CDI should not have been conducted to evaluate a reprisal complaint. However, the CDI did not investigate reprisal. The CDI, dated 5 July 2012, investigated but did not substantiate allegations of improprieties in the selection process. Specifically, the CDI did not substantiate allegations of forgery, false official statement and willful dereliction of duty. Accordingly, we find no evidence that the CDI investigated a reprisal complaint. Based on the totality of the evidence, and noting SAF/IGS referred the hiring process matter to command, and a CDI found the hiring process was not materially irregular, we are not persuaded the applicant's nonselection for the 214 RS/CC position was an error or an injustice. Pursuant to the OUSD remand order that the Board again review the applicant's request for command credit and SSB consideration to the grade of colonel, we have completed a comprehensive and exhaustive review of the complete evidence of record in this case to include the ROI, CDI, and the applicant's responses to the advisory opinions. However, the applicant has not met the burden of proof to establish he suffered an error or injustice, and as such, his request for command credit is denied.

We also note the OUSD memorandum directed that an appropriate Air Force decisional authority take action to grant the applicant an SSB for the 2011 Colonel Promotion Board, unless the justification demonstrates that such relief is not appropriate. Although the previous panel made a number of corrections to the applicant's record, and noting the minor error with the applicant's transfer date from the ANG to the AFR, nothing in the record was changed that would qualify the applicant for an SSB IAW Title 10, U.S.C., § 14502(b), Special selection boards: correction of errors. Therefore, we do not find that an SSB for the CY 2011 AFR PR Colonel Line and Nonline Promotion Selection Board is appropriate. Additionally, ARPC/PB indicates that removal of the applicant's erroneous retirement qualifies him for supplemental promotion consideration to the grade of colonel as outlined in Title 10, U.S.C., § 14502(a). As such, ARPC/PB will process the appropriate paperwork for the

applicant's supplemental consideration for the CY 2014 AFR PR Colonel Line and Nonline Promotion Selection Board. Regarding his request for a direct promotion to the grade of colonel with a date of rank of 17 February 2012, we find that the applicant has not provided sufficient evidence to overcome the rationale expressed in the previous decision; therefore this request is denied. Given that the applicant's remaining requests for a TIG waiver and to change his retirement order to reflect 31 May 2015, are all predicated upon being awarded command credit, these requests are also not favorably considered. Accordingly, it is our opinion that the relief previously crafted by the Board was appropriate to the circumstances of the applicant's case and constitutes full and fitting relief. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting any of the relief sought in this application.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 28 May 2015, 22 July 2015, 4 January 2016, and 28 January 2016, under the provisions of AFI 36-2603:

XXXXXXXXXX, Panel Chair
XXXXXXXXXX, Member
XXXXXXXXXX, Member

All members voted to correct the record as recommended. The following documentary evidence was considered in AFBCMR Docket Number BC-2012-03031:

Exhibit S. Record of Proceedings, dated 3 July 2012, w/Exhibits.
Exhibit T. Letter, OUSD, dated 20 June 2014, w/atchs.
Exhibit U. Letter, Applicant, dated 1 July 2014, w/atchs.
Exhibit V. Letter, ARPC/PB, dated 25 September 2014.
Exhibit W. Letter, SAF/MRBR, dated 22 October 2014.
Exhibit X. Letter, Applicant, dated 3 November 2014,

w/Exhibits.
Exhibit Y. Letter, ANGRC/JA, dated 20 February 2015.
Exhibit Z. Letter, SAF/MRBR, dated 24 February 2015
Exhibit AA. Letter, Applicant, dated 19 March 2015,
w/atch.
Exhibit AB. Memorandum, ARPC/PB, dated 18 November 2015,
w/atch
Exhibit AC. Letter, AFBCMR, dated 21 December 2015.
Exhibit AD. Letter, Applicant, dated 22 December 2015,
w/atch, and Email, dated 20 January 2016.
Exhibit AE. Commander Directed Investigation - WITHDRAWN

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-03153

. COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His military record be corrected as follows:

1. His Letter of Admonishment (LOA), dated 10 March 2010, be removed.

2. His Letter of Reprimand (LOR), dated 23 March 2010 be removed.

3. Any documents pertaining to a proposed revocation of a security clearance or access to classified material be removed.

4. His Unfavorable Information File (UIF) be removed.

5. Adverse documents in his Officer Selection Record (OSR) from August 2003 through 15 October 2010 be removed.

6. His Officer Performance Report (OPR) for the period of 4 August 2009 through 3 August 2010 be voided and replaced with a new OPR indicating “Meets Standards.”

7. His Inactive Duty Training (IDT) points withheld for time spent working with the Area Defense Counsel (ADC) be reinstated.

8. He be awarded the First Oak Leaf Cluster (1OLC) for the Meritorious Service Medal (MSM) for the period of 4 August 2006 through 3 August 2009.

9. Any documentation concerning adverse action taken, or proposed, by the U.S. Air Force Academy (USAFA) be removed.

10. He be reinstated as an active member of the Air Force Reserve, effective 15 October 2010, with award of IDT points consistent with the average IDT points he earned between 1 March 2008 and 31 March 2010.

APPLICANT CONTENDS THAT:

In a 25-page brief the applicant, through counsel, makes the

following contentions:

1. He enjoyed a very successful military career until two years prior to his forced premature retirement in October 2010. In 2008 his USAFA Admission Liaison Officer (ALO) program supervisors began questioning his military duty point submissions. They initiated two formal investigations, one based upon an Inspector General (IG) complaint and the other through a Command Directed Investigation (CDI).

a. In October 2008, an IG complaint was filed which accused him of having submitted a fraudulent AF IMT 40A, Record of Individual Inactive Duty Training. The complaint alleged that he filed inaccurate and false claims for IDT points. The complaint originated with Major A, the Liaison Officer Director (LOD) who supervised the ALOs. Major A was passed over by the same board that selected him for promotion to Lieutenant Colonel in July 2008 but remained his designated supervisor despite the rank inversion this structure created. The IG determined that the complaint against him was not substantiated.

b. In June 2009, a CDI was ordered by the USAFA Superintendent, due to a troubling command climate. In the course of the CDI the issue of the fraudulent AF IMT 40A was again brought up. The investigating officer commented that the submission was reviewed multiple times by unit personnel, unit supervision and independent sources. All sources except for his immediate supervisor found little to no cause to unambiguously believe that he had falsified his AF IMT 40A. The investigating officer stated that the preponderance of available evidence reflected there was no intent to defraud the government when he submitted his AF IMT 40A. The investigation was completed and no disciplinary actions were taken.

2. Although twice exonerated, his supervisors continued to investigate fraudulent military duty submissions. Except for a few submissions relating to time spent with his military counsel, none of his duty point submissions were disapproved.

3. Simultaneously, USAFA officials were actively engaged with his civilian employer, American Airlines (AA), in a collaborative attempt to justify termination of his AA employment for alleged abuse of military leave. Although AA cited 43 instances of inappropriate conduct, an arbitrator found no abuse of military leave and only one contractual transgression and ordered his reinstatement with restoration of benefits, seniority, and back pay for all but 20 days.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

1. According to copies of documents extracted from the Automated Records Management System (ARMS) the applicant is a former commissioned officer of the Air Force Reserves. He was progressively promoted to the grade of Lieutenant Colonel, (O-5), with an effective date of rank and pay grade of 25 July 2008. Effective 15 October 2010, the applicant was, voluntarily, assigned to the Retired Reserve section awaiting pay at age 60 (23 June 2021).

2. Regarding removal of his OPR for the period of 3 August 2009 through 2 August 2010; the applicant did not file an appeal through the Evaluation Report Appeals Board (ERAB) under the provisions of AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports, due to the fact that he is in retired status and is not authorized to file an appeal through the ERAB.

a. The following is a resume of his last five OPR ratings commencing with the report closing on 2 August 2006.

PERIOD ENDING	OVERALL EVALUATION
2 Aug 2006	Meets Standards (MS)
2 Aug 2007	MS
2 Aug 2008	MS
2 Aug 2009	MS
2 Aug 2010*	Does Not Meet Standards

* contested report.

3. On 30 December 2009, the applicant filed an IG complaint via AF IMT 102, Inspector General Personal and Fraud, Waste and Abuse Complaint Registration (Exhibit C), with the Department of Defense IG (DoD/IG) and presented six allegations against his squadron of assignment. DoD/IG forwarded the complaint to the Secretary of the Air Force IG (SAF/IG), who in turn, forwarded the complaint to the USAFA/IG. By letter dated 10 February 2010, the USAFA/IG provided the applicant the following analysis of the allegations and subsequent findings:

a. USAFA/RR denied his AF IMT 40A points for time spent in defense, in violation of military policy and fair access to defense services. Finding: Not Substantiated. Rationale: AFI 36-2017, Admissions Liaison Officer Program, dated 27 Feb 95, Table Al.l., Activities Authorized for Point Credit, lists 19 items that are authorized activities for ALOs to receive points. Trips to ADC or IG are not listed as an authorized activity under this table. Furthermore, neither AFI 36-2017 nor AFMAN 36-8001 (22 Jan 04) Reserve Personnel Participation and Training Procedures, mandate that a reservist must be awarded points for visits to their ADC or IG.

b. USAFA/RR made pen and ink changes to his September and October 2009 40As and filed them without his signature in

violation of Air Force Records Management and established legal principles. Finding: Not Substantiated. Rationale: Their understanding is that the applicant initially signed his 40A for this timeframe and then withdrew his signature through his ADC after the pen and ink changes. Certifying officials and LODs are obligated to validate trips claimed by an ALO. The items which were lined out on the 40A were not identified as being authorized to award points under the guidance of Table Al.l., of AFI 36-2017. Furthermore, the burden falls on the ALO to provide justification to command of the trips claimed.

c. USAFA/RR LODs chose to take arbitrary action (or inaction) based on personal bias and unfounded allegations in violation of the standards of good order and discipline and appropriate supervisory roles. Finding: Not Substantiated. Rationale: After reviewing the information submitted, they could not discern any preponderance of evidence that would indicate arbitrary action or personal bias. The leadership consistently questions other ALOs regarding Form 40As when issues of concern come to their attention. This practice is not remarkable to the validation process.

d. The USAFA/RR chain of command structure is fatally flawed and inappropriately denied his Article 138 complaint in violation of Article 138, UCMJ and AFI 51-904, Complaints Of Wrongs Under Article 138, Uniform Code Of Military Justice (UCMJ). Finding: Not Substantiated. Rationale: The USAFA-level chain of command is just like any other MAJCOM. USAFA has a squadron section commander who is on "G-series" orders. The squadron section commander is placed on "G-series" orders so that they can administer UCMJ actions on behalf of the Directors and other commanders, who are not on "G-series" orders, where appropriate. Regarding the Article 138 issue, this matter has already been addressed. The applicant provided a 29 October 2007, e-mail from HQ USAF/JAA which supported that USAFA/CC took proper actions considering the Article 138.

e. USAFA/RR is disseminating personal information on multiple Air Force personnel and prospective cadets in violation of the Privacy Act. Finding: Not Substantiated. Rationale: The applicant has already filed a complaint on this issue with the USAFA Privacy Act Manager, the proper channel for this complaint.

f. USAFA/RR requested his civilian employer flight schedule and contact information without a legal basis in violation of the Privacy Act and without appropriate military authority. Finding: Not Substantiated. Rationale: Command attempted to obtain information about the applicant for official purposes. This does not violate the Privacy Act because they did not release any personal information.

USAFA/IG advised the applicant that if he had any questions regarding the matter he could contact the USAFA Chief of

Complaints.

4. On 15 January 2010, the applicant provided a copy of his IG complaint to the offices of his State Representative and Senator. On 29 March 2010, SAF/LL requested assistance in answering the congressional inquiries. A copy of the 10 February 2010, closure letter to the applicant was sent to SAF/LL in response to the congressional inquiries.

5. On 30 August 2010, the applicant contacted AFRC/IG alleging reprisal for making a protected communication (PC) to USAFA/IG and claimed the following actions were taken against him as a result of the PC: 1) he received a Letter of Admonishment (LOA) and Letter of Reprimand (LOR), 2) USAFA/RR provided information to his civilian employer, 3) creation of an Unfavorable Information File (UIF) and placement of LOR into his Officer Selection Record (OSR), 4) referral Officer Performance Record (OPR), 5) suspension of security clearance and creation of a Security Information File (SIF), 6) suspended pay and points status, and 7) his request for transfer to another unit was not approved. AFRC/IG transferred the applicant's complaint to SAF/IGQ who then transferred the complaint to USAFA/IG on 8 September 2010.

6. USAFA/IG reviewed the allegations and, based upon a thorough analysis of the documentation, determined an investigation into the allegations of reprisal under Title 10 U.S.C. §1034 was not warranted. Each allegation was assessed for abuse of authority and found to be not substantiated. The preponderance of the evidence established that the personnel actions against the applicant would have been taken even if the protected communications had not been made. The evidence supported that the actions taken by the applicant's leadership were reasonable and that any other supervisor/commander would have taken similar actions based on the applicant's history of failing, and sometimes outright refusal, to comply with requests for additional details to validate his Form 40As from his supervisor and the ALO Program Director. USAFA/JA established the actions taken by USAFA leadership were appropriate consequences for the applicant's refusal to provide requested information to his supervisors and for using his ALO duties to manage his civilian employment.

AIR FORCE EVALUATIONS:

USAFA/RR recommends denial. USAFA/RR states on multiple occasions the applicant willfully disobeyed direct orders and policies, which brought his judgment and ability to adhere to the standards expected of a United States Air Force officer into question. Furthermore, the applicant's actions were detrimental to the good order and discipline of the Admissions Liaison Officer program.

The complete USAFA/RR evaluation is at Exhibit D.

RMG/CC recommends denial. RMG/CC states that the items in which the applicant is seeking relief are either not applicable to the Readiness Management Group (not in the applicant's military file) and/or are unit connected and therefore must be addressed by USAFA, the applicant's unit of assignment. Upon review of obtainable documentation related to the matter, they estimate that the measures and actions carried out by the applicant's active duty chain of command were thoroughly vetted, legal and binding.

The complete RMG/CC evaluation is at Exhibit E.

AFRC/JA recommends denial. AFRC/JA states the applicant argues that he was treated unjustly when he was given an LOA and LOR. USAFA/RR argues that the adverse actions taken before the applicant's voluntary retirement were justifiable. HQ AFRC does not have access to the referenced CDI nor any of the purported IG investigations. USAFA has the required background information and supporting documentation to opine on this application. While AFRC retained shared administrative control (ADCON), USAFA exercised primary ADCON in these actions. However, judging by a preponderance of the evidence available, they believe the applicant has not proven any error or injustice.

The complete AFRC/JA evaluation is at Exhibit F.

AFRC/A1K recommends denial. A1K states their position supports that of the AFRC/JA and RMG/CC without further input.

The complete AFRC/A1K evaluation is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a five-page response the applicant and counsel state that the applicant's dispute is primarily with the U.S. Air Force Academy not with the Air Force Reserve Command (AFRC). They counter the advisory opinions point-by-point and indicate that they consider the AFRC comments to be conclusory in nature with no supporting documentation and as such, the advisory opinions should be given little weight. They concluded that there is nothing that justifies the actions of the USAFA officials in this case and further state that the USAFA attack upon the applicant through his civilian employment was vindictive, malicious, and completely beyond the scope of their supervisory authority. USAFA actions must be set aside and the applicant should be allowed to resume his military career.

The applicant's complete response, with attachments, is at

Exhibit I.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice regarding the applicant's request for award of the First Oak Leaf Cluster (1st OLC) for the Meritorious Service Medal (MSM) with inclusive dates of 4 August 2006 through 3 August 2009. We took careful notice of the applicant's complete submission in judging the merits of the case; however, the applicant has not provided any documentary evidence to substantiate his claim that he was recommended or that he meets the criteria for the MSM. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this portion of the application.

4. Notwithstanding our determination above, sufficient relevant evidence has been presented to demonstrate the existence of error or injustice with respect to the remainder of the applicant's requests. The applicant alleges that he has been a victim of reprisal for making a protected communication (PC) and has not been afforded full protection under the Whistleblower Protection Act (Title 10 U.S.C. § 1034). Based on this, he is requesting corrective actions as noted in his appeal to the Board. After carefully considering the totality of the evidence before us, we are persuaded that relief is warranted. In this respect, we believe the evidence provided makes it clear that a serious personality conflict existed between the applicant and certain members of his chain of command as validated by Inspector General (IG) complaints filed by his supervisory chain and the applicant himself, as well as the Commander Directed Investigation (CDI) ordered by the USAFA Superintendent due to a troubling command climate. We note the IG complaint, filed by the applicant's supervisory chain in December 2008 alleged he submitted a fraudulent AF IMT 40A, Record of Individual Inactive Duty Training, which contained inaccurate and false claims for IDT points; however, the IG determined the complaint was not substantiated. In spite of the documented failure to substantiate the allegation, the issue of the fraudulent AF IMT 40A was once again raised in the June 2009 CDI. Of note is the investigating officer's comment that the submission was reviewed multiple times by unit personnel, unit supervision and independent sources and all sources except for the applicant's immediate supervisor found little to no cause to unambiguously believe that he had falsified his AF IMT 40A, further providing evidence of the tenuous relationship between the applicant and

his immediate supervisor. The investigation was completed with the preponderance of available evidence reflecting there was no intent to defraud the government on the part of the applicant. Also noted is the USAFA/IG determination that an investigation into the complaint alleging reprisal under Title 10 U.S.C. § 1034, was not warranted. Nonetheless, we are persuaded that a preponderance of the evidence submitted supports the applicant was improperly disadvantaged by his supervisory chain given the level of administrative and disciplinary actions taken against him to include; removal from his position as Deputy, Admissions Liaison Officer (ALO); suspended access to the ALO website, corroborations with his civilian employer resulting in his termination from civilian employment; initiation of a UIF; processing for involuntary separation with resultant suspension of access to classified information and prohibited participation in activities for pay or retirement points; and denial of the opportunity to transfer to another assignment. We believe the applicant has provided significant and sufficient evidence that we call into question the basis for the numerous administrative actions taken against him after he made the December 2009 protected communication in the form of an IG complaint. The not substantiated finding of the supervisory chain's December 2008 IG complaint and the CDI evidence reflecting there was no intent to defraud the government on the part of the applicant, establish there was no basis for the adverse actions taken against the applicant. In view of the above, we are persuaded that the adverse actions taken against the applicant as a result of the alleged submission of a fraudulent AF IMT 40A, are factually baseless and should be removed from his records.

5. With regard to the applicant's request to remove his referral report; we note that concurrently the issuance of the LOA, LOR, UIF and subsequent referral report relied on the allegations that he took advantage of his military position to the detriment of his civilian employer, submitted a fraudulent AF IMT 40A, Record of Individual Inactive Duty Training, which contained inaccurate and false claims for IDT points and refused to provide requested information of his physical whereabouts on non-duty days. We note the first assertion was invalidated by an independent arbitrator with an outcome of the applicant being reinstated to full duty with his civilian employer with a concurrent promotion, in addition, as noted above, the IG complaint and CDI allegations of fraudulent claims for IDT points were found to be not substantiated. Based on the fact that there was no validated evidence of misconduct on the part of the applicant, we are persuaded that the contested report is not an accurate assessment of the applicant's performance during the period in question and the aforementioned personality conflicts may have hindered the rating chain's abilities to objectively assess the applicant's performance. In view of the foregoing, we recommend the contested report be declared void, removed from his military record, and replaced with a new report indicating "meets standards."

6. The Board notes the RMG/CC states the LOA, LOR, and UIF are not in the applicant's military record. Notwithstanding, we recommend any documents with reference to these administrative actions be removed from his military record. Additionally, we recommend any adverse documents associated with his OSR, the intent to withdraw his security clearance, or any other adverse action taken or proposed by the USAFA be removed from his military record.

7. The applicant requests that his inactive duty training points withheld for time spent working with his area defense counsel (ADC) for the period of February through October 2009 be reinstated. The OPRs' recommendations of denial are duly noted, however, we have been advised there is nothing in law or policy to prohibit a commander from authorizing the use of IDT points for such consultation. Moreover, we note that Air Force Legal Operations Agency (AFLOA) policy authorizes ADC services for reservists whether or not they are on active duty. We see no clear rationale for the supervisory chain's decision to withhold these points; therefore, we recommend his record be corrected to show that he was awarded the additional inactive duty training points for training for the period of February through October 2009.

8. We further note that reinstatement as an active member of the Air Force Reserve is among the applicant's requests. The OPRs recommendations are noted; however, after reviewing all of the evidence provided, we are persuaded that at the time of his "voluntary" retirement the applicant's circumstances in the loss of his civilian employment and prevention from transferring to another assignment left little choice but to request an early retirement in lieu of his involuntary separation from service. We believe continuance as an active member of the Air Force Reserve is fitting relief given the circumstances. Therefore, based on the above, we believe the corrections cited below will provide the applicant proper and just relief and as such recommend his records be corrected as indicated.

9. The applicant alleges he has been the victim of reprisal. As noted, the applicant's allegation of reprisal was investigated by the USAFA/IG and found to be not substantiated. We note the applicant's contention that after he filed an IG complaint alleging reprisal for making a protected communication (PC) to USAFA/IG, numerous administrative actions were taken against him as mentioned above. As such, based on the authority granted to this board pursuant to Title 10 U.S.C. § 1034, we reviewed the complete evidence of record to determine whether we conclude the applicant has been the victim of reprisal. Based upon our own independent review, we have determined the applicant has established he was subjected to reprisal in violation of Title 10 U.S.C. § 1034. The evidence provided supports the allegation of adverse personnel actions taken against the applicant. The applicant was twice subjected to two formal investigations, one based upon an Inspector General

complaint and the other through a Command Directed Investigation. Although twice exonerated, his supervisory chain continued to investigate fraudulent military duty submissions. Shortly thereafter he made the protected communication, as documented in his 30 December 2009, IG complaint presenting six allegations against his squadron of assignment. The allegations were found to be not substantiated, however, disciplinary and administrative actions occurred after the PC and continued until the applicant applied for a voluntary retirement in lieu of further actions. In view of the totality of the circumstances in this case, we believe our recommendations for correction constitute full and fitting relief.

10. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

a. The Letter of Admonishment (LOA), dated 10 March 2010, be declared void and removed from his records.

b. The Letter of Reprimand (LOR), dated 23 March 2010, be declared void and removed from his records.

c. The documents pertaining to a proposed revocation of a security clearance and access to classified material be declared void and removed from his records.

d. The Unfavorable Information File (UIF) be declared void and removed from his records.

e. The adverse action documents in his Officer Selection Record (OSR) from August 2003 through 15 October 2010, be declared void and removed from his records.

f. His Officer Performance Report (OPR) for the period of 4 August 2009 through 3 August 2010, be declared void and replaced with a new OPR indicating “Meets Standards.”

g. He was awarded an additional 36 non-paid Inactive Duty Training (IDT) points for retention/retirement year 04 August 2008 through 03 August 2009.

h. Any documentation concerning adverse action taken, or proposed, by the U.S. Air Force Academy (USAFA), be declared void and removed from his record.

i. On 15 October 2010, he was not released from active Reserve status but, on that date, he was continued in active Reserve status and was ordered Permanent Change of Station (PCS) to his home of selection.

j. He was awarded 119 paid IDT points for retention/retirement year 4 August 2010 to 3 August 2011, for a satisfactory year of service.

k. He was awarded 119 paid IDT points for retention/retirement year 4 August 2011 to 3 August 2012, for a satisfactory year of service.

l. He was awarded 119 paid IDT points for retention/retirement year 4 August 2012 to 3 August 2013, for a satisfactory year of service.

m. He be reassigned to an Air Force Reserve Category E participation program position within 120 days of this directive.

n. His corrected record be considered for promotion to the grade of colonel (0-6) by a Special Selection Board (SSB) for the Calendar Year (CY) 2012 (V0612A) Colonel Central Selection Board.

o. It is further directed that any nonselections for promotion to the grade of colonel prior to receiving at least four Officer Performance Reports with at least 250 days supervision, in the grade of lieutenant colonel, be, and hereby are, set aside.

The following members of the Board considered this application in Executive Session on 25 April 2013, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in AFBCMR Docket Number BC-2012-03153:

Exhibit A. DD Form 149, dated 27 June 2012, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Report of Investigation - WITHDRAWN.
Exhibit D. Letter, USAFA/RR, dated 30 November 2012.
Exhibit E. Letter, RMG/CC, dated 30 November 2012.
Exhibit F. Letter, AFRC/JA, dated 10 December 2012
Exhibit G. Letter, AFRC/A1K, dated 17 December 2012.
Exhibit H. Letter, SAF/MRBR, dated 7 February 2013.

Exhibit I. Letter, Counsel, dated 23 January 2013, w/atchs.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-03760
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His AF IMT 475, Education/Training Report (TR), rendered for the period 21 Apr 09 thru 18 Dec 09, be declared void and removed from his records.

APPLICANT CONTENDS THAT:

The applicant provides a copy of the AF IMT 948, Application for Correction/Removal of Evaluation Reports from his commander requesting his AF Form 475 be removed due to inaccuracies and injustices and he agrees with the proposed actions.

His commander states that his contested TR contained both a direct and implied derogatory statement regarding his performance and should have been processed as a referral TR in accordance with (IAW) AFI 36-2406, Officer and Enlisted Evaluation Systems, and thereby denied due process protections. A referral would have given him the opportunity to reply and required review/signature by a higher authority.

He does not have the resources available to mount a defense regarding the contested TR.

There is substantial evidence that proves the derogatory comments on the TR do not relate to his actual performance at the training school, as substantiated by a Commander-Directed Investigation (CDI). Instead the derogatory comments may have come from protected complaints made by him and subordinate classmates about the leadership at the training school.

There is an ongoing criminal/Inspector General (IG) investigation against the leadership team at the school, to include the person who signed his TR.

The Board should take action on the basis of procedural errors and the evidence provided in support of his petition and not wait for the final results of the IG and criminal processes.

He has met two promotion boards with this derogatory report potentially serving as the source of his non-selection.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of captain.

On 20 Nov 11, the applicant filed a complaint with the 17th Training Wing Inspector General (17 TW/IG) alleging his TR rendered for the period 21 Apr 09 thru 18 Dec 09, was written as an adverse action, as a reprisal for his conversation with his chain of command regarding sexual harassment issues between his classmates.

On 8 Dec 11, the 17 TW/IG reviewed the complaint and determined that while the applicant did provide potential extenuating circumstances that contributed to his delay in filing, the events in question occurred so long ago that it would be virtually impossible to gather sufficient credible evidence to accurately adjudicate the issues he wanted examined. Therefore, IAW AFI 90-301, Inspector General Complaints Resolution the applicant's case was closed. The applicant was notified of the IG's decision.

The applicant filed an appeal through the Evaluation Report Appeals Board (ERAB) under the provisions of AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. The ERAB considered the applicant's appeal and was not convinced the report was unjust or inaccurate and denied her request for relief.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibit C and D.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial. DPSID states that the applicant contends the comment "Eventually met minimum Air Education and Training Command (AETC) standards of bearing, fitness and appearance with frequent mentoring and guidance from staff and squadron leadership; mentored frequently on leadership, communication and professionalism," was derogatory; therefore, his TR should have been referred. However, they disagree that the comment was in fact derogatory in nature, and presume that in the absence of input or explanation from the evaluator, that they were in fact valid for comment on the contested TR. In addition, the CDI did not find the comments to be invalid; they merely only commented that they could find no evidence to prove

they were warranted, which is clearly not the same thing.

DPSID states the CDI report stated there appeared to be some circumstantial evidence which suggested a personality conflict, but there was insufficient evidence to conclude there were in fact any reprisal actions taken against the applicant by the evaluator in this case.

DPSID states that Air Force policy is that an evaluation report is considered to represent the rating chain's best judgment at the time it is rendered. Once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The applicant has not substantiated the contested report was not rendered in good faith by the evaluator based on knowledge available at the time.

The complete DPSID evaluation is at Exhibit C.

AFPC/JA recommends denial. JA states that one of the conclusions of the CDI was that the Investigating Officer (IO) could find no documentary or testamentary evidence to support any poor performance on the part of the applicant or that he fell short of AETC standards. However, despite interviewing numerous witnesses, the IO failed to interview the single most important witness relative to this allegation – the author of the TR. Without, this person's input, JA opines the report of investigation (ROI) is incomplete and unworthy of any consideration regarding the accuracy of the TR.

JA states the applicant has failed to establish an error or injustice.

The complete JA evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 16 Oct 12, for review and comment within 30 days (Exhibit E). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice warranting

voidance and removal of the contested training report from his records. We are not persuaded by the evidence provided that the contested report is not a true and accurate assessment of his performance and demonstrated potential during the specified time period, that the comments contained in the report are in error, and that the report was prepared in a manner contrary to the provisions of the governing instruction. Therefore, we agree with the opinions and recommendations of Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice.

4. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). By policy, reprisal complaints must be filed within 60 days of the alleged incident or discovery to facilitate the IG's investigation. In the applicant's case, he failed to file his IG complaint within a timely manner and it was closed by the IG without action. Nevertheless, we reviewed the evidence of record to reach our own independent determination of whether reprisal occurred. Based on our review, we do not conclude the applicant has been the victim of reprisal. The applicant has not established that the TR was rendered in retaliation to making a protected communication. Therefore, it is our determination the applicant has not been the victim of reprisal based on the evidence of record in this case. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-03760 in Executive Session on 9 May 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-03760 was considered:

Exhibit A. DD Form 149, dated 21 Aug 12, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSID, dated 17 Sep 12.
Exhibit D. Letter, AFPC/JA, dated 3 Oct 12.
Exhibit E. Letter, SAF/MRBR, dated 16 Oct 12.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-03871

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His officer performance report (OPR) for the period of 10 December 2002 through 9 December 2003, be voided and removed from his record.

2. His date of rank (DOR) of promotion to the grade of Lieutenant Colonel (Lt Col) be changed from 1 April 2006 to 1 April 2005.

3. His date of rank (DOR) of promotion to the grade of Colonel (Col) be changed from 1 October 2011 to 1 October 2010.

4. He be granted back pay and allowances for the adjusted DORs.

5. He be granted any other benefits or entitlements that would have accrued with promotion on the CY04B Lt Col board and promotion on the in-the-zone Colonel board.

6. His retirement grade be adjusted to reflect the grade of Colonel, O-6.

7. His retirement pay and allowances be adjusted to account for the corrected dates of rank.

APPLICANT CONTENDS THAT:

One of his OPRs contains two factual errors and his rater engaged in reprisal. As the top OPR for his Lieutenant Colonel Central Selection Board, the reprisal and OPR had an unjust impact and caused his non-selection for promotion.

1. The reprisal consisted of both adverse personnel action and written OPR comments indicative of poor performance.

2. The Squadron Director of Operations (DO) asked him to write and sign an OPR for someone he did not know and for whom he did not have the required period of supervision. When he declined and utilized his chain of command to express his concerns, the

DO took adverse personnel action by removing his supervisory responsibilities.

a. Air Force Instruction (AFI) 36-2406, Officer and Enlisted Evaluation System, requires raters to have 120 days of supervision in order to write an OPR. It had been less than 30 days since the DO designated him as the member's rater. After reading the AFI and consulting with military personnel flight, he informed the DO he did not have the required days of supervision and he did not know the member he was asked to report on, therefore, he could not sign the OPR.

b. In response, the DO sent an email to everyone in the unit with a subject line entitled “Hammer Time!!” The DO said it was not acceptable for anyone to refuse to write an OPR regardless of whether they knew the ratee or not. The DO further stated:

(1). “I don't know this person” will not be accepted as an excuse.

(2). “There is no time like the present to get to know your fellow man.”

(3) “Let's face it, given good inputs, you can write on anyone and make it look good.”

4. This guidance was contrary to AFI 36-2406. He contacted his unit commander to express his concerns. In reprisal, the DO removed his supervisory responsibilities.

a. Utilization of his chain of command is a protected communication per AFI 90-301, Inspector General Complaints Resolution. The loss of supervisory responsibilities constituted adverse personnel action as defined in DoDD 7050.06, Military Whistle Blower Protection. This loss was a significant change in duties, and it relieved him of responsibilities that were consistent with his grade and duty position.

b. After he made the protected communication the 15 Nov 03, records show the reprisal in that he no longer supervised any officers.

c. His subsequent OPR was unjust. As the Chief of Weapons and Tactics, section III, “Job Description”, Item 2 “Key Duties” did not reflect supervision of personnel as would be expected of his rank and duty position. The OPR had an unjust impact and caused a non-selection.

5. In addition to making a protected communication to his chain of command, he also made a protected communication to the Inspector General (IG) regarding the squadron leave policy.

a. As a deployed Expeditionary Squadron Commander, he learned

of a unit policy that prohibited members from taking leave following return from deployments and compensatory time off. Specifically, the Squadron Commander implemented a policy that prohibited members from being on leave from the unit for more than 14 days. AFI 36-3003, Military Leave Program, states in part, “Give members the opportunity to take at least one leave period of 14 consecutive days or more every fiscal year (FY).” He thought the squadron policy deviated from the AFI guidance, so he inquired about the policy.

b. In response to his query, the DO explained the rationale for the policy in an email in which he stated he would not sign off on the idea that members take their comp time and then follow that with leave. In his mind, that was double dipping.

c. Following the DO email, he contacted the Squadron Commander. The commander said this was also his policy, and he added that he personally believed it sent a message that members aren't important in the unit if they are allowed to be gone for more than 14 days. Since members were permitted compensatory time following deployments, he would not let them go on leave afterwards even when members weren't needed for military necessity.

d. Upon learning the Squadron DO denied leave for an enlisted member because of this 14-day policy and in violation of AFI 36-3003, He filed a third-party Inspector General Complaint on behalf of the enlisted member.

(1). He obtained a copy of the IG case files through a Freedom of Information Act request.

(2). The case files reflected the IG sent a letter regarding the complaint to his additional rater on 3 Feb 04.

(3). The letter had sufficient details to identify him as the complainant.

(4). His rater signed his OPR three weeks after learning of the IG complaint.

6. Professional Military Education courses teach members that the first and last lines of rater comments on an OPR are considered to be the most important. On his 9 Dec 2003 OPR, the rater leads off his last line with "Outstanding professional.” The additional rater follows in his first line with “Outstanding results-oriented professional with a capital “P.” The additional rater's last line also included the comments "Top all-around officer” and “excels in all tasks.” While these phrases had positive words, they were notably absent of any stratification and conveyed poor performance.

7. As a graduated Squadron Commander and Deputy Group

Commander, his primary duties included reviewing OPRs and providing feedback/counseling regarding reports to the 12 Squadron Commanders in his Group. He also wrote, reviewed, or edited all of the Group's promotion recommendation forms (PRFs) for the officers who were meeting promotion boards for Major, Lieutenant Colonel, and Colonel. Having written or reviewed hundreds of OPRs in this role, he could say from experience that an additional rater who uses no stratification and instead characterizes the officer as a "Top all-around officer" who "excels in all tasks" has clearly indicated the lowest performing officer.

8. Including language to indicate he was at the lowest levels of officer performance is unjust given the contrast to his documented performance throughout the reporting period. The non-selection for promotion is evidence of the impact and injustice resulting from the combination of reprisal and factual errors.

9. The subject OPR closed out on 9 Dec 2003 and erroneously showed 365 days of supervision in block 6. On 11 Dec 02, he was assigned to another squadron and was enrolled in two formal training courses. He remained in that squadron until May 2003. Although his training report cites 23 May 03 as the end of training, administrative issues with the permanent change of assignment (PCA) delayed his arrival to his current squadron by approximately 5 days. The PCA occurred 169 days into the reporting period.

a. Three months after his arrival he received orders to deploy to a remote base in Pakistan. He departed on 2 Sep 03 and returned 102 days later on 13 Dec 03. During this extended temporary duty (TDY) he served as an Expeditionary Squadron Commander, and was supervised by and reported directly to the Expeditionary Operations Group Commander.

b. The rater who signed the subject OPR remained at home station. The TDY was more than 30 consecutive days where he did not perform duties under the supervision of the rater, and the TDY was not normally part of his duties (such as those of an inspection team member as listed in the AFI), the 102 days of TDY should have been deducted from the supervisory period lAW AFI 36-2406.

c. Records show the rater had a maximum of 94 days of supervision instead of the 365 days indicated on the subject OPR. Thus, the rater did not have the requisite 120 days of supervision to write his OPR. The OPR is factually incorrect and should be removed from his records.

10. The second factual error on his OPR relates to his distinguished graduate (DG) status from the Joint Firepower Course (JFC). The JFC recognized the top three graduates as DGs based upon academic merit. He contacted the JFC and found

they did not identify the ranked order of the three distinguished graduates. The subject OPR erroneously lowered the stratification of his performance by indicating he was #3 out of 45. It was incorrect as it excluded that he finished the course as either #1 or #2 of 45 graduates.

His sustained record of performance demonstrates he would have been selected during the CY04 board except for the reprisal. Additionally, he arguably would have received a "definitely promote" (DP) from his senior rater on the CY04 board. His CYO5 Promotion Recommendation Form (PRF) was written by the same senior rater and assigned a DP rating. Had his 2003 OPR not included factual errors or reprisal, his record would have been more competitive and he may have received a DP rating. As a minimum, his record did not receive fair consideration during the CY04 PRF process or the CY 04 selection board.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

According to documents extracted from his Military Personnel Record (MPR) the applicant is a former commissioned officer of the Regular Air Force. He retired on 1 May 2012 and was credited with 20 years, and 16 days of active service for retirement.

On 25 January 2004, the applicant filed an IG complaint via an AF IMT 102, Inspector General Personal and Fraud, Waste and Abuse Complaint Registration, as a third party, on behalf of a member of his squadron. The complaint alleged improper leave denial. He alleged that the squadron DO violated the rights of the member by denying her right and entitlement to take leave under the provisions of AFI 36-3003.

On 28 June 2004, the Nellis Air Force Base IG responded to the applicant that after a thorough review and analysis of his complaint, they determined the squadron leave issue was being handled correctly and the policy was in accordance with AFI 36-3003. They informed the applicant that as his complaint concerned a third party issue, they could not address specific circumstances to him; however, the third party could pursue their individual issues directly with the IG. They advised the applicant if he personally experienced difficulty with any leave policies, to please feel free to contact them once again. They thanked him for submitting his concerns through the IG complaint channels.

On 5 November 2008, the applicant filed an IG complaint (Exhibit C - WITHDRAWN) with the Secretary of the Air Force IG (SAF/IG) and presented numerous allegations against his squadron of

assignment. The complexity of the complaints required two separate Major Command IG investigations. Headquarters Air Combat Command (ACC) and Headquarters Air Force Material Command (AFMC) IG offices independently investigated his complaints.

a. The specific allegations considered by ACC/IG are as follows:

(1XXXXXXXXXX. NOT SUBSTANTIATED.

(2). XXXXXXXXXX. SUBSTANTIATED.

(3). XXXXXXXXXX. NOT SUBSTANTIATED.

b. The specific allegations considered by AFMC/IG are as follows:

(1). XXXXXXXXXX. NOT SUBSTANTIATED.

(2). XXXXXXXXXX. NOT SUBSTANTIATED.

(3). XXXXXXXXXX. NOT SUBSTANTIATED.

(4). XXXXXXXXXX. NOT SUBSTANTIATED.

(5). XXXXXXXXXX. NOT SUBSTANTIATED.

(6). XXXXXXXXXX. NOT SUBSTANTIATED.

(7). XXXXXXXXXX. NOT SUBSTANTIATED.

(8). XXXXXXXXXX. NOT SUBSTANTIATED.

(9). XXXXXXXXXX. NOT SUBSTANTIATED.

(10). XXXXXXXXXX. NOT SUBSTANTIATED.

c. On 22 December 2009, The Complaints Resolution Directorate, Office of The Inspector General, Secretary of the Air Force (SAF/IGQ) sent the applicant a letter which stated they reviewed the reports from ACC/IG and AFMC/IG and concurred with their findings. Command action was taken to remedy the one substantiated allegation and the matter was closed.

d. The applicant appealed to SAF/IGQ and stated that ACC/IG only investigated three allegations and did not include his allegation of XXXXXXXXXX as well as the inclusion of subsequent information that was not available during the investigation.

e. In their 23 March 2010, response, SAF/IGQ conveyed to the applicant that two independent commander-directed investigations (ACC and AFMC) reviewed all of his allegations and both independently came to the same conclusion. They reiterated the

SAF/IGQ case closure letter (22 Dec 09), para 3, stated the allegation that XXXXXXXXXX was found to be not substantiated.

f. It was their determination XXXXXXXXXX These findings also received a legal review which found the determination to be legally sufficient. Therefore, further investigation of XXXXXXXXXX was not warranted.

They advised the applicant if he had additional information that was not available during the ACC and AFMC investigations, he could direct this information to the ACC/A8 Director and 303 Aeronautical Systems Wing, respectively, for reconsideration. They considered the appeal of this matter closed.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial of the applicant's request to remove the contested OPR. DPSID states they do not believe the applicant provided sufficient substantiating documentation or evidence to prove his allegation of two factual errors. One error being that the rater did not have the required minimum of 120 days of supervision to write the report and the second error being that he should have been ranked #1 or #2 graduate from the Joint Firepower Course, as opposed to #3 of 45 graduates as written on the contested OPR.

a. Regarding the error that the rater did not have the required minimum of 120 days of supervision to write the report, the applicant provides as evidence his own words of the sequence of events which he believes should have been deducted from the 365 days of supervision. However, the applicant merely provides an Air Form 475, Education/Training Report which accounts for the applicant's absence while attending a formal course for a total of 12 weeks. The remainder of the 243 days appears to be valid as the applicant provided no proof that any additional days should have been deducted from the contested rating period. They were unable to determine the authenticity of the travel voucher, and without a copy of an official Contingency Exercise Deployment (CED) order, it is impossible to make a sound determination on the applicant's claim.

b. Regarding the error that the applicant should have been ranked #1 or #2 graduate from the Joint Firepower Course, as opposed to #3 of 45 graduates as written on the contested OPR, the applicant provided absolutely no evidence that the ranking was incorrect. The applicant has merely provided his own personal opinions, unsupported allegations, and absolutely no proof that these events are accurate as described; as such, they dismiss this allegation and find it to be without merit.

c. In addition, the applicant alleged that the rater engaged in reprisal action against him and removed him from supervisory

responsibilities after he refused to write an OPR on a subordinate for which he did not have the required number of days of supervision as required per AFI 36-2406. Again, the applicant has provided no proof in this case to substantiate that the rater reprised against him or that he may have been removed from supervisory responsibilities for cause. The burden of proof is entirely on the applicant.

d. The applicant claimed the contested OPR was inconsistent with his subsequently written OPR. AFI 36-2401, paragraph A1.5.2, states ratings are not erroneous or unjust because they are inconsistent with other ratings the applicant has received. In this case, they contend, the applicant's rating chain simply made a determination as to what was relevant information regarding the applicant's duty performance and promotion potential during this contested rating period and properly documented that performance on the contested OPR. It is also not up to the applicant to determine that a stratification comment should have been reported on this OPR, but rather it is the rating chain's responsibility to make that determination as inclusion of stratification comments are not mandatory for mention. The applicant did not provide proof that it was or was not the evaluators' direct intentions in omitting stratification comments during this rating period.

e. AFI 36-2401, Paragraph A1.3, states "the most effective evidence consists of statements from the evaluators who signed the report or from other individuals in the rating chain when the report was signed." However, statements from all of the evaluators during the contested period are conspicuously absent. Without the benefit of these statements, they can only conclude that the OPR is accurate as written. Such evidence from the rating officials could have shed light on these matters; as such, they do not see any valid justification, as presented by the applicant, which would justify removal of this contested OPR from his permanent evaluation record. The applicant failed to provide any information or explanation from the rating chain of record on the contested evaluation

f. In the absence of information from evaluators, official substantiation of an error or injustice from the Inspector General or Military Equal Opportunity & Treatment is appropriate, but not provided in this case. The applicant did provide what appears to be an official IG complaint; however, it pertained to resolved leave issues in which the applicant was made aware that the squadron leave was handled correctly; but there was nothing that addressed the reprisal action or indicated that any adverse personnel action was taken against the applicant. In consideration of the sum of evidence provided, there is no valid basis in which they could support removal of the OPR as written.

The complete AFPC/DPSID evaluation is at Exhibit D.

AFPC/DPSOO recommends denial. DPSOO states based on the evidence provided, they do not support a change to the applicant's dates of rank to the grades of Lt Colonel and Colonel.

a. In Feb 05, the applicant requested his nonselection from the CY04B Lt Colonel board be removed and that he be allowed to meet the CY05A Lt Colonel board as an IPZ eligible. The applicant, at that time, contended that he had insufficient time on active duty to build a competitive record for promotion to Lt Colonel. He only had 18 months on active duty; the first 6 months were spent in training and the next 5 months on contingency TDY orders in addition to completing IDE via correspondence. Additionally, his unit had extensive home-based mission requirements and supported continuous combat flight operations with only two scheduled down days in the past two years. Due to training and deployments, he was unable to complete his advanced degree and was therefore, not competitive for promotion. At no time did the applicant mention the OPR that was on file for the board. The applicant's request was approved.

b. Based on the applicant’s DOR to Lt Colonel, 1 Apr 06, he met the CY10C Colonel CSB which convened on 8 Nov 10. He was selected for promotion with a DOR of 1 Oct 11.

c. The applicant voluntarily retired 1 May 12 prior to having the required three years time-in-grade to retire as a Colonel. Had the applicant been selected for promotion to Lt Colonel by the CY04B CSB and met the CY09D Colonel CSB as an IPZ eligible, his DOR to Colonel would have been 1 Sep 10. The applicant still would not have had sufficient time-in-grade to retire as a Colonel.

The applicant felt the reason for his nonselection was due to having insufficient time to complete his advance degree and not his OPR and he was granted relief because of that reason. Since he was promoted to both Lt Colonel and Colonel with the OPR on file, there is no evidence that it caused his nonselection in 2004.

The complete AFPC/DPSOO evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his response, the applicant reiterated his contentions and indicated he considered the Air Force evaluations to be factually incorrect on certain points.

a. He stated it was not reasonable for AFPC/DPSID to falsely state he failed to provide evidence. It was factually incorrect to repeatedly assert throughout the advisory opinion

that he only provided as evidence his own words, he provided no proof, he merely provided his own personal opinions and he provided absolutely no evidence. Repeatedly and falsely stating that no evidence existed is unjust in that it might bias any reader into believing that he did not submit any evidence. He requests the Board review the submitted records for relevance, consistency with his assertions, and credibility toward the facts in question.

b. Additionally, in an effort to characterize the effects of the injustice he suffered from the OPR, he asserted that he did not receive fair consideration during the PRF process due to the injustice. Specifically, he stated, "had his 2003 OPR not included factual errors or reprisal, his record would have been more competitive and he may have received a Definitely Promote rating." It was not reasonable to conclude these statements constituted a request to alter the PRF. However, multiple comments, entire paragraphs, and the DPSID concluding recommendation centered on the erroneous foundation presuming he requested alteration of the PRF to a Definitely Promote rating. DPSID's opinion groups the lack of evidence relating to PRF changes and summarizes them as applying to the request to void the subject OPR as well. Thus, the entire content of the DPSID recommendation paragraph is misleading and might unfairly bias the Board when considering the merits of the application.

c. DPSOO's opinion appears to be based, at least in part, on the erroneous belief that he had previously argued in the 2005 appeal that his record was not competitive. Had he actually argued as such, their opinion might be valid, however, the evidence submitted substantiated that was not the case. He strongly argued the competitiveness of his record. This should not preclude the Board considering the requested remedy on his current appeal.

d. It is difficult for him to fully describe the entire set of circumstances in existence in 2005 that prevented him from pursuing an IG complaint of reprisal in order to contest the OPR at the time. If the Board feels this matter is relevant, he would ask for an opportunity to appear before the Board to interactively examine the facts, circumstances, and his perceptions in order to determine if the course he took was reasonable given the situation. Circumstances led him to believe the pursuit of corrective action to the subject OPR might bring risk of reprisal, and was therefore not an available option. He believes the evidence supports that this was a reasonable course of action and in the interest of justice the Board should find in his favor to consider the requested remedy.

The applicant's complete response, with attachments, is at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took careful notice of the applicant's complete submission pursuant to Title 10, United States Code, Section 1552 (10 USC § 1552) in support of his requests and the evidence of record. The applicant's contention that his contested OPR contains factual errors, his rater engaged in reprisal, and his sustained record of performance demonstrated he would have been selected during the CY04 promotion board except for the reprisal are duly noted; however, we do not find the evidence provided sufficient to override the rationale provided by the Air Force offices of primary responsibility. We also note that the applicant filed two complaints with the IG; however, one complaint was a third party complaint and according to the SAF/IG case file, the applicant's complaint did not allege reprisal. While the applicant alleges that this OPR harmed his promotion opportunities he has not provided any evidence showing that the content of the OPR was the sole reason he was not selected for promotion by the CY04B Lt Colonel promotion board. To the contrary, the evidence established indicates the applicant's records, including the contested OPR, were considered for promotion by the CY05A Lt Colonel and CY10C Colonel Selection Boards and he was selected for promotion in both instances. The applicant has not provided evidence to persuade us to the contrary and we agree with the opinions and the recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant alleges he has been the victim of reprisal. By policy, reprisal complaints must be filed within 60 days of the alleged incident or discovery to facilitate the IG's investigation. As mentioned above, we note the applicant filed two IG complaints; however, the available record does not substantiate that either of the complaints filed alleged reprisal and it appears no investigation for reprisal was done. Nevertheless, we reviewed the evidence of record to reach our own independent determination of whether reprisal occurred under the provisions of 10 USC § 1034. We note the applicant's contentions but based on our review of the evidence presented, we do not conclude that he has been the victim of reprisal.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 21 February 2013, under the provisions of AFI 36-2603 and the authorities found in 10 USC Sections 1034 and 1552:

, Chair
, Member
, Member

The following documentary evidence was considered in AFBCMR Docket Number BC-2012-03871:

Exhibit A. DD Form 149, dated 26 August 2012, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. IG Complaint dated 22 December 2009 (withdrawn).
Exhibit D. Letter, AFPC/DPSID, dated 17 September 2012.
Exhibit E. Letter, AAFPC/DPSOO, dated 18 October 2012.
Exhibit F. Letter, SAF/MRBR, dated 21 December 2012.
Exhibit G. Letter, Applicant, dated 3 Jan 2013, w/atch.

Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-04458

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His Fitness Assessment (FA), dated 22 Aug 12, be removed from the Air Force Fitness Management System (AFFMS).

2. His Letter of Counseling (LOC) with Unfavorable Information File (UIF), dated 18 Sep 12, be removed from his military personnel records.

APPLICANT CONTENDS THAT:

1. He was forced to take the contested FA before the full 90-day reconditioning period had expired, in violation of AFI 36-2905, Guidance Memorandum 4. He was initially served a Letter of Reprimand (LOR) for failing the FA, which was later rescinded when his commander became aware that he should not have participated in the contested FA.

2. The LOC and UIF he received as a result of being “non-current” in the fitness program is invalid and therefore, baseless and should be removed from his records. His 90th day to take the FA was on 28 Aug 12 but he could not have tested on that day due to the base being shut down because of a hurricane.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant served in the Regular Air Force in the grade of major (O-4) during the matter under review.

On 22 Aug 12, the applicant participated in an FA, attaining a composite score of 62.10, which constituted an unsatisfactory assessment.

On 24 Aug 12, the applicant received a LOR for failing his Air Force Physical Fitness reassessment.

On 30 Aug 12, the applicant filed an Inspector General (IG) complaint in reference to his commander forcing him to take the FA prior to his full 90-day reconditioning period being complete.

On 4 Sep 12, the applicant participated in another FA and attained a passing score.

On 5 Sep 12, the applicant’s commander rescinded the aforementioned LOR and determined that the action would not be filed in the applicant’s officer selection record.

On 10 Sep 12, the IG Office responded to the applicant's complaint acknowledging their awareness that the commander rescinded the LOR and the unit commander had taken corrective action. As a result, they considered the applicant's complaint to be closed.

On 18 Sep 12, the applicant received an LOC for failing to schedule his fitness retest in a timely manner. In accordance with AFI 36-2905, Airmen are required to retest within 90 days following an Unsatisfactory FA in order to maintain currency. The applicant's 90th day was 28 Aug 12, he did not retest until 4 Sep 12.

On 9 Oct 12, the applicant was ordered to be relieved from active duty on 31 May 13 and retired, effective 1 Jun 13.

AIR FORCE EVALUATION:

AFPC/DPSIM recommends granting the applicant's request to remove the FA dated, 22 Aug 12 from the AFFMS, noting that Unit Commanders may not mandate Airmen to retest any sooner than the end of the 90-day reconditioning period; however, Airmen may volunteer to do so. As for the LOR, dated 24 Aug 12, it appears the commander has already agreed to rescind the LOR from his record. Notwithstanding the above, the applicant's request to remove the LOC and UIF should be denied as the LOC was processed in accordance with AFI 36-2907.

A complete copy of the AFPC/DPSIM evaluation, with attachments, is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reiterates that the LOC is inappropriate, unfair, and constitutes reprisal. He argues that if he had not objected to taking his FA on 22 Aug 12, he would have remained current in the system and would not have received the LOC. His FA on 22 Aug 12 was in effect until his commander invalidated the test

on 5 Sep 12. He passed the test on 4 Sep 12. He points-out that the language in the LOC implies that either he "volunteer" to test on 22 Aug 12, or, face the consequences of being labeled "derelict" for failure to remain current. He received an LOC for "failing to remain current" in the fitness system but he was never non-current.

A complete copy of the applicant's response is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice with respect to the 22 Aug 12 FA, the LOC and the UIF. We took notice of the applicant's complete submission in judging the merits of the case and agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has been the victim of an error or injustice with respect to the 22 Aug 12 FA. The applicant contends the basis for the LOC and the UIF, i.e., him becoming "non-current" in the fitness program, is invalid because circumstances outside his control caused him to be unable to schedule his FA before he became "noncurrent" on 28 Aug 12. In this respect, we note the applicant would not have been untimely in scheduling his retest, had he not been forced to take the FA on 22 Aug 12, prior to his 90-day

reconditioning period. Therefore, we recommend the applicant's record be corrected as indicated below.

4. The applicant alleges he is the victim of reprisal, indicating that the aforementioned LOC and UIF were issued in retaliation for making a protected communication to the Inspector General (IG) regarding his contested FA. However, while we found the evidence submitted sufficient to recommend removal of these actions from the applicant's record, other than his own assertions, he has provided no direct evidence of this alleged reprisal motive. While the applicant filed an IG complaint related to his 22 Aug 12 FA failure and was subsequently issued the contested LOC and UIF for becoming "noncurrent," the fact that his contact with the IG, preceded the LOC and UIF is not, in and of itself, sufficient to establish that these actions were motivated by reprisal. Therefore, after a thorough review of the evidence before us, we do not conclude the applicant has been the victim of reprisal. The applicant has not established the LOC and UIF were rendered

in retaliation to making a protected communication. Therefore, it is our determination the applicant has not been the victim of reprisal based on the evidence of record in this case.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected as follows:

a. The Fitness Assessment (FA), dated 22 Aug 12, be declared void and removed from the Air Force Fitness Management System (AFFMS).

b. The letter of counseling (LOC), with Unfavorable Information File (UIF), dated 18 Sep 12, be declared void and removed from his records.

The following members of the Board considered AFBCMR Docket Number BC-2012-04458 in Executive Session on 4 Jun 13, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 25 Sep 12, w/atchs.

Exhibit B. Applicant's Military Personnel Records.

Exhibit C. Letter, AFPC/DPSIM, dated 29 Oct 12, w/atchs.

Exhibit D. Letter, SAF/MRBR, dated 26 Nov 12.

Exhibit E. Letter, Applicant, dated 3 Dec 12.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-04795
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

She receive the following relief based on being the victim of a substantiated case of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 Jul 07, and Title 10 USC 1034:

1. Her record be corrected to reflect that she was selected for the position of Director, Reserve Active Guard/Reserve (AGR) Management Office (REAMO) effective Jan 09.

2. She receive a new date of separation (DOS) of 31 Jan 14, or one year from the date of the Board's decision with credited retirement and service points.

3. She receive all active duty back pay, leave, basic allowance for subsistence (BAS), basic allowance for housing (BAH) for the Washington, DC area and a DD Form 214, Certificate of Release or Discharge from Active Duty for having served in the Director, REAMO position from 1 Feb 10 to 1 Feb 14, or one year from the date of the Board's decision.

4. She receive $1,000.00 for recoupment of gasoline and vehicle maintenance due to her geographic separation from her family.

6. She receive a direct promotion (without Special Selection Board (SSB) consideration) to the grade of brigadier general (BG) with an effective date of 1 Feb 11.

7. She be granted any and all other relief the Board and the Secretary of the Air Force (SAF) deem appropriate.

APPLICANT CONTENDS THAT:

In a 10-page statement the applicant presents the following major contentions:

1. Her application is the result of substantiated findings from an official Secretary of the Air Force Inspector General (SAF/IG) complaint she filed on 2 Sep 08.

2. In May 08, she submitted an application to be considered for

the Director, REAMO position. The assignment to this position would have incurred an additional four years of active duty. The announcement required an Air Force Specialty Code (AFSC) of 37F4 (Personnel) and stated that AGR applications would be the only ones considered. She met every required qualification.

3. On 10 Jul 08, she was notified that an Air Reserve Technician (ART) who did not meet the advertised requirements had been selected. Among other things, the officer was not a personnelist.

4. She was informed the general officer charged with making the selection did not base his decision on the merits of the records but on personal prejudices against her.

5. The crux of her reprisal complaint was that she clearly should have been chosen as the Director, REAMO. Had she been given the opportunity to serve as the Director, REAMO and subsequently meet the Reserve Brigadier General Qualification Board (RBGQB), she likely would have been placed in a BG position. Furthermore, her record in the context of that period of time would have been very competitive for promotion to the grade of BG. Her official Air Force record as well as her colonel (Col) Promotion Recommendation Form (PRF) speaks for itself. She was the youngest line of the Air Force Col at the age of 39, when she pinned on Col in Feb 04. It stands to reason, that if her record was exceptional enough to advance her through the ranks that quickly, promotion to the grade of BG was surely a reasonable expectation.

6. Even though the evidence of reprisal was substantiated in her favor, she would be at a disadvantage if allowed to meet a SSB today. She would not have a PRF, an appropriate general officer ranking and many of the general officer board members would be familiar with her case and likely oppose selecting her for promotion. Her record cannot be reconstructed in such a manner so as to permit her to compete for promotion on a fair and equitable basis.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

In 2007, the applicant met an Air Reserve Board (ARB) and requested a two year extension of her 31 Jan 08 DOS.

On 13 Aug 07, the applicant sent a letter to the AFRC/CC, stating in part that the ARB’s decision not to extend her was “flawed” and that the process violated Air Force Instructions and Title 10 USC.

In Apr 08, AGR Vacancy Announcement 08-598H (Director, REAMO) was announced with a closing date of 28 May 08. On 23 May 08, the applicant submitted an application.

In July 08, the Deputy AF/RE selected a logistics officer for the position.

On 2 Sep 08, the applicant filed an IG complaint with the SAF/IG office IAW AFI 90-301, Inspector General Complaints Resolution. The applicant alleged that the Deputy AF/RE reprised against her by not selecting her for the position in violation of Title 10 USC 1034.

On 1 Feb 10, the applicant retired in the grade of Col (0-6).

On 13 Jul 10, the applicant was notified that the SAF/IG had substantiated her allegation of reprisal against the Deputy AF/RE, under the provision of Title 10, USC 1034. SAF/IG reviewed the ROI and approved its findings. In addition, the Department of Defense (DoD)/IG conducted a thorough review of the report and concurred with its findings that the Deputy AF/RE had reprised against her by not selecting her for the position of Director, REAMO in violation of Title 10 USC 1034.

The remaining relevant facts pertaining to this case are contained in the evaluations prepared by the appropriate offices of the Air Force, which are contained at Exhibits B, C and F.

AIR FORCE EVALUATION:

AFRC/JA recommends denial. JA states that according to the ROI there were two AGRs that applied for the Director, REAMO position and that both were tied as the top candidates. The cover sheet that accompanied the AGR announcement provided that "if two or more AGRs apply, their applications are the only ones forwarded on the initial nomination package, regardless of the number of applicants that applied. Ten eligible candidates applied for the position.

However, instead of sending only the AGR applicants, to the Deputy AF/RE for consideration, all 10 candidates were forwarded. The applicant met all the mandatory qualifications of the vacancy announcement and only lacked squadron command experience which the vacancy announcement listed as "highly desirable," but not mandatory. The other AGR colonel met all the mandatory requirements, but he too, lacked the highly desirable command experience. Both applicants were tied as the #1 candidate.

According to the ROI, the Deputy AF/RE engaged in numerous frank discussions about the candidates with members of his staff, and after these discussions he selected a non-AGR candidate. His

rationale for not selecting the applicant was that he was "looking for someone with extensive AFR experience, staff experience at the headquarters and most importantly squadron commander experience." According to the Deputy AF/RE the candidate selected was the most qualified for the position.

Title 10 USC 1034b provides that "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" to make a protected communication.

AGR members are not by law or policy guaranteed a right to serve beyond 20 years in the AFR. The AFR manages its AGRs through an ARB to review AGRs with an upcoming DOS biannually for continuation in the AGR program for career status beyond their 20 year active duty retirement date. The applicant's records met an ARB in Mar 07. The results of that ARB were that her DOS remained at 31 Jan 08. The applicant appealed the denial of her AGR tour extension which the AFRC/CC denied. She asked for reconsideration and AFRC/CC subsequently granted her request thereby extending her AGR tour to 31 Jan 10. Before she retired on 1 Feb 10, she could have applied for another AGR position and if selected would have been eligible to serve on duty longer.

In May 08, the applicant applied for the Director, REAMO, for which position she was not selected. She applied for no other AGR positions before she retired.

The applicant argues that she was the most qualified despite the SAF/IGS ROI that states that she tied with another colonel as the #1 candidate. As for justification for her promotion to the grade of BG, the applicant cites that "each Director, REAMO has been screened by the Reserve Brigadier General Qualification Board (RBGQB) and found to be qualified to be placed in a Brig Gen position." However, selection as qualified for the RBGQB is by no means a guarantee for promotion to BG. The facts reveal that while these officers may have been selected as qualified for RBGQB, only one has been promoted to BG.

Facts are that twice a year the AFR convenes an ARB with the purpose of reviewing AGRs with an upcoming DOS for continuation in the AGR program for career status or beyond their 20 year active duty retirement date. The applicant's records went before an ARB that resulted in her DOS remaining at 31 Jan 08, until AFRC/CC granted her reconsideration and extended her AGR tour to 31 Jan 10. There is no authority that provides an AGR will receive, is promised, or is guaranteed an extended tour. The standard for an ARB is the "needs of the AFR." SAF/IGS ROI also conducted an inquiry into the ARB process concerns raised by the applicant and concluded that the "Reserve ARB is an authorized method to force manage the AGR program. The inquiry determined the ARB met the intent of DoDI 1205.18, Full-Time Support (FTS) to Reserve Components and AFI 36-2132 by managing

her career to active duty retirement eligibility. There is nothing to indicate that she was singled out for denial of her extension request."

The applicant's view is that she was involuntarily separated from the Air Force, and that this involuntary separation violated the law. Contrary to her belief, the applicant was not involuntary separated from the Air Force, nor was she forced into retirement. The ARB merely denied extending her AGR tour DOS beyond 31 Jan 10; she was allowed to finish her AGR tour and retired 1 Feb 10. She could have applied for AGR tours other than the Director, REAMO; however, she did not.

As to a violation of Title 10 USC 1034b, the applicant appears to have the opinion that she was the only qualified applicant and would have been selected but for reprisal by the Deputy AF/RE substantiated in the SAF/IGS ROI. Contrary to her views, the evidence found by the SAF/IGS ROI depicted another colonel tied with the applicant as equally qualified for the Director, REAMO position. Had the Deputy AF/RE not reprised against her, there is no evidence that she would have been selected over the other colonel, who tied as the #1 candidate.

With regard to her belief that but for the reprisal she would have been selected as the Director, REAMO and but for this non-selection she would have been promoted BG, the evidence again is to the contrary. Selection as qualified to meet the RBGQB does not result in an automatic promotion. Air Force policy is: promotion is not a reward for past service. The applicant's belief is that it is the position held that gives rights to promotion, yet despite evidence to the contrary not all that served as Director, REAMO have been promoted to the grade of BG.

The complete JA evaluation is at Exhibit B.

AFRC/A1K recommends denial. A1K states that their position supports that of AFRC/JA.

The complete A1K evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The author of the AFRC/JA opinion has largely mischaracterized the facts of her case, while minimizing some of the issues substantiated by the findings of the SAF/IG and addressing other issues not even requested in her BCMR submission.

The SAF/IG ROI substantiated her allegation of reprisal, that the Deputy AF/RE did not select her for the Director, REAMO position in Jul 08.

The SAF/IG substantiated reprisal against her is the foundation

of her BCMR submission and the causal effects of the subsequent delays in addressing her case are the basis for the additional requests therein to provide compensation.

Paragraph 1 of the AFRC/JA memorandum is of significant concern due to its initial mischaracterization of the facts contained in her BCMR submission and that it sets the baseline for the remainder of her letter. The paragraph states the following:

She is not "alleging" that she was wrongfully denied the position of Director, REAMO. That is a substantiated fact as stated in the SAF/IG ROI. Therefore, her AGR orders should be corrected to show that she was selected for the Director, REAMO with four years added to her last orders, and she should have continuing active duty orders with a new DOS of 31 Jan 14 (or one year from date of the Board's decision IAW Title 10 USC 1552d, whichever is sooner. Additionally, her retirement date should be amended to at least that point and all pay and entitlements which should have been earned, be awarded to her as compensation.

Secondly, she did not allege she was wrongfully denied promotion to the grade of BG. The fact is that due to the substantiated reprisal by the Deputy AF/RE, she was denied the position as Director, REAMO and subsequently the opportunity to competitively screen for the RBGQB. While she fully understands that selection for promotion to BG is highly competitive and by no means an assurance solely based upon attaining specific positions during a career, the fact of the matter is that the opportunity to compete was wrongly denied to her by the substantiated reprisal actions of the Deputy AF/RE. A promotion board should only be usurped when there are: 1) extraordinary circumstances (i.e. a showing that the officer's record cannot be reconstructed in such a manner so as to permit fair and equitable consideration) and 2) when the probability of selection for promotion would have been extremely high were it not for the original errors. Her record in this case cannot be reconstructed to show OPRs pertaining to her tenure as Director, REAMO or any other positive effect of her selection to that position. Moreover, based on her previous record and rate of selection of the previous Directors, REAMO, there is a high probability that she would have been highly competitive and selected for promotion to the grade of BG.

Third, the AFRC/JA opinion repeatedly mentions that she alleges she was wrongfully denied extension of her AGR tour and was involuntarily separated. The fact of the matter is that she is not addressing the issue of the ARB or her separation, or any extension issues in this BCMR request at this point due to the fact that she still has not received any of the Freedom of Information Act (FOIA) information she requested. As previously stated she would separate her BMCR into two separate cases:

one for her reprisal case and a second BCMR at a future date on

all the other wrong doings (i.e. AGR mismanagement, violations of law and her involuntary separation from the Air Force) once she receives the appropriate information.

The applicant's complete response, with attachment, is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION:

AF/JAA recommends denial. AF/JAA states that the applicant was not the only AGR who was the top candidate for the Director, REAMO position and when faced with her AGR tour extension denial in 2010, she elected not to apply for other AGR positions or another Reserve position. It was within her control to apply for other AGR positions or pursue other opportunities that could have continued her in the Reserves until potentially other AGR positions came open. In short, the applicant chose to retire.

AF/JAA states that one may consider that a denied tour extension in the current AGR position does not force the member to retire. However, it was a decision based on the best interest of the Air Force that the applicant should not be extended in her current position. In fact, from her application, the applicant's supervisor stated that she had a successful path ahead of her in the AGR program for many years to come. The fact was she had been serving in that position for approximately six years. The applicant comments that each Director, REAMO had been screened and found qualified to be placed in a BG position. As pointed out by AFRC/JA, being found qualified to be in such a position does not mean the individual would be guaranteed promotion. In fact, only one of the named prior Directors, REAMO had been actually promoted to the higher grade. In addition, there was no guarantee that even if the applicant had been selected for Director, REAMO she would have been successfully found qualified to be placed in a BG position.

AF/JAA states that they do not slight the applicant's record, but note that she was not the top candidate for the Director, REAMO position. There was another qualified individual, and they do not see any evidence that person was reprised against by not being selected. In fact, there was no guarantee that had the other candidate been selected, he or she would have been found qualified to be placed in a BG position. Finally, the applicant does not present other AGR or Reserve positions that she applied for and was denied, and she does not identify other positions that would guarantee her being found qualified for the higher grade.

AF/JAA states that they cannot and do not ignore the fact that she was the victim of reprisal; however, they do not believe she has articulated a justified claim for relief. While a second ARB decided not to extend her AGR tour, it was within the

applicant's control to apply for other positions rather than retire.

The complete AF/JAA evaluation is at Exhibit F.

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION:

Every time she receives a legal opinion either from AFRC or Headquarters Air Force (HAF), she is regrettably presented with either a gross mischaracterization of the facts or the minimization of the circumstances surrounding her case. The applicant states that she is entitled to correction of her military records for the reprisal against her as stipulated in Title 10 USC 1034, as substantiated by the ROI provided by the SAF/IG.

The first two pages of the AF/JAA opinion attempt to restate the background of her complaint and emphasize that she did not have the highly desirable command experience. However, as noted in her 17 Jan 13 reply to the AFRC/JA advisory opinion, it is undisputed the advertised position requirement for Director, REAMO stated, "previous squadron, flight or section command is highly desirable." She was a squadron section commander at Soesterberg Air Base, The Netherlands. This is evidenced in her records and duty title summary previously provided in her Jan 13 rebuttal. There appears to have been a gross administrative error on the part of the REAMO office when they did their initial screening.

The reviewers continue to either misunderstand or mischaracterize the issue and the fact that it was during the IG interview that the Deputy AF/RE stated that he only wanted someone with "squadron command" (and not section or flight command) experience as his reason for not selecting her when he was questioned during the investigation. Furthermore, she has been informed that she should have been "color-coded" as the undisputed #1 candidate for the position from the very beginning. Although she has requested this information under the FOIA, she has yet to be provided this "color-coded" rack/stack list.

The AF/JAA author attempts to shift focus to two points. First, that she was not the only AGR who was a top candidate for the position. However, the SAF/IG report identified her as the top candidate based on interviews conducted and insights provided under oath. Even if there was another strong candidate, the Deputy AF/RE reprisal actions against her ensured she was denied the position. Her concern is the compensation she should be afforded based on the substantiated reprisal actions of the Deputy AF/RE.

Regarding her second point, it seems convenient that three or so

years after the fact, the case reviewers simply state that she chose to retire and could have applied for other jobs. This is absurd when considering the facts. During that time, she was waiting on the results of an official IG complaint which by law, is supposed to be finalized within six months (it actually took 22 months to conclude and she was not provided the results until the last day of Jul 10, an admitted oversight by the (SAF/IG). It does not make sense that she would apply for other positions when she was waiting for the results. At a minimum, the Air Force should have retained her at her current duty location or one close by until the results were provided. Also, as verified in the IG report, she was informed that she was not going to get another job. Furthermore, she did not request to leave the AGR career program; she requested to stay in the program but was told to either retire or she would be placed in the Individual Ready Reserve (IRR).

She cannot communicate how competitive her promotion potential was prior to the reprisal actions of the Deputy AF/RE. Even the AF/JAA advisory opinion states they do not slight her record at all. She acknowledges that she would be at a disadvantage if her case were presented to a SSB. However, at this point she offers her records as evidence that she achieved every whole-person milestone, served at all levels (squadron, wing, MAJCOM, HAF and Joint Command), has always been ranked as #1 or #2 or top 1%, completed her Master's Degree, awarded the Legion of Merit (LOM) and completed all professional military education (PME). The probability of her being selected for promotion would have been extremely high. However, her case is one of such an egregious injustice and blatant abuse of power that unprecedented action should be warranted.

Lastly, regarding AF/JAA's advisory opinion that they acknowledge and do not ignore the fact that she was the victim of reprisal based on the substantiated findings of the official IG complaint, her professional response to that is this: the law orders military department BCMRs to correct the record of a victim of reprisal pursuant to Title 10 USC 1034 and to provide appropriate compensation.

The applicant's complete response is at Exhibit H.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice concerning the applicant's requests for a direct promotion to the grade of

BG and that her record be corrected to reflect that she was selected for the Director, REAMO position with a new DOS of Jan 2014. Although the applicant has been the victim of substantiated reprisal in violation of 10 USC 1034 by the Deputy AF/RE, which was wrong and unacceptable, we cannot conclude that a direct promotion to the grade of BG is an appropriate remedy. In this respect, we note that this Board has long taken the position that issues of promotion are best determined by a duly constituted promotion board empowered with the authority to determine those best qualified for the limited number of promotions available. In addition, our effort to try and determine the appropriate relief in light of the act of reprisal has been complicated by the applicant's decision to retire from the Air Force. Moreover, the applicant has specifically requested that she not meet a SSB so SSB consideration is moot. While this Board has on occasion found it to be in the interest of justice to directly promote an applicant, it has only been under the most extraordinary of circumstances when the Board is convinced the applicant has been unfairly deprived of promotion and likely cannot receive fair and equitable consideration. Although the list of accomplishments the applicant has presented appears impressive, we cannot validate they establish her qualifications for promotion or know how they would be viewed when stacked against her contemporaries in a competitive promotion process. Essentially, we can only speculate as to whether or not she would have ultimately been promoted to the grade of BG. Moreover, as pointed out by AFRC/JA, being found qualified to be in such a position does not mean an individual would be guaranteed promotion. In fact, AF/JAA states that only one of the named prior Directors, REAMO had been actually promoted to the higher grade. Additionally, there is no guarantee that even if the applicant had been selected for Director, REAMO she would have been successfully found qualified to be placed in a BG position. In view of this, coupled with the fact that the ROI reflects that she was not the definitive number one candidate for the position, we are not persuaded that she more likely than not would have been promoted to the grade of BG were it not for the reprisal. Unfortunately, there are situations wherein the ability of the Board to craft relief that will make an applicant completely whole is often times limited by the very circumstances of the case. In this instance, there is no way to completely restore the career opportunities the applicant may have lost. Therefore, we do not find extraordinary circumstances in her case that rise to a level to warrant a direct promotion to the prestigous grade of BG. With regards to her requests that her records be corrected to show that she was selected for the Director, REAMO position with a DOS of Jan 2014, we believe the relief recommended that includes constructive credit through January 2013, is the more appropriate remedy. Accordingly, we find no basis to grant this portion of the applicant's request.

4. Notwithstanding the above, sufficient relevant evidence has been presented to demonstrate the existence of an error or

injustice to warrant changing her records to reflect a new DOS of 1 Feb 2013, with back pay, issuing a new DD Form 214 and reimbursement for vehicle fuel/maintenance expenses. While the Board cannot definitively conclude that the applicant would have been selected for the position but for the reprisal; we believe that some measure of relief is warranted. In this respect, we note that the applicant tied with another colonel as the "#1" candidate for the Director, REAMO position. However, because of the personal prejudices of the responsible management official against the applicant, she was not fairly considered for the position. As such, we have determined what we believe is the appropriate relief based on the evidence before us. Although the applicant contends that she should be given service credit from 1 Feb 10 to 1 Feb 14, we find it more equitable to award the applicant with three years of active service credit beginning 1 Feb 10, resulting in a new retirement date of 1 Feb 13, which is consistent with the date she alleges she would have actually reported to the Director, REAMO position (Jan 09). Additionally, we believe reimbursement for her out-of-pocket vehicle maintenance expenses incurred as a result of having to be geographically separated from her family due to the reprisal is warranted. Therefore, we believe correcting the applicant's record to reflect that she was awarded three years' service credit with associated back pay and allowances along with reimbursement of vehicle expense is appropriate to the circumstances of the case and constitutes full and fitting relief. Therefore, we recommend the applicant's records be corrected to the extent indicated below.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

a. She was not released from active duty on 31 January 2010, but on that date, she was continued on active duty until 31 January 2013, at which time she was released from active duty and retired under the provisions of Title 10, United States Code, Section 8911, effective 1 February 2013.

b. She was in a temporary duty status for a sufficient number of days to accumulate an entitlement of $1,000.00.

The following members of the Board considered Docket Number

BC-2012-04795 in Executive Session on 18 Apr 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 11 Oct 12, w/atchs.
Exhibit B. Letter, AFRC/JA, dated 4 Dec 12.
Exhibit C. Letter, AFRC/A1K, dated 17 Dec 12.
Exhibit D. Letter, SAF/MRBR, dated 21 Dec 12.
Exhibit E. Letter, Applicant, dated 17 Jan 13, w/atch.
Exhibit F. Letter, AF/JAA, dated 31 Jan 13.
Exhibit G. Email, SAF/MRBC, dated 22 Mar 13, w/atch.
Exhibit H. Letter, Applicant, dated 17 Apr 13.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-05071

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. The Article 15 she received on 21 Mar 11 be set aside and she be restored to the grade of technical sergeant (E-6) and she receive supplemental promotion consideration for the grade of master sergeant (E-7).

2. Her Enlisted Performance Report (EPR), rendered for the period of 10 Feb 11 through 30 Jun 11, be declared void and removed from her military personnel record or two lines be removed from the EPR and replaced with two different lines from her current rater.

3. The Letter of Counseling (LOC), dated 7 Sep 10; LOC, dated 18 Feb 11; Letter of Reprimand (LOR), dated 28 Mar 11; LOC, dated 28 Mar 11; and LOC, dated 15 Jun 11 be removed from her official military personnel records.

APPLICANT CONTENDS THAT:

1. The alleged false official statement for which she received her Article 15 was not made with the intent to deceive; it was made from her recollection of the events 24 days after the incident in question.

2. The Article 15 was too harsh as it did not represent progressive discipline; the 18 Feb 11 Letter of Reprimand (LOR) she received that preceded it was declared void and removed from her records as the Inspector General's (IG) Office found that it constituted reprisal.

3. The 7 Sep 10, 18 Feb 11, and 28 Mar 11 LOCs and 28 Mar 11 LOR were all influenced by the perpetrator of the substantiated reprisal and should therefore also be declared void and removed from her record.

4. The 15 Jun 11 LOC for inattention to detail in the performance of her duties was a result of the additional scrutiny she was subjected to in the wake of the reprisal and

numerous other adverse actions against her.
The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 12 Apr 94.

On 7 Sep 10, the applicant received an LOC for making a false official statement to her Flight Commander about who reported the applicant for having an unprofessional relationship.

On 18 Feb 11, the applicant received an LOC for dereliction of duty by failing to provide fitness slides on time. On 24 Feb 11, she submitted a rebuttal wherein she contended the LOC was as an act of reprisal and her supervisor is guilty of unfair application of his own standards and those of the USAF.

On 18 Feb 11, the applicant received an LOR for being late for work on 16 Feb 11. On 24 Feb 11, the applicant submitted a rebuttal to the LOR wherein she contended she was on time for work because she remembered walking in the microbiology door just as reveille began. The 18 Feb 11 LOR was later determined to be an act of reprisal by the IG and removed from the applicant's records.

On 8 Mar 11, the applicant's commander notified her of her intent to impose non-judicial punishment (NJP) under Article 15, for making a false official statement, in violation of Article 107, Uniform Code of Military Justice (UCMJ). The reason for the action was her rebuttal response to the 18 Feb 11 LOR indicated that on 31 Jan 11, she claimed that she was late for duty because she was delayed by a member asking a question about Medical Readiness, in which this statement was false. Her punishment consisted of reduction to the grade of Staff Sergeant and a reprimand.

On 14 Mar 11, the applicant acknowledged receipt of the Article 15 punishment and, on 18 Mar 11, elected to appeal the punishment and submit statements on her behalf.

On 21 Mar 11, the applicant's commander denied her appeal and, on 23 Mar 11, the appellate authority denied the appeal. On 24 Mar 11, the Article 15 was reviewed and determined to be legally sufficient.

On 28 Mar 11, the applicant received an LOR from her commander for failure to obey a lawful order given to her by her supervisor to provide training dates, update rank, and sign off pending tasks in the Air Force Training Record (AFTR). On 30 Mar 11, she submitted a response to the LOR wherein she acknowledged her delinquency in responding after the stated

deadline.
On 28 Mar 11, the applicant received an LOC from her commander for engaging in conduct with a commissioned officer that created the improper appearance of an unprofessional relationship. On 30 Mar 11, she submitted a response to the LOC wherein she contended that the football game in which she attended with the commissioned officer was a group event that included both military and civilian personnel and family members. She also contended that on the days she received a ride to work from the commissioned officer, she did not have her vehicle so she asked him for a ride to work.

On 4 Apr 11, the applicant filed an AF Form 102, Inspector General Personal and Fraud, Waste, and Abuse Complaint Registration, alleging reprisal within her department.

On 15 Jun 11, the applicant received an LOC for inattention to detail in the performance of her duties. On 15 Jun 11, she submitted a response wherein she acknowledged her inattention to detail; however, she indicated that other technicians were making similar errors, but not being subjected to adverse administrative actions.

On 22 Jul 11, the contested EPR was referred to the applicant for comments related to her failing to maintain standards, reduction in rank due to making a false official statement, and demonstrated lack of integrity. On 29 Jul 11, the applicant submitted a rebuttal to the referral EPR.

The following is a resume of the applicant's EPR ratings:

	RATING PERIOD	PROMOTION RECOMMENDATION
	30 Jul 12	3
*	30 Jun 11 (SSgt)	3 (referral)
	9 Feb 11	4
	29 Jun 10	5
	29 Jun 09	5
	18 Jan 09	5
	18 Jan 08 (TSgt)	5
	18 Jan 07	4
	18 Jan 06	5
	18 Jan 05	4
	18 Jan 04	5
	18 Jan 03	5
	18 Jan 02	4
	18 Jan 01 (SSgt)	5

* Contested Report

On 21 Mar 12, DOD/IG notified SAF/IGQ that they agree that applicant for making a protected communication.

On 3 Apr 12, AFGSC/IG provided the applicant with a final response to her complaint filed with the 90 MW/IG. The final

amended findings for the allegations are as follows:
Allegation 1. That on or about 18 Feb 11, MSgt B--- reprised against the applicant in violation of 10 USC 1034 when he issued her an LOR in retaliation for making a protected communication.

FINDING: SUBSTANTIATED

Allegation 2. That on or about 18 Feb 11, TSgt G--- reprised against the applicant when he influenced MSgt B--- to issue her an LOR because he believed the applicant made a protected communication.

FINDING: NOT SUBSTANTIATED

Allegation 3. That on or about 2 Mar 11, MSgt B--- reprised against the applicant when he influenced Lt Col P--- to issue her an Article 15 because he believed that she made a protected communication.

FINDING (As amended by AFGSC/IG): NOT SUBSTANTIATED

The applicant's commander removed the 18 Feb 11 LOR from the applicant's military personnel records as a result of the substantiated finding of reprisal in the AFGSC/IG Report.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are attached at Exhibits C, D, and E.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial of the applicant's request to set aside the contested Article 15, indicating she has not shown a clear error or injustice. The applicant fails to make a compelling argument the Board should overturn the commander's original NJP decision on the basis of injustice. Except for her contention that her alleged false official statement was not intentional and the LOR she received was removed due to her substantiated reprisal claim, the applicant offers no evidence in her submission that she did not, in fact, make a false official statement with which she was charged. She simply offers the proposition that the statement was not intentional and she believes the Article 15 is not warranted due to the substantiated reprisal claim.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit C.

AFPC/DPSIM recommends denial of the applicant's request to remove the NJP from her military records, indicating the applicant has not indicated a clear error or injustice. The commander followed the appropriate procedures and guidance in administering the NJP. The applicant exercised her right to

appeal the commander's decision; however, her appeal was denied and punishment was imposed.

A complete copy of the AFPC/DPSIM evaluation is at Exhibit D.

AFPC/DPSID recommends denial of the applicant's request to remove and/or amend the contested EPR from her military record, indicating the lack of corroborating evidence provided by the applicant and the presumed legal sufficiency of the Article 15 action does not warrant any corrective action. She has not provided compelling evidence to show that the report was unjust or inaccurate as written. The applicant contends that the administrative actions administered to her during this reporting period were issued with underlying malicious intent due to interpersonal relationships, unfair application of standards, and substantiated acts of reprisal and argues that these actions are undermined by the partial substantiated claim by the IG Office. However, it is noted that the party in which was a subject in the applicant's complaint, was not a signatory/ evaluator of this contested evaluation report. Furthermore, even though two lower level IG offices substantiated the applicant's claim that the subject influenced her commander (the additional rater and commander of the contested report) to issue the applicant an Article 15 in reprisal, said finding was not substantiated by the highest level IG office and the finding in this regard was amended to reflect that it was not substantiated. Additionally, there is no evidence that suggests the rater of this report may have also been negatively influenced into giving an unfair or impartial rating during the assessment of the report. The applicant's rating chain appropriately chose to document the incidents on the contested report, which caused the report to be a referral.

In addition, the applicant requests to remove or amend two disparaging lines from the contested report and have two new lines inserted by her current rater. In accordance with AFI 36-2401, paragraph A1.5.22, "If you are requesting a report be reaccomplished, you must furnish a substitute report in your appeal case. The substitute report must be signed by the evaluators who signed the original report." However, inconsistency in ratings does not make it erroneous or unjust. A report evaluates performance, conduct, and potential in that position for a specific period.

Finally, AFLOA/JAJM has rendered an opinion that the Article 15 was legally sufficient and based on that, the contested report was appropriate to the circumstances and there is no basis to support its removal.

A complete copy of the AFPC/DPSID evaluation is at Exhibit E.
AFPC/DPSOE indicates that in view of the fact AFLOA/JAJM found no error or injustice requiring correction or set aside of the Article 15 and AFPC/DPSID determined the EPR is accurate as written; they defer to both their recommendations and find that

supplemental promotion consideration should not be awarded.

A complete copy of the AFPC/DPSOE evaluation is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

She argues that her IG investigation is separated into three allegations, each requiring its own individual analysis: Allegation 1 being the reprisal of the LOR being issued by MSgt B---; Allegation 2 being the reprisal of the Article 15 being issued by the commander; and Allegation 3 being the reprisal of MSgt B---influencing the commander to issue the Article 15. She reiterates that she was treated differently from her other co-workers by MSgt B--- and that he was "piling on the paperwork" through administrative actions along with diminishing her character to the commander that eventually led to her receiving an Article 15. She feels like MSgt B---, by virtue of his position as the superintendent, was a participant during the decision making process of the Article 15.

She stresses that the 90 MW/IG and AFGSC/IG substantiated portions of her complaint and, in the end, a Command Directed Investigation (CDI) was initiated. MSgt B--- was reduced to TSgt and forced to retire. TSgt G--- was reduced to SSgt and denied re-enlistment. The final IG Investigation report substantiated the reprisal complaints.

A complete copy of the applicant's response is at Exhibit H.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends that the inspector general's finding that she was reprised against when issued a LOR on 18 Feb 11 from her supervisor is proof of a hostile environment and should form the basis of a determination that the remaining contested actions are unfair/unjust; however, we are not convinced the existing record should be disturbed. In this respect, we note that the IG fully investigated the applicant's several contentions in this regard and found that even though the noted LOR was an act of reprisal and was removed from her records, the remaining administrative and punitive actions were found to be appropriate to the circumstances. Based on our own independent review, we

find no basis to conclude that these other contested actions constitute and error or injustice under 10 USC 1552, or reprisal in violation of 10 USC 1034. In this respect, we note that while the applicant contends these other actions resulted from the reprisal motive, she has not presented any additional evidence that was not reasonably available and considered by the IG that would serve to impugn their methods or findings. Therefore, absent direct evidence that the contested actions represented an abuse of discretionary authority or disproportionate to the circumstances, or the applicant was denied rights to which she was entitled, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-05071 in Executive Session on 30 Jul 13, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 22 Oct 12, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFLOA/JAJM, dated 21 Nov 12.
Exhibit D. Letter, AFPC/DPSIM, dated 12 Jan 13.
Exhibit E. Letter, AFPC/DPSID, dated 10 Feb 13.
Exhibit F. Letter, AFPC/DPSOE, dated 6 Mar 13.
Exhibit G. Letter, SAF/MRBR, dated 25 Mar 13.
Exhibit H. Letter, Applicant, dated 22 Apr 13, w/atchs.

Panel Chair

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RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-05342

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His Enlisted Performance Reports (EPR) covering the periods 1 Apr 05 through 30 Sep 06 and 1 Oct 07 through 30 Sep 08 be declared void and removed from his records.

2. He be given supplemental promotion consideration to the grade of Senior Master Sergeant (SMSgt/E-8) for promotion cycles 06E8, 07E8, 08E8, 09E8, and 10E8 and receive his promotion board scores for each.

APPLICANT CONTENDS THAT

1. The two cited EPRs were issued in reprisal for his Inspector General (IG) and Article 138 complaints against his leadership for their selective enforcement of their Senior Rater Endorsement policy.

2. His EPR covering the period 1 Apr 05 through 30 Sep 06 was not signed by the proper individual in his chain of command in violation of AFI 36-2406, Officer and Enlisted Evaluation Systems, Paragraph 3.2.5.4. The AFI prohibits making rating chain deviations (such as skipping an evaluator) solely for reasons of convenience. However, the additional rater block on this EPR was not signed by his additional rater, the Military Personnel Flight (MPF) commander, but by the Mission Support Squadron Commander instead.

3. He was unjustly denied multiple supplemental promotion considerations:

a. When the 06E8 Board convened, one of his decorations was missing from his record and his duty title was wrong on the Senior Noncommissioned Officer (SNCO) Evaluation Brief used for his supplemental board.

b. The Evaluation Report Appeals Board (ERAB) directed that his EPR closing 29 Jun 06 be replaced; however, he should have been provided supplemental promotion consideration for promotion cycles 07E8 and 08E8.

c. He did not meet an original 09E8 promotion board because his EPR covering the period 1 Oct 07 through 30 Sep 08 was not completed in time to meet the board, unfairly causing his records to meet a supplemental board. This was an act of reprisal.

d. The ERAB directed his EPR closing 30 Sep 07 be voided and removed from his record; however, he was again not provided supplemental promotion consideration in violation of AFI 36-2502, Table 2.5, Rule 2.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant served in the grade of Master Sergeant (MSgt/E-7) while assigned to Misawa AB, Japan during the period of time in question.

According to the documentation provided by the applicant, on 3 Aug 07 he filed an AF Form 102, IG Complaint, claiming unfair selective enforcement of the Wing's unwritten Senior Rater Endorsement Policy for EPRs; on 9 Aug 07, he filed an Article 138 Complaint claiming reprisal; and on 15 Oct 07, he filed an AF Form 102 with the IG claiming reprisal.

On 3 Jun 08, the ERAB granted the applicant's petition to have his EPR covering the period 1 Apr 05 through 29 Jun 06 replaced with an EPR covering the period 1 Apr 05 through 30 Sep 06.

On 3 Aug 10, the ERAB granted the applicant's request to void and remove his EPR covering the period 1 Oct 06 through 30 Sep 07 because it contained bullets which were duplicate of another EPR. However, the ERAB denied the applicant's request to void and remove two additional EPRs covering the periods 1 Apr 05 through 30 Sep 06 (which he had recently gained ERAB approval to substitute into his record in place of his EPR closing out 29 Jun 06) and 1 Oct 07 through 30 Sep 08. The applicant contended that the EPRs should be removed from his record because he was denied a senior rater endorsement in reprisal for challenging the wing policy on senior rater endorsements. The ERAB was not convinced the contested reports were unjust or wrong.

On 10 Feb 11, the ERAB again denied the applicant's request to void his reaccomplished EPR covering the period 1 Apr 05 through 30 Sep 06. The applicant claimed coercion by superiors, unfair treatment, and an incorrect rater and final evaluator caused the EPR to be invalid. The ERAB was not convinced the original report was unjust or wrong. The ERAB pointed out that the applicant lacked supporting documentation such as a Commander Directed Investigation or Equal Opportunity and Treatment (EOT) Investigation to substantiate his allegation of discrimination.

The following is a resume of the applicant's enlisted performance reports:

Period of Supervision
Location
Rating
Status
10 Apr 04 thru 31 Mar 05
Texas
5

1 Apr 05 thru 29 Jun 06
Japan
N/A
Voided by the ERAB*
1 Apr 05 thru 30 Sep 06
Japan
5
Replaced voided EPR
1 Oct 06 thru 30 Sep 07
Japan
N/A
Voided by the ERAB**
1 Oct 07 thru 30 Sep 08
Japan

5

1 Oct 08 thru 30 Sep 09
Germany
5

*Removed at the request of the applicant and replaced by subsequent report.
** Removed at the applicant's request because it contained duplicate bullets

The applicant was ultimately selected for promotion to the grade of Senior Master Sergeant (E-8) in cycle CY1108E.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility (OPRs) which are included at Exhibits C and D.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial indicating there is no evidence of an error or injustice. The ERAB approved the applicant's request to replace his EPR covering the period 1 Apr 05 through 29 Jun 06 with a reaccomplished EPR covering the period 1 Apr 05 through 30 Sep 06, despite the fact the two evaluations were signed by a different reviewer and the revised version contained considerable content changes in the applicant's favor. Subsequently, the applicant filed additional appeals to the ERAB requesting the reaccomplished EPR be declared void, along with EPRs closing out on 30 Sep 07 and 30 Sep 08, due to alleged unfair treatment. The ERAB determined the EPRs closing 30 Sep 06 and 30 Sep 08 were not in error or unjust and denied the applicant's request; however, the ERAB approved the removal of the EPR closing out 30 Sep 07 because it contained duplicate bullets that were duplicated in the replacement EPR closing on 30 Sep 06 (a fact the ERAB was not aware of when it approved the applicant's previous request).

The applicant also contends his EPRs rendered for the period 1 Apr 05 through 30 Sep 06 and 1 Oct 07 through 30 Sep 08 are inaccurate due to discrimination and unfair treatment. However, he did not provide any official Equal Opportunity Treatment (EOT) investigation findings or a completed IG report to prove he was treated unfairly or discriminated against. Although the applicant provided e-mails from a rater in his chain of command and statements from outside sources, there is no confirmation the applicant was unfairly assessed on reports rating his actual performance. The documentation does not provide any clear or concrete evidence of an error or injustice in the preparation or execution of the contested reports.

Regarding the applicant's contention his EPR covering the period 1 Apr 05 through 30 Sep 06, which is only a matter of record because he requested that it replace another report, was in error because it was not signed by his additional rater at the time in violation of AFI 36-2406, the unit commander determines the rating chain for assigned personnel based on Air Force and Management Level policy. The voided EPR closing on 29 Jun 06 was signed by the applicant's additional rater at the time who also signed the substitute report. AFI 36-2401 states substitute reports must be signed by the evaluators who signed the original report. Therefore, the substitute report covering the period 1 Apr 05 through 30 Sep 06 was also appropriately signed by Major "S" even though he was no longer the applicant's additional rater when the substitute report was completed. Moreover, unit commanders determine the rating chain for assigned personnel and without proper statements from the applicant's leadership at the time for clarification, it is impossible to determine the validity of the applicant's claim that the additional rater on his EPR was the wrong person.

Concerning the applicant's contention the contested EPRs written while he was stationed at Misawa AB, Japan were weak, AFI 36-2401 states a report is not erroneous or unfair because the applicant believes it contributed to non-selection for promotion or may impact future or career opportunities. The applicant's rating chain simply made a determination as to what was relevant information regarding the applicant's duty performance and promotion potential during this contested rating period and properly documented that performance on the contested EPRs. The applicant has not provided relevant evidence that the reports in question are erroneous or unjust based on content, and without clear

and significant evidence, the applicant has not demonstrated a compelling need to void his contested EPRs.

A complete copy of the AFPC/DPSID evaluation is at Exhibit C.

AFPC/DPSOE recommends the applicant receive supplemental promotion consideration to the grade of E-8 beginning with cycle 08E8, indicating there is evidence of an error. After the ERAB approved the replacement of the EPR covering the period 1 Apr 05 through 29 Jun 06 with the EPR covering the period 1 Apr 05 through 30 Sep 06, the new EPR closing 30 Sep 06 was used in the promotion process during promotion cycles 07E8 and 08E8. The applicant was provided promotion consideration by the supplemental board and was a non-select for both cycles. While the applicant claims his record was not seen by a supplemental board because he was not provided a score notice nor was a brief filed in his record, IAW AFI 36-2502, Airman Promotion/Demotion Programs, score notices are not provided for Airmen who receive supplemental board consideration to SMSgt and CMSgt, if they were considered by the original board. Since the applicant had met original boards, he was not provided a score notice. In addition, new briefs are only printed if information on the brief has changed. Since EPR dates are not listed on the SNCO Evaluation Brief, the change in the applicant's EPR date did not affect his brief, and a new brief was not necessary. Recommend disapproval of the request for supplemental consideration for cycles 07E8 and 08E8 based on the change in close out date of his 29 Jun 06 EPR.

The applicant also requests supplemental consideration for promotion for cycle 08E8 due to the removal of his 30 Sep 07 EPR. A review of the records indicates the contested report was approved for removal by the ERAB on 3 Aug 10, however, the Enlisted Promotion Section at AFPC was never notified of the corrective action and therefore the applicant's record was never processed for supplemental Board consideration. Therefore, the applicant should be provided supplemental promotion consideration beginning with cycle 08E8.

The applicant is requesting supplemental promotion consideration for cycle 06E8 based on a missing decoration and an incorrect duty title. The applicant received supplemental promotion consideration for cycle 06E8 with the added decoration as evidenced by the 2 Apr 06 Senior Noncommissioned Officer Evaluation Brief. Although the brief does reflect the wrong duty title, the applicant's top EPR that was seen by the Board reflected the correct duty title. IAW AFI 36-2502, supplemental promotion consideration will not be granted if the error or omission appeared on/in the Airman's DVR, ARMS record, or SNCO selection folder and no corrective or follow-up action was taken by the Airman prior to the original evaluation board for SMSgt. There is nothing in the records to indicate the applicant tried to have the duty title on his career brief corrected prior to the original SMSgt Evaluation Board. Therefore, the applicant's request for supplemental promotion for cycle 06E8 should be denied.

A complete copy of the AFPC/DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant contends his records were incorrect the entire time he was at Misawa AB. His EPR covering the period 1 Apr 05 through 30 Sep 06 was not signed until 7 Mar 08, and was not placed in his file until 2 Jun 08, almost two years after closing out. His EPR covering the period 1 Oct 06 through 30 Sep 07 was signed on 25 Jan 08, two months before his Sep 06 EPR was signed. This hurt his promotion records. While AFPC/DPSID indicates that he did not provide any clear or concrete evidence of reprisal or unfair treatment he received, he filed an IG complaint for reprisal and an Article 138 complaint and submitted multiple letters of support from credible individuals who witnessed the treatment and its effect on his evaluations. As for the argument that his additional rater on his reaccomplished EPR closing out on 30 Sep 06 had to be the very same additional rater who signed the original EPR, then the EPR is still incorrect because the replacement EPR as signed by a different reviewer than the reviewer on the initial EPR. He also takes exception to the position that he may not have received Senior Rater Endorsement because the bullets in his EPR lacked Top 3 involvement, and emphasizes the support he submitted from three Chief Master Sergeants. Finally, he asserts that the preponderance of evidence from credible and relevant first hand witnesses clearly indicates he was subjected to unfair

treatment (Exhibit F).

The applicant's rebuttal to the AFPC/DPSOE advisory states that although they claimed he received supplemental promotion consideration, the response to a FOIA request shows he only received a supplemental consideration for the 09E8 cycle. He met an "in-system supplemental process" for cycles 07E8 and 10E8, and the FOIA request infers the same may be true for cycle 08E8. As for the claim there was nothing in his record to indicate he tried to get the incorrect duty title on the NCO Promotion Brief corrected for the 06E8 cycle, he did not know the duty title was incorrect. Since he went through the process of updating his records to include a missing decoration, he surely would have corrected the duty title and Duty AFSC (DAFSC) as well had he know they were incorrect at the time. Further, he now requests the supplemental promotion boards be conducted without using the EPRs he received while stationed at Misawa AFB (Exhibit G).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice concerning the applicant's enlisted performance reports (EPR). The applicant alleges he has been the victim of an error or injustice (10 USC 1552) and that he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). He contends that his EPRs are inaccurate, invalid, and unjust in that he was denied the appropriate senior rater endorsement in reprisal for his Inspector General (IG) and Article 138 complaints. We took notice of the applicant's complete submission, to include his rebuttal responses to the advisory opinions, in judging the merits of the case; however, we agree with the opinion and recommendation of AFPC/DPSID and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or an injustice or reprisal concerning his EPRs. While the applicant claims these reports should be removed from his record because they were issued in reprisal in violation of the Whistleblower Protection Act (10 USC 1034), we note that he has failed to provide the final IG Report of Investigation (ROI) or any other documentation from a proper investigating authority proving his allegations were substantiated. Even so, based upon our own independent review, we have determined the applicant has not established that his command took any action that was motivated by retaliation for making protected communications. In reaching this determination, we note he has submitted insufficient evidence to establish a prima facia case of reprisal. Given the Assumption of Regularity, we are not convinced the contested EPRs inaccurately describe the applicant's performance or promotion potential. In addition, the applicant petitioned the ERAB on multiple occasions for changes or corrections to his EPRs and was granted relief where warranted, but has not submitted sufficient evidence or information to this Board to clearly establish that his record of performance, as it is currently constructed, is inaccurate, invalid, or unjustly caused him to be non-selected for promotion. Therefore, we find no basis to recommend any relief beyond that rendered by the ERAB.

4. Notwithstanding the above, sufficient relevant evidence has been presented to warrant granting partial relief with respect to the applicant's requests for supplemental promotion consideration. In this respect, we agree with the comments of AFPC/DPSOE indicating the applicant should have received supplemental promotion consideration when his EPR closing 30 Sep 07 was removed from his record. Accordingly, we believe he should receive supplemental promotion consideration for all cycles for which this now-voided report was a matter of record, i.e., 08E8, 09E8, and the 10E8 promotion cycles. The applicant believes he should also be afforded supplemental promotion consideration for earlier promotion cycles; however, in view of the fact that we have determined that there is insufficient evidence to warrant any other corrections to his underlying record, we find no basis to recommend that he be afforded supplemental promotion consideration for the 06E8 and 07E8 cycles. Therefore, we recommend that his record be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be provided supplemental promotion consideration to the grade of Senior Master Sergeant (E-8) for promotion cycles 2008E8, 2009E8, and 2010E8. If the Air Force Personnel Center discovers any adverse factors during or subsequent to supplemental consideration that are separate and apart, and unrelated to the issues involved in this application that would have rendered the applicant ineligible for the promotion, such information will be documented and presented to the Board for a final determination or the individual's qualifications for promotion.

The following members of the Board considered AFBCMR Docket Number BC-2012-05342 in Executive Session on 10 Sep 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 8 Nov 12, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSID, dated 6 Mar 13.
Exhibit D. Letter, AFPC/DPSOE, dated 24 Apr 13.
Exhibit E. Letter, SAF/MRBR, dated 19 May 13.
Exhibit F. Letter, Applicant, dated 10 Jun 13, w/atchs.
Exhibit G. Letter, Applicant, dated 10 Jun 13, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-05678

COUNSEL: NONE

HEARING DESIRED: NO

THE APPLICANT REQUESTS THAT:

Her retirement date be changed from 1 Jan 11 to 1 Feb 11.

THE APPLICANT CONTENDS THAT:

She was unfairly targeted by the Assistant Adjutant General for the Arizona Air National Guard (ATAG AZANG). Her chain of command recommended her for an extension of her Active Guard Reserve (AGR) active duty tour until 1 Apr 11. However, the ATAG disapproved her request and shortened her tour causing her to be 22 days shy of completing 34 years of service.

She notes that the ATAG was investigated by the Secretary of the Air Force Inspector General (SAF/IG) for "abuse of power/authority" in several instances. The allegations were substantiated and the Adjutant General of Arizona (AZ TAG) and the Governor of Arizona relieved him of his command and banned him from the AZANG state headquarters.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 31 Dec 10, the applicant was relieved from active duty and transferred to the Retired Reserve and her name was placed on the USAF Retired List. She was credited with 29 years and 25 days or active service for retirement and 33 years, 11 months and 9 days of service for basic pay.

The applicant filed an IG complaint against the ATAG alleging that he had abused his authority by not retaining her beyond 31 Dec 10.

On 5 Jan 11, the SAF/IGS determined the evidence indicated the Arizona Adjutant General (AZ TAG), not the ATAG, had closely examined the applicant's situation on more than one occasion, even having his Command Chief Master Sergeant provide him with additional information on her overall situation. He extended

her orders to 31 Dec 10 in concert with her and the wing's wishes. This was a reasonable extension given her personal circumstance of being retirement eligible; the Arizona State's CMSgt AGR control grades being fully utilized (full manning levels), and the new commander having enough time to fully learn her job before having to hire a new superintendent. The date chosen was consistent with the wing's stated desires and at the end of the calendar year when individuals that separate under retention programs usually depart. The decision not to grant the additional 31 days just for retirement pay purposes is consistent with past decisions. Finally, the TAG's motive was to provide ample time for the unit to prepare for the change and give the applicant ample time to determine what she wanted to do next, of which retirement was one option.

The above analysis does not provide any prima facie evidence of possible wrongdoing on the part of the ATAG. Although he was

certainly involved in advising TAG on decisions, TAG was the responsible management official (RMO) in this situation. As the ATAG, he had the right to actively lead and manage his units, to include getting involved in such matters and advising his boss. Although his hands-on style in doing this may be a departure from the style of his predecessors, it did not fall into any category of wrongdoing on this issue. Hence, they did not recommend investigating this issue further.

THE AIR FORCE EVALUATION:

NGB/A1P concurred with the subject matter expert (SME) and recommend relief not be granted based on the ANG Instruction and lack of documentation to substantiate an injustice had occurred.

A1PO states the applicant has included evidence supporting an abuse of authority was substantiated towards Brig Gen S.; however, there is no evidence provided to support the allegation that this same abuse of authority occurred towards the applicant.

A1PO notes that NGB/A1PP recommends denial. Separation for non-retained members is required to be completed prior to 31 Dec of the year in which the retention board is convened in accordance with ANGI 36-2606, Selective Retention of Air National Guard Officer and Enlisted Personnel. There is no evidence the applicant requested reconsideration of the decision to allow retention beyond 31 Dec 10. Furthermore, no evidence was provided to support an abuse of authority occurred towards the applicant.

ANGI 36-2606, para 3.1 provides authority for the TAG to approve or disapprove any or all specific recommendations for selective retention. TAGs may direct separation between 1 Oct and 31 Dec of the calendar year of the board provided that the member is permitted at least 30 days in which to respond to the

notification of non-retention. Per ANGI 36-2606, paragraph 3.2 "In exceptional circumstances, TAG may retain a member no more than six months past the 31 Dec separation/discharge date for the purpose of recruiting and training a replacement, upcoming

unit compliance inspection (UCI), operational readiness inspection (ORI), or other circumstances deemed necessary by TAG. TAG is the ultimate authority for any retention decision six months beyond 31 Dec.

The complete A1P evaluation is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

The basic premise of A1P's advisory is flawed. A1P uses the selective retention guidelines as their basis, which is incorrect. The issue is one of an extension of her AGR orders and her enlistment. She was not in a selective retention cycle or on any selective retention roster. The action to extend her AGR tour was outside the scope of any selective retention program and was done out of vindictiveness and spite by the ATAG in direct opposition of her commanders. No other basis exists for this action and the ATAG was investigated and allegations were substantiated.

In addition, she provides an email and personal statement suggesting that her group commander wanted her to be retained until 31 Jan 11.

The applicant's complete response, with attachment, is at (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. The applicant alleges she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). Based on this, she is requesting her retirement date be changed to 1 Feb 11. We note the Inspector General investigated the alleged abuse of authority by the applicant's State military officials; however, they recommended no further investigation on this matter. Contrary to the applicant's assertions that she was unfairly targeted by the ATAG, the evidence reveals that it was actually the AZ TAG that denied her retention beyond 31 Dec 10; not the ATAG. SAF/IG found this

determination was consistent with other members within the State that were similarly situated. Based on our own independent review, we did not find that TAG's actions were arbitrary or capricious or that his actions were motivated by retaliation for the applicant making a protected communication. Therefore, without substantial evidence to substantiate the ATAG or TAG abused their power against the applicant, we agree with the opinion and recommendation of the National Guard Bureau office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has failed to sustain her burden of having suffered either an error or an injustice. In view of the above and absent persuasive evidence to the contrary, we find no basis to recommend granting the relief sought.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-05678 in Executive Session on 21 May 13, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 3 Dec 12, w/atchs.

Exhibit B. SAF/IG Report of Investigation, WITHDRAWN.

Exhibit C. Letter, NGB/A1P, dated 24 Jan 13, w/atch.

Exhibit D. Letter, SAF/MRBR, dated 3 Feb 13.

Exhibit E. Letter, Applicant, dated 25 Feb 13.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-05912

COUNSEL: NONE

HEARING DESIRED: NO

THE APPLICANT REQUESTS THAT:

1. He be reinstated in the grade of chief master sergeant (CMSgt/E-9), with his original date of rank (DOR) of 1 Sep 03.

2. He receive back pay and allowances, including per diem, for the remaining portion of his extended active duty tour in support of Operation JUMP START (OJS) that was curtailed (1 Oct 07 to 25 Jun 08).

3. He receive pay for the Chief Executive Course that he was not allowed to attend.

THE APPLICANT CONTENDS THAT:

At the time the reprisal action took place, he was unlawfully pulled from a 2-year mission after only completing 15 months. He states that according to the Inspector General (IG) investigation, he was targeted by his former mission support

group (MSG) commander when he did not report for unit training assemblies (UTAs) when required. The IG substantiated three acts of reprisal by the MSG commander for 1) curtailing his Active Guard Reserve (AGR) active duty tour; 2) denial of reenlistment, and 3) denial of attendance to the Chief Executive Course.

He was fearful of coming forward earlier because he feared additional reprisal action against him since his chain of command all the way up to The Adjutant General (TAG) was from his former unit.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 25 Jun 06, the applicant, while serving in the grade of CMSgt with the 144th Fighter Wing (144th FW), was recalled on extended active duty (EAD) in support of OJS. On 30 Sep 06, the applicant was released from active duty in the grade of CMSgt, with a reason for separation of completion of required active service. On 1 Oct 06, the applicant entered an AGR tour, in

support of OJS and served until 30 Sep 07, with a reason for separation of completion of AGR military duty tour.

On 3 Nov 07, the applicant's 30 Nov 04 enlistment was extended for one year, with an new expiration date of 29 Nov 08.

In Sep 08, the applicant took an assignment with the 222nd Intel Support Squadron (222nd ISR), in a master sergeant (MSgt/E-7) position and was demoted, without prejudice, to the grade of MSgt.

On 16 Nov 08, the applicant reenlisted in the grade of MSgt for a period of three years. He completed a subsequent reenlistment contract on 11 Nov 11.

On 23 Aug 11, the applicant filed an IG complaint against the MSG commander with the following 3 allegations; 1) terminating his OJS orders; 2) denying reenlistment, and 3) denying his attendance to the Chief Executive Course.

On 19 Oct 12, the applicant was notified by the Secretary of the Air Force Inspector General (SAF/IGQ) that the investigation substantiated his allegations of reprisal. The SAF/IGQ reviewed the report of investigation and concurred with the findings. In addition, the Department of Defense Inspector General (IG DoD/MRI) concurred with the determination, approved the report, and substantiated the allegations (Exhibit B).

SAF/IG concluded that allegation 1 was substantiated because the MSG/CC terminated the applicant's AGR tour orders shortly after being notified of the OJS's letter regarding drill attendance was suspect. They noted based on the investigation the applicant and his OJS chain of command was understood that he would continue on his OJS orders.

SAF/IG concluded that allegation 2 was substantiated because the MSG/CC denied the applicant's reenlistment due to protected communication regarding his drill attendance while on OJS orders and not as the MSG/CC stated.

SAF/IG concluded that allegation 3 was substantiated because the MSG/CC denied his attendance to the Chief Executive Course because of protected communication and not because he did not want to expend resources on someone who was not reenlisting. However, the evidence shows that had the applicant been able to reenlist he would have attended the course.

The applicant is currently serving in the grade of senior master sergeant (SMSgt/E-8) with a DOR of 1 May 01 and an effective date of 19 Dec 12.

THE AIR FORCE EVALUATION:

NGB/A1P did not provide a recommendation. However, they concurred with the subject matter expert (SME) noting the

applicant's request did not substantiate any procedural errors defined by policy occurred.

The SME, A1PP noted, that while responsible to provide an advisory to this case, they cannot affect any of the requested changes the applicant has cited in his application. His request for changes is not based on procedural errors defined by policies but based on several acts of injustices. The requested actions can only be rectified by the California Air National Guard (CAANG) Joint Forces Headquarters (JFHQ) and Air Reserve Personnel Center (ARPC). In addition, discussion with the CAANG JFHQ indicates that they are standing by to implement any of the directed changes determined by the BCMR.

A1P notes that while they are not trained in the IG arena, it is difficult to discount the substantiated SAF/IG complaint alleging the applicant's non-retention was reprisal based. If the Board grants relief in concurrence with the SAF/IG findings, appropriate updates to the applicant's personnel record should be made.

The Air National Guard Readiness Center Judge Advocate (ANGRC/JA) noted if accurate, the SAF/IG Complaint findings supports the conclusion that some of the CAANG personnel actions described by the applicant were taken as direct result of improper retaliatory motives as defined by Title 10, United States Code (USC), § 1034- Protected Communications; Prohibition of Retaliatory Personnel Actions. All relevant personnel actions at issue in the present case were conducted by the CAANG, and may only be remedied by the CAANG and ARPC. It is proper for NGB/A1P to examine and comment on the procedural actions at issue in an appeal to the BCMR submitted by a current or former member of the ANG. It would, however, be improper for NGB/A1P to rely on the SAF/IG findings in the investigation at issue to comment on the motives, and whether those motives were the proximate cause, behind the actions of the CAANG.

Furthermore, determination on the intent and possible remedy of CAANG's actions in this matter are beyond the purview of NGB/A1P.

The complete A1P evaluation, with attachments, is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

A copy of the Air Force evaluation, with attachments, was forwarded to the applicant on 8 Mar 13 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We note that based on the Report of Investigation (ROI) from the SAF/IG the applicant was the victim of reprisal under the Whistleblower Protection Act (10 USC 1034) by his former commander who denied his reenlistment and attendance at the Chief Executive Course (CEC). Based on this, the applicant’s requests he be awarded back pay and allowances, including per diem for the remaining portion of his AGR tour in support of OJS and that he be paid for the Chief Executive Course he was not allowed to attend.

Although the ROI concluded that had it not been for the reprisal action the applicant would have been continued on his active duty OJS tour for a total of two years, the applicant states that his orders were approved in six-month increments due to funding. Based on our review of the evidence before us, we do not find this to be the case. In this respect, we note that his OJS orders began on 26 Jun 06 and appears to have naturally ended on 30 Sep 07, not in six months. Other than the comments in the ROI, the applicant has not provided substantial evidence to demonstrate to our satisfaction that his OJS orders would have been approved/extended beyond 30 Sep 07. In view of this, we are not inclined to award the applicant additional pay and allowances including per diem for the period of 1 Oct 07 to 25 Jun 08 in support of OJS. Should the applicant provide additional documentation from the approval authority that validates that his orders would have continued beyond Sep 07 we would be willing to reconsider his appeal. As such, this portion of the applicant's request is not favorably considered. With respect to the applicant's request to receive pay for the CEC that he was not allowed to attend, we note that he did not attend it and has provided no evidence to show that he was entitled to compensation for a course he did not attend. Accordingly, it is our opinion the applicant has failed to sustain his burden of proof that he has been the victim of an error or injustice. Absent persuasive evidence that he was denied rights to which he was entitled, we find no basis to recommend granting the relief sought in this portion of his request.

4. Notwithstanding the above, sufficient relevant evidence has been presented to demonstrate the existence of error or injustice warranting corrective action in regards to reinstatement to the grade of CMSgt. After careful consideration of the applicant's request, we agree with the findings of the ROI that the applicant was denied reenlistment in the grade of CMSgt as a result of a protected communication. We note that had the commander not denied the applicant reenlistment he would not have taken the actions that resulted in his demotion without prejudice to the grade of MSgt. Therefore, we conclude that the applicant's grade should be reinstated effective Sep 08 (the date he took the demotion) and he be placed in an appropriate position, commensurate with his

office, grade and rank of CMSgt. Accordingly, we recommend the applicant's record be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. It is recommended that the California Air National Guard reflect that on 8 September 2008, he was not voluntarily demoted to the grade of master sergeant, without prejudice.

b. We direct that his Air Reserve Component record reflect that he was honorably discharged on 15 November 2008 and reenlisted in the Air National Guard on 16 November 2008 for a period of three (3) years in the grade of chief master sergeant.

The following members of the Board considered AFBCMR Docket Number BC-2012-05912 in Executive Session on 30 May 13, under the provisions of AFI 36-2603:

All members voted to correct the records, as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-05912 was considered:

Exhibit A. DD Form 149, dated 20 Dec 12, w/atchs.

Exhibit B. SAF/IG Report of Investigation, WITHDRAWN.

Exhibit C. Letter, NGB/A1P, dated 4 Mar 13, w/atchs.

Exhibit D. Letter, SAF/MRBR, dated 8 Mar 13.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-05978
COUNSEL:
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His Unfavorable Information File (UIF), dated 1 Mar 11, be removed from his records.

2. His Letter of Admonishment (LOA), dated 21 Dec 10, be removed.

3. The derogatory comment "During this period, Major C displayed disrespectful and unprofessional behavior toward 66 ABG legal staff for which he received a Letter of Admonishment" be removed from his Training Report, dated 3 Aug 12, or, in the alternative, the entire report be declared void and removed from his records.

4. He be reinstated into the Regular Air Force at his previous rank and grade.

APPLICANT CONTENDS THAT:

In a 10-page brief, the applicant's counsel makes the following key contentions:

1. The applicant was retaliated against by his leadership resulting in the issuance of an LOA, a UIF, and a referral Training Report.

2. On or about 20 Nov 10, the applicant injured himself while serving as an Honor Guard Ceremonial Guardsman during a funeral ceremony. However, he was never evaluated for any disability prior to discharge.

3. On or about 21 Dec 10, he received a LOA for being "uncooperative" with and allegedly "rais[ing] [his] voice" during a meeting. He believes thereal reason he received the LOA was because his leaders were upset that he had brought a serious safety concern to the attention of senior leaders and were concerned that this would make them look bad in the eyes of

their raters. The LOA subsequently formed the basis for a UIF and was reflected on his Training Report.

4. Despite an Air Force Student/Patient Panel recommending his retention, a Reduction in Force (RIF) Retention Board non-selected him for retention. He did not receive a RIF score sheet and was not evaluated for any disability prior to discharge.

5. His command failed to comply with the governing instructions regarding filing the LOA in the UIF:

a. His LOA did not have any supporting evidence. First, the LOA did not comply with the strict regulatory requirements contained in the governing instructions for LOAs and UIFs. The instructions specifically state, that a LOA shall state "[w]hat the member did or failed to do, citing specific incidents, and their dates." The LOA only provides the date theapplicant sent an email to his leadership identifying safety concerns, yet provides no dates about when his alleged "unprofessional and immature behavior toward the 66 ABG legal staff" took place. Additionally, it fails to cite any "specific" actions or words used by the applicant. Secondly, and most importantly, the applicant was never provided with any evidentiary basis for the LOA precipitating his separation. His command not only failed to follow the applicable instructions, but ended his career without gathering a single piece of evidence to support the vague and untrue allegations contained in the LOA. In fact, it appears that there was not even the most cursory inquiry or investigation into the applicant's alleged misconduct. Even more troubling is the alleged offensive conduct involved (1) an attempt to report a serious safety violation and (2) communications which the applicant believed were subject to attorney client privilege.

b. The Air Force Safety Program is designed to encourage reporting of safety incidents and concerns. Moreover, various federal laws, including the Military Whistleblower Protection Act (MWPA), 10 U.S.C. Section 1034 and DoD Directive 7050.0 prohibit reprisal actions, such as the admonishment received by the applicant. When a "member of the Armed Forces communicates information the member reasonably believes evidences a violation of law or regulation, including… a substantial and specific danger to public health or safety, when such communication is made to any of the … Any person or organization in the chain of command." The email to leadership falls squarely with the protections of the MWPA, and subsequent actions taken by his command are textbook reprisal.

Regarding the communication between the applicant and the legal personnel, the governing instructions provide, that "Legal assistance establishes an attorney-client relationship and

consists of Air Force attorneys provided advice on personal, civil legal matters to eligible beneficiaries." The communication should take place in a "confidential setting" and most importantly that information received from a client during legal assistance, attorney work-product, and documents relating to the client are confidential. Information should only be released with the client's express permission, pursuant to a court order, or as otherwise permitted by the Air Force Rules of Professional Conduct and other Air Force rules pertaining to ethical conduct and professional responsibility. Such release should only be accomplished after contacting AFLSA/JACA through the appropriate supervisory chain.

There is no exception authorizing disclosure when the attorney believes the client has engaged in disrespectful conduct. The 66 ABG/SJA failed to comply with these requirements and disclosed communications with the applicant to command in connection with the issuance of the LOA, after assuring him of the confidentiality of their communications.

6. Improper inclusion of non-specific/vague derogatory comments on the applicant's Training Report: Despite the fact that this allegation is not supported by any evidence, sworn statement, memorandum for record, or other documentation, the Training Report contains exactly the type of "non-specific/vague comments about the individual's behavior or performance" which are prohibited by the governing instruction. As these comments are prohibited, and are not supported by the evidence, the Training Report should be voided or the inaccurate and unsubstantiated comments be removed.

In support of his request, the applicant provides a copy of his Declaration Statement; excerpts from his medical records; a copy of his LOA and response; a copy of his AF IMT 1058, Unfavorable information File Action; a copy of his AF Form 77, Letter of Evaluation; a copy of a memorandum from AFIT/ENE, a copy of his response to the AFIT/ENE memorandum; a copy of an Addendum;, copies of his AF Form 707, Officer Performance Report; a copy of a letter from Headquarters Space and Missile Systems Center ; a copy of a Separation Fact Sheet, with four attachments; copies of letters of support, and a copy of his DD Form 214, Certificate of Release or Discharge from Active Duty.

His complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

On 12 Jul 10, the applicant was commissioned a second lieutent and enrolled in a 41-week Education with Industry program through the Air Force Institute of Technology at Raytheon Company, Marlborough, MA.

On 20 Nov 10, the applicant was injured while performing duty during an Air Force Honor Guard funeral ceremony.

On 21 Dec 10, the Associate Dean for Students, Air Force Institute of Technology (AFIT), Air University, issued the applicant a Letter of Admonishment (LOA) for unprofessional and immature behavior toward the 66 ABG legal staff and disrespect toward a superior commissioned officer.

On 26 Jan 11, the Commandant, AFIT, determined that an Unfavorable information file should be established and the LOA filed therein.

On 17 Aug 11, the applicant was rendered a referral Training Report (TR), for the period 12 Jul 10 through 24 Jun 11. IAW the governing AFI, the TR was considered a referral based on the following comment, "During this period [applicant] displayed disrespectful and unprofessional behavior toward 66 ABG legal staff for which he received a Letter of Admonishment." Prior to making the TR a matter of record, the Commandant, AFIT, considered the applicant's response, as noted in the Letter of Evaluation that accompanies the TR.

The applicant was considered and not selected for retention by the Calendar Year 2011 Reduction in Force Board.

On 25 Jan 12, the Air Education and Training Command Inspector General (AETC/IGQ) reviewed the applicant's allegations and provided the following analysis:

Issue 1: The applicant alleged the Associate Dean for Students reprised against him by issuing him an LOA because he reported a safety hazard to Air Force senior leaders. The applicant contends that it was because of the LOA that he was not retained in the Air Force.

Analysis/Findings: This case did not meet the elements for prima facie reprisal. The AFIT Dean of Students issued the LOA to the applicant for good reason, unrelated to the alleged protected communications. The LOA was based on the applicant's disrespect to a superior officer and for unprofessional conduct towards the staff of the 66 ABG/JA. The UIF was created to ensure the LOA was transmitted to his gaining unit. The decision to file the LOA in his OSR was at the discretion of his senior rater who apparently felt the applicant's lapse in decorum warranted the attention of future promotion or retention boards.

Issue 2: Review of Abuse of Authority. Since the responsible management official's (RMO) actions were within the scope of his authority and were not arbitrary or capricious, he did not abuse his authority by issuing the LOA to the applicant.

Analysis/Findings: AETC/IG dismissed the complaint in accordance with governing instructions. They found the complaint to be untimely and the likelihood the evidence necessary to make a definitive decision in any investigation was grossly diminished by the passage of time. Since AETC/IG did not pursue the complaint, notifications in conjunction with any possible reprisal allegation or adverse information against the Associate Dean for Students was not required. The case was closed and the applicant was notified. A copy of the complete Report of Investigation is at Exhibit B.

The applicant was released from active duty on 1 March 2012 with a narrative reason for separation of Reduction in Force.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which is at Exhibit C, D, E, and F.

AIR FORCE EVALUATION:

AFPC/DPSIM recommends the UIF and LOA not be removed from the applicant's records. They cannot speak to whether or not the commander's actions were just or not; at most they can only discuss if the proper procedure was followed in the administration of action. After careful review of the evidence presented, minor discrepancies have been identified in the commander's process for establishing a UIF. However, none of the discrepancies are so egregious that they invalidate the commander's action. The LOA in question should have been administered as outlined by the governing instructions. Specifically, there is no evidence the applicant acknowledged receipt of the LOA at the time of being administered the admonishment. Paragraph 6 of the LOA notifies the applicant that "You will acknowledge receipt of this letter immediately by signing the acknowledgement below"; however, the LOA does not provide the endorsement the commander is referring to. The applicant presumably received the LOA, dated 21 Dec 10, and submitted comments on 10 Feb 11. With that being the case, they assume the applicant acknowledged receipt of the administrative action; therefore, meeting the intent of the instructions.

The complete DPSIM evaluation is at Exhibit D.

AFPC/DPSOR does not provide a recommendation. The Air Force implemented various voluntary Force Management measures to decrease personnel over its authorized end strength; however, they did not achieve the required losses for the officer force through voluntary means thus the Secretary of the Air Force chose to convene a RIF Board. Captains and Majors in the Line of the Air Force and in specified year groups were considered by the board. Officers not selected for retention on active duty

had a mandatory date of separation of 1 Mar 2012. An unfortunate consequence of reducing the officer force is losing quality professionals who gave their best to the Air Force. Shortening the careers of the dedicated officers was a painful, but a necessary action by the Air Force in order to meet end strength and budgetary limitations.

The complete DPSOR evaluation is at Exhibit E.

AFPC/DPSID recommends denial of the applicant's request to remove the training report. Based on the lack of corroborating evidence provided by the applicant, and the presumed legal sufficiency pertaining to the issuance of the LOA as commented upon in the contested report, they recommend the report remain in the applicant's records. Further, the applicant has not provided sufficient evidence to show the report was unjust or inaccurate as written. Although the applicant provided a compelling story and they can sympathize with him that he was a victim of accidental bodily injuries while performing Honor Guard duties, this does not excuse him from remaining professional and respectful to the JAG personnel and having the common courtesy of following the proper chain of command protocols. Ultimately, the adverse actions against him happened because of how he conducted himself after the incident.

The complete DPSID evaluation, with attachment, is at Exhibit F.

AFPC/JA recommends denial stating that they agree with the other advisories in this case, and write only to add additional comment. The DPSID advisory provides a complete and accurate assessment of the issues raised in the application. They also agree with the IG's determination not to conduct a full investigation and to dismiss the complaint. The applicant's LOA and UIF are completely supported by the evidence.

The portion of the LOA that admonished the applicant for not reporting his concerns to lower level supervisors and failing to follow the chain of command in no way establishes the LOA was a pretext for reprisal. In addition, attorney-client privilege covers the content of communications; it does not at all pertain to reporting observed behavior by witnesses that happened to be attorneys. Privileged communications do not include rude and disrespectful behavior.

The complete JA evaluation is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a 7-page brief, counsel provides the following key points for his rebuttal:

a. While AFPC/DPSIM recommends denying the removal of the applicant's UIF and LOA, they explicitly note that they "cannot speak to whether or not the commander's actions were just or not" and are only discussing whether proper procedures was comported with. Although DPSIM characterizes the deficiencies as "minor," they concluded the proper procedures were not followed, in that (1) the LOA did not contain the required endorsement for signature by the applicant; and (2) the commander did not acknowledge receipt of the applicant's rebuttal prior to deciding to establish the UIF.

b. The emails recently provided to the applicant pursuant to a Freedom of Information Act (FOIA) request indicate that senior leadership had already decided to take adverse action against him in retaliation for the email he sent on 22 Nov 10.

c. In an 8 Dec 10 email, the Associate Dean of Students at AFIT stated, "FYI, between the inappropriateness of the initial notification; email, and follow on actions with your folks, I'm "Looking at [issuing] LOA with likely UIF." In other words, he was planning to issue a UIF, in part, for retaliation against the applicant emailing his safety concerns to senior leadership. Further, the recipient of this email stated that "I strongly support a UIF," again without regard to any explanation by the applicant.

d. AFPC/DPSOR's memorandum addresses only the applicant's non-retention under the RIF board. The memorandum is dedicated only to explaining the origins and procedures of the RIF board, and does not refute any of the irregularities or injustices raised by the applicant.

e. AFPC/DPSID addresses only the referral training report and does not address whether the training report contains "non-specific/vague comments about the individual behavior or performance" in violation of the governing instruction. The report does not indicate when the alleged conduct took place, or what the alleged disrespectful and unprofessional behavior was, nor does it indicate that this occurred in the aftermath of a traumatic accident involving the applicant. In addition, DPSID gives a lot of weight to an AETC/IG memorandum that allegedly found "no merit in the member's claim." However, the fact is, the IG declined to conduct an investigation into the allegations of reprisal on the basis the request for investigation was made more than 60 days after the incident. To date, no investigation has taken place with regard to the applicant's allegations of reprisal.

f. Regarding the memorandum for record from the Associate Dean for Students, rendered prior to his retirement/, he states the "reasons for the LOA are clearly laid out in paragraphs 1 and 2 of the LOA" and paragraph 3, regarding the applicant's email, was only an "opportunity to provide some formal, written mentoring."

g. The AFPC/JA advisory opinion relies upon the findings of the AETC/IG report which contends it "fully investigated" the applicant's allegation, yet acknowledges the IG did not conduct a "full investigation" into the applicant's complaints. AFPC/JA contends the LOA was "completed supported by the evidence" referencing a 29 Nov 10 memorandum for record; however, no such memorandum was provided to the applicant in connection with the LOA, UIF, or referral training report. With regard to the issue of privilege, AFPC/JA ignores the fact the alleged disrespectful behavior by the applicant arose during attorney-client communications; this fact is confirmed in an email from the colonel to a general officer.

The applicant's complete submission, with attachments, is at Exhibit I.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took careful notice of the applicant's complete submission pursuant to Title 10, United States Code, Section 1552; however, we are not persuaded that he has been the victim of an error or an injustice. We have also considered this case under the provisions of 10 USC 1034 and find the evidence provided insufficient to override the rationale provided by the Air Force offices of primary responsibility. We also note the applicant filed a complaint with the IG alleging reprisal; however, the IG determined his complaints did not meet the elements for prima facie reprisal and were found to be untimely. While the applicant alleges the LOA and referral training report harmed his retention opportunities, he has not provided any evidence showing the content of the report was the sole reason he was not selected for retention by the RIF board. As noted by AFPC/DPSOO, the Air Force had to make a reduction in their officer force, and although it was unfortunate, it was necessary in order to meet congressionally mandated end strength. Furthermore, the action taken against the applicant was solely due to his own actions. With regard to counsel's assertion the 66 ABG/SJA failed to comply with attorney-client confidentiality, as noted by AFPC/JA, the applicant's reporting of a hazardous situation was investigated by the AETC/IG office who determined the communications were not sent as protected communications; therefore, no violation occurred. The applicant has not provided evidence to persuade us to the contrary and we

agree with the opinions and the recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant alleges he has been the victim of reprisal. By policy, reprisal complaints must be filed within 60 days of the alleged incident or discovery to facilitate the IG's investigation. As mentioned above, we note the applicant filed an IG complaint; however, his complaint did not meet the elements for prima facie reprisal and were found to be untimely. Nevertheless, we reviewed the evidence of record to reach our own independent determination of whether reprisal occurred under the provisions of 10 USC § 1034. We note the applicant's contentions but based on our independent review of the evidence presented, we do not conclude that he has been the victim of reprisal.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-05978 in Executive Session on 5 Nov 13, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in AFBCMR Docket Number BC-2012-05978:

Exhibit A. DD Form 149, dated 21 Dec 12, w/atchs.
Exhibit B. SAF/IG Investigation (Withdrawn).
Echibit C. Applicant's Master Personnel Records.
Exhibit D. Letter, AFPC/DPSIM, dated 31 May 13.
Exhibit E. Letter, AFPC/DPSOR, dated 10 Jun 13.
Exhibit F. Letter, AFPC/DPSID, dated 14 Jul 13.
Exhibit G. Letter, AFPC/JA, dated 22 Jul 13.
Exhibit H. Letter, SAF/MRBR, dated 18 Sep 13.
Exhibit I. Letter, Applicant's Counsel, dated 11 Sep 13 [sic], w/atchs.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-00516

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His official records be corrected to show he was medically retired from the Air Force Reserve.

2. His medical conditions such as Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), Headaches, and other ailments be added to his official Air Force record.

APPLICANT CONTENDS THAT:

The Air Force Reserve failed to process his medical case in sufficient time. He deployed to both Iraq and Afghanistan. He waited for the Air Force Reserve to process his paperwork for two years, but was discharged before his Medical Evaluation Board (MEB) was accomplished. The Department of Veterans Affairs (DVA) has determined his medical conditions to be service connected. The medical conditions he suffers from are TBI, PTSD, depression, headaches, migraines, a left ankle injury, knee problems, right elbow issues, anxiety disorder, nightmares, insomnia, trouble breathing while sleeping, asthma, irritable bowel syndrome, rashes, sweating profusely, and tinnitus. These issues were all incurred while on active duty and most were not reported due to fear of reprisal from his chain of command.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force on 8 Oct 03.

On 10 Feb 10, the applicant received an Enlisted Performance Report (EPR) covering the period 17 Mar 09 through 8 Feb 10 with an overall performance assessment of "5" (Truly Among the Best), which indicated he met Air Force fitness standards.

On 1 Apr 10, the applicant voluntarily separated from active duty to transfer to the Air Force Reserve after 6 years, 5 months, and 24 days of active service.

On 5 Apr 10, the applicant enlisted in the Air Force Reserve.

On 24 Mar 11, the applicant received an Enlisted Performance Report (EPR) covering the period 9 Feb 10 through 8 Feb 11 with an overall performance assessment of "5" (Truly Among the Best), which indicated he met Air Force fitness standards.

On 7 Dec 11, the applicant was reassigned from Homestead Air Reserve Base, Florida to the Air Reserve Personnel Center (ARPC) due to change of residence.

On 21 Sep 12, the applicant was honorably discharged from the Air Force Reserve.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility, which are attached at Exhibits C, D, and E.

AIR FORCE EVALUATION:

AFPC/DPFD did not make a recommendation. The Physical Disabilities Division at the Air Force Personnel Center (AFPC/DPFD) never received a referral to the Physical Evaluation Board (PEB) pertaining to the applicant. Therefore, a PEB was never completed on the applicant.

A complete copy of the AFPC/DPFD evaluation is at Exhibit C.

AFRC/SG recommends denial indicating there is no evidence of an error or an injustice. The applicant served on active duty, deploying to Iraq during the period Jan through Jun 08 and to Afghanistan during the period Jan through Oct 09. On 5 Apr 10, he was gained by the Air Force Reserve. At the time of his transfer to the AF Reserve, he had a completely clear medical profile. In addition, his separation Report of Medical Assessment signed by him states he had not had any illness or injury limiting him in any way, that he had no questions or concerns about his health, and that he did not have any conditions for which he intended to seek veteran's affairs disability. His listed conditions were acne, allergies, and headaches. During his initial in-processing into the Reserve squadron, the applicant complained of severe headaches, occurring 1-2 times a week. He was placed in a Reserve "no pay-no points status," and was profiled for fitness for duty determination. His last month of Reserve participation was Aug 10. On 14 Sep 10, after his last participation in the Reserve, he was in a motor vehicle accident while relocating to Texas. On 20 Sep 10, he was seen by the Department of Veterans Affairs (DVA) in Texas. The notes from the DVA show the applicant had been receiving medical care from the Miami Veterans Affairs Medical Center (VAMC) prior to his relocating to Texas. Subsequent evaluation at the DVA led to multiple diagnoses which had not previously existed in his medical records. It is reasonable to assume that many of his current medical complaints are referable to his time on active duty. It is not reasonable to assume the Reserve Component played any role as he served virtually no time in that capacity. The applicant separated from active duty without having an MEB. No board appeared necessary at that time. His records reflect that he was well, and he signed documents attesting to that fact prior to his separation. There is no relief required with respect to Reserve service, as he essentially has none. Unfortunately, many times medical issues don't become obvious until months later. In this case, the applicant is receiving excellent care from the DVA, as is appropriate for any member who separates and then learns he has medical issues that the DVA determines are service connected.

A complete copy of the AFRC/SG evaluation is at Exhibit D.

The BCMR Medical Consultant recommends denial indicating there is no evidence of an error or an injustice. None of applicant's supplied documentation indicates that his conditions resulted in the initiation of a physical profile restriction and/or Duty Limiting Condition Report of a sufficient duration or level of impairment that rendered him non-worldwide qualified or warranted referral through the military Disability Evaluation System (DES) during his active service. Indeed, the applicant eventually left active military service and transitioned to the Reserve likely without any military documentation of an existing medical condition that could interfere with military service. After transferring to the Reserve the applicant was seen for migraine headaches on 1 May 10. He was "asymptomatic," but reported experiencing headaches "2 to 3" times per month. The medical provider wrote "not worldwide qualified" into this record, but no physical profile or Duty Limiting Condition Report is available to reflect the provider's recommendation to restrict duty. On 16 Feb 12, a memorandum was sent to the applicant's unit commander from the servicing medical organization stating that the applicant has been found to have a medical condition that does not meet medical standards and that preparation is being made to submit his case to AFRC/SGP for appropriate disposition of the applicant's medical qualification for worldwide duty (WWD). The memo indicates that the applicant had elected to submit his case

for secondary review by the Physical Evaluation Board (PEB) should AFRC/SGP determine he is not WWD-qualified, and noting that the applicant had been given 60-days to provide any medical documentation from his private care provider. This is an indicator that the potential disqualifying condition was considered non-duty related. However, no final documents are provided to reflect the decision of the AFRC/SGP. Without the final medical disqualification statement from AFRC/SGP, the Medical Consultant cannot determine which among his many medical conditions was found disqualifying and implicitly resulted in his discharge. A medical entry on 14 Apr 12, indicates that the source of information regarding the applicant's medical conditions was acquired from records of the DVA, implicating possible failure on the part of the applicant to timely supply medical documentation IAW AFI 36-3209, Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members, a common reason for the administrative release from military service. Regarding the applicant's request for medical retirement, the Medical Consultant recommends denial. Operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any (all) medical condition(s) determined service incurred, without regard to, and independent of, its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the period of service during which the medical conditions were incurred. In the case under review, the applicant's prior period of active service was the primary source of information utilized to establish service connection by the Department of Defense. While any one or more of his conditions could have been considered disqualifying, the proof is insufficient to make the determination of in-the-line-of-duty during the applicant's Reserve service. This is the reason why an individual can be released from military service for one reason and yet sometime thereafter, receive compensation ratings from the DVA for one or more conditions that were service-connected, but not militarily unfitting and compensable at the time of release from service, in this case release from the Reserve service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating award as the level of impairment from a given service connected medical condition may vary over the lifetime of the veteran.

A complete copy of the BCMR Medical Consultant evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the AFBCMR Medical Consultant and Air Force evaluations were forwarded to the applicant on 12 Jul 13 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the BCMR Medical Consultant and Air Force offices of primary responsibility (OPR) and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-00516 in Executive Session on 12 Dec 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, undated, w/atchs.
Exhibit B. Applicant's Master Personnel Records
Exhibit C. Letter, AFPC/DPFD, dated 18 Apr 13.
Exhibit D. Letter, AFRC/SG, dated 7 Jun 13.
Exhibit E. Letter, BCMR Medical Consultant, dated 11 Jul 13.
Exhibit F. Letter, SAF/MRBC, dated 12 Jul 13.

Panel Chair

ADDENDUM TO

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-00516

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His honorable discharge be changed to a medical retirement.

2. His medical conditions, such as Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), headaches, and other ailments be added to his official military record.

RESUME OF CASE:

On 12 Dec 13, the Board considered and denied the applicant's original request to make the same corrections to his records. In the original case, the applicant contended the Air Force failed to process his medical case in sufficient time. After he returned from deployment from Iraq and Afghanistan, he waited two years for the Air Force Reserve to process his paperwork, but was unjustly discharged before his Medical Evaluation Board (MEB) was accomplished. The Department of Veterans Affairs (DVA) determined his medical conditions to be service connected. His medical issues were incurred while on active duty, but most were not reported due to fear of reprisal from his chain of command. The Board concurred with the recommendations of the BCMR Medical Consultant and AFRC/SG that the applicant had submitted insufficient evidence to demonstrate an error or injustice. For an accounting of the facts and circumstances

surrounding the applicant's original request and the rationale of the earlier decision by the Board, see the Record of Proceedings (ROP) at Exhibit G.

On 22 Jan 14, the BCMR received a request from the applicant for reconsideration of his original request. Along with additional medical documentation, the applicant submitted a number of emails related to his attempt to get an MEB, and letters of support from his associates. The applicant's complete submission, with attachments, is at Exhibit H.

AIR FORCE EVALUATION:

The BCMR Medical Consultant recommends denial indicating there is no evidence of an error or an injustice. A 16 Feb 12 memo to the applicant from his Medical Squadron informs him a review by the Physical Evaluation Board (PEB) "is only to determine [his] fitness for continued military duty and not to determine if [he] is entitled to disability processing." The memo also states "If I elect to have my case reviewed by the PEB solely for a fitness determination, I understand referral of my case does not constitute a disability evaluation and does not entitle me to disability compensation from the Air Force." The memo was signed by the applicant on 23 Feb 12. Addressing the applicant's assertion that the numerous emails he submitted indicate "they say they were working on [his] MEB when it really seemed as if they were stalling," a preponderance of the evidence points towards existence of a disqualifying medical condition that was not considered duty-related or permanently aggravated by military service. Even though the record indicates the applicant's headaches, which were noted during his active service, occurred in greater frequency and severity and he required increased use of his asthma medication twice per day, there is no clinical evidence these two conditions were the proximate result of his Reserve service or represented permanent aggravation of his pre-existing (active duty) respiratory symptoms and headaches. While the AF Form 469, Duty Limiting Condition Report, is commonly utilized for identifying conditions qualifying for processing through the Disability Evaluation System (DES), implicitly as a compensable condition, it appears this document is also utilized to identify the applicant's non-duty-related conditions and may have errantly created the impression a medical separation or retirement was imminent. Having said that, since there is an established nexus between the applicant's medical condition and his period of service this qualifies him to receive compensation through the DVA. Unfortunately, his conditions were identified as disqualifying after he was allowed to transition to the Reserve via PALACE CHASE. As a Reservist, his medical conditions were considered pre-existing and he must, then, have shown proof of permanent aggravation while in a Reserve duty status. Failure to disclose certain conditions at the time of the applicant's discharge from active duty, absence of objective evidence of duty restrictions imposed during active military service that warranted DES processing prior to release from active duty, does not now justify a medical retirement from the Reserve.

A complete copy of the BCMR Medical Consultant evaluation is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 7 Jan 15 for review and comment within 30 days (Exhibit J). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

After again reviewing the evidence in the applicant's case, and taking into consideration the additional documentation provided by the applicant, we remain unconvinced that corrective action is warranted. While it appears as though the applicant was being processed for a fitness determination due to his disqualifying (non-duty related) condition, the evidence he has presented is not sufficient for us to conclude that the conditions for which he was disqualified were incurred or aggravated in the line of duty and thus should have been found unfitting, vice disqualifying. Therefore, in the absence of evidence to the contrary, we agree with the opinion and recommendation of the AFBCMR Medical Consultant and adopt his rationale for our conclusion the applicant has not been the victim of an error or injustice.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-00516 in Executive Session on 19 Feb 15 under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2013-00516 was considered:

Exhibit G. Record of Proceedings, 17 Dec 13, w/atchs.

Exhibit H. Letter, Applicant, undated, w/atchs.

Exhibit I. Memorandum, BCMR Medical Consultant, dated 10 Dec 14.

Exhibit J. Letter, SAF/MRBR, dated 7 Jan 15.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-00685
XXXXXXX COUNSEL: NONE
HEARING DESIRED: NO

THE APPLICANT REQUESTS THAT:

1. His 10 Oct 10 discharge date be voided.

2. He be allowed to remain in the Air National Guard (ANG) until his Mandatory Separation Date (MSD) of 1 Jun 12, with all back pay, allowances, and benefits.

THE APPLICANT CONTENDS THAT:

He was involuntarily discharged without the proper authority, which was substantiated by the Secretary of the Air Force, Inspector General (SAF/IGS).

His discharge resulted in an error in his records and an injustice by terminating his career along with the loss of wages and benefits earned between 10 Oct 10 through 1 Jun 12.

In support of his appeal, the applicant provides a personal statement, copies of his retirement orders, discharge certificate, the SAF/IGS Report of Investigation (ROI), and various other documents.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The following information was noted in the ROI provided by the applicant. In the fall of 2009, the applicant, while serving as an Air Guard Technician (AGT) and the Military Personnel Management Officer (MPMO), for the Joint Forces Headquarters (JFHQ), informed the Assistant to the Adjutant General (ATAG), Wyoming ANG (WYANG), of his intentions to retire in Sep 10.

On 22 Jan 10, the applicant submitted a request to hire his replacement as the full-time MPMO.

On 14 Mar 10, the applicant submitted an electronic application

to retire from the ANG, effective 13 Sep 10, his 60th birthday.

On 25 Apr 10, the applicant's replacement was hired to fill his position.

On 5 Jun 10, the applicant's replacement signed his orders to separate him from the ANG, effective 10 Sep 10. On 22 Jun 10, the applicant sent an email to the National Guard Bureau (NGB/A1PO) indicating that he was considering staying until his MSD, 1 Jun 12.

On 24 Jun 10, the applicant emailed the then-Vice Chief of the Joint Staff, WYANG, notifying her that he intended to work until his MSD of 1 Jun 12, and withdrew his AGT retirement application.

On 10 Jul 10, the applicant acknowledged that he was being assigned as an "excess" in his position with an expiration of 10 Oct 10. The notice was signed by the Vice Chief of the Joint Staff, on the ATAG's behalf. At that time, he was presented with a NGB 31-11, Statement of Understanding (SOU) – Excess/Overgrade Condition; however, he refused to sign the SOU.

On 11 Jul 10, the applicant and the ATAG met to discuss his desire not to retire in Sep 10.

On 23 Jul 10, the applicant met with the WYANG Inspector General (WYANG/IG) and filed a complaint against the Vice Chief of Joint Staff and the ATAG.

On 3 Aug 10, the Vice Chief of Joint Staff signed an order amending the applicant's separation from the ANG and transfer to the Air Force Reserve to reflect his discharge from the WYANG and as a Reserve of the Air Force effective 10 Oct 10, under the provisions of AFI 36-3209, para 2.25.2, ANG Unique Separations.

On 6 Oct 10, the applicant traveled to the Air Reserve Personnel Center (ARPC) and submitted an ARPC Form 83, Application for Retired Pay, with an effective date of 11 Oct 10.

On 10 Oct 10, the applicant was discharged from the WYANG and transferred to the Air Force Reserve. On 11 Oct 10, his name was placed on the USAF Retired List, with authorization for retired pay. He was credited with 39 years, 4 months, and 21 days of satisfactory Federal service (Reserve Order EL-0082, dated 6 Oct 10).

On 21 Mar 12, SAF/IGS found that the ATAG did not violate AFI 36-2606, Selective Retention of Air National Guard Officer and Enlisted Personnel, by not having a Selective Retention Review Board (SRRB) because the applicant was exempt from consideration by the 2010 SRRB because he served as a recorder and member of the Board (Allegation 1). However, SAF/IGS found that the ATAG did violate AFI 36-3209 by directing the separation of the

applicant without initiating proper discharge actions (Allegation 3).

Regarding Allegations 2 and 4, SAF/IGS did not find that the Vice Chief of Joint Staff reprised against the applicant because she would have ordered his discharge even if he had not made any protected communications. However, they did determine that she abused her authority when she signed the orders that discharged the applicant from the WYANG and the Air Force Reserve. In addition, they found that the discharge adversely affected the applicant and was outside the Vice Chief of Joint Staff's authority.

In addition, no one had the authority to discharge the applicant from the Reserve of the Air Force (See SAF/IG Report at Exhibit B).

THE AIR FORCE EVALUATION:

NGB/A1P concurs with the Subject Matter Expert (SME) and recommends denial based on the governing AFI and documentation provided by the applicant.

A1PP agrees with the findings of SAF/IGS in that the Vice Chief of Joint Staff, WYANG, did not act in retaliation for the applicant formalizing a complaint with the WYANG/IG. They note that SAF/IG did not substantiate the allegation(s) of reprisal, but did find that both the ATAG and the Vice Chief of Joint Staff were in error in the way in which they handled the applicant's involuntary separation from the WYANG.

According to AFI 36-3209, "the authority to separate ANG assigned member from state status rest with the State Adjutant General." The Vice Chief of Joint Staff did not have authority to discharge the applicant as a discharge package is required by the commander, then forwarded to the ATAG, then to the TAG for final approval.

The IG states the applicant's discharge was an unfavorable personnel action because it ended his military career before his MSD and discharged him from the Reserve of the Air Force, but attested the action was not an act of retaliation. According to AFI 36-3209, members placed as excess or overgrade can be separated if not placed into another position upon reaching the expiration date; therefore, the applicant being forced to retire was not in violation of ANG policy.

The complete A1P evaluation, with attachments, is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

The applicant notes that there are four methods to separate a member involuntarily from the military: 1) by expiration of their MSD; 2) by findings of the Medical Evaluation Board (MEB) determining the member is not fit for duty; 3) administrative discharge for cause; or 4) the concurrence by the TAG of an SRRB's recommendation.

He believes two areas need further clarification; the response from A1PP and the manipulation of the policy and procedure by the ATAG and the Vice Chief of Joint Staff. It is clear that A1PP only addresses the process regarding members in an excess status, but, ignores as in his case, the only authorized method to discharge him involuntarily was to use his MSD as his separation date. Obviously, missing in A1PP's consideration are the actions taken by the ATAG and the Vice Chief of Joint Staff showing their plan to have him removed from military service without cause. The procedure they use to place him in an excess status was not implemented correctly. So he did not sign the SOU as required. The ATAG's actions were based on improper administration of the personnel policies as stated in ANG Instruction (ANGI) 36-2101, Assignments Within the Air National Guard (ANG), dated 11 Jun 04, paragraph 2.3, Assignment of Full-Time Personnel, states, "Under no circumstances will military technicians or AGR personnel be assigned in an excess status without written approval from ANG/DP, to include projected losses within 24 months." The ATAG did not have approval from ANG/DP to place him into an excess status, on 10 Jul 10. Paragraph 4.1, Retention in an Excess Status, states, "The member placed in the excess condition will not be a military technician or Active Guard Reserve (AGR). Only in rare circumstances will a military technician or AGR member, be placed in an excess condition. Prior to making an assignment action that would result in a military technician or AGR becoming excess, ANG/DPFOM review and approval is required."

In addition, A1PP states, ANGI 36-2101, "... members placed as excess or overgrade can be separated if not placed into another position upon expiration date ..." the ATAG intentionally did not fulfill his mandatory obligation to place him into a valid position that he was qualified for, the existing commander vacancy, as stated in the enclosed Memo-For-Record (MFR) of their 11 Jul 10 discussion about this position (enclosure #5). This is a violation of Technician Program Administration 303 dated 24 Aug 05, paragraph 2-1b, (enclosure #6), "The full-time support member is the primary occupant of the military position and is not coded as excess." It is also a violation of ANGI 36-2101, paragraph 2.20.4, "It is incumbent on the unit commander to keep members informed of their status and to continually try to rectify the excess or overgrade situation." The ATAG's direction/guidance to the Vice Chief of Joint Staff, per A1PP's message, "by not placing you into another billet prior to the expiration date of your excess" is an unlawful direction from the ATAG, the commander of the WYANG, to the Vice

Chief of Joint Staff.

The Vice Chief of Joint Staff misused her authority by discharging him involuntarily as stated in the SAF/IG report. This lack of authority is a violation of policy and procedure and not authorized by the Air Reserve Personnel Center (ARPC).

He goes on to discuss the following areas of the IG report to substantiate his request:

1. Page 4, seventh bullet: "I informed Col C. I intended to be employed through the date of my MSD. I withdrew my technician retirement form."

2. Page 16, paragraph #2, the discharge ended his career before his MSD.

3. Page 18, third paragraph, the discharge was unreasonable.

4. Page 19 - 20, paragraph 5, the discharge was unreasonable and not correct procedurally.

In addition to the SAF/IG report, the MFR from the meetings and discussions with Vice Chief of Joint Staff substantiates that she was determined to remove him from his position at her earliest opportunity, when she stated, "I cannot wait 2 years." She made him choose between retiring voluntarily and remaining to his MSD. He informed her he would remain until his MSD. His decision was followed by a concerted effort between the ATAG and her to manipulate policy and procedure to their advantage and was an abuse of their authority and misconduct by senior officials. This resulted in his termination without cause and a significant monetary loss and personal stress to him and his family.

The applicant's complete response, with attachments, is at (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). The Inspector General investigated the allegations of reprisal against the applicant's state military

officials; however, while they determined that the ATAG and the Vice Chief of Joint Staff did abuse their authority by separating the applicant without initiating the proper discharge actions, they did not find the allegations were an act of reprisal or retaliation because of protected communication. We considered the allegations by the applicant and based on our own independent review, we note that although it appears the applicant's separation was not properly executed, the evidence reflects that the TAG was aware and agreed with this action. Therefore, we did not find that the actions to separate the applicant were motivated by retaliation for making a protected communication. As such, we find no basis to grant the applicant's request under 10 USC 1034. Additionally, while we note the apparent error made by state military officials, we do not believe the error in this case rises to the level of an injustice to warrant the relief the applicant is seeking. In this respect, we note that while the ATAG and the Vice Chief of Joint Staff did not properly execute the applicant's separation, in our view, it appears that had the separation been carried out properly by the TAG that the outcome would have been the same. Therefore, we conclude that although an error was made in executing the applicant's discharge, we consider the error to be harmless in regards to its impact on the applicant and that it does not constitute an injustice that should be remedied by this board. In view of the above and absent evidence to the contrary, we find no basis exists upon which to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-00685 in Executive Session on 22 Nov 13, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 4 Feb 13, w/atchs.
Exhibit B. SAF/IG Report, WITHHELD.
Exhibit C. Letter, NGB/A1P, dated 26 Apr 13, w/atchs.
Exhibit D. Letter, SAF/MRBR, dated 3 May 13.

Exhibit E. Letter, Applicant, dated 25 May 13, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-00944

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His 30 December 2010 involuntary early retirement from the Michigan Air National Guard (MIANG) be set aside.

2. He be reinstated to his former status as a full-time Air National Guard (ANG) technician, with appropriate back-pay and allowances.

3. In the alternative, he be reinstated to a comparable status in the Air Force Reserve

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APPLICANT CONTENDS THAT:

1. The decision of the Selective Retention Review Board (SRRB)

to non-retain him was in reprisal for his efforts to correct his civilian personnel records to reflect he was in the Civil Service Retirement System (CSRS) instead of the Federal Employees' Retirement System (FERS).

2. His inability to participate in the Operational Readiness Inspection (ORI) was due to his father's terminal illness, but was used as an excuse to initiate the non-retention action.

3. The stated basis for the decision to not retain him was faulty. While the rationale for the decision was that his continued retention would adversely affect unit manning (hindering promotions), his continued service would not have precluded others from being promoted. The command's claim that his forced retirement would allow the unit to promote other members is simply untrue. There are a variety of personnel force management alternatives the commander could have employed to ensure his continued service. While there were two technical sergeants occupying master sergeant positions who could not be promoted under the ordinary promotion criteria because the unit had exceeded the authorized percentage of assigned master sergeants, the commander could have promoted them under the Deserving Airman Promotion Program (DAPP), regardless of these manning concerns. Additionally, this decision flies in the face

of the high regard his technician superiors held for him as exemplified by their efforts to obtain an extension for him.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant served with the Air National Guard (ANG) in the grade of master sergeant (E-7) during the matter under review.

According to documentation provided by the applicant, on 21 June 1987, he was hired as a dual-status technician with the California Air National Guard (CANG).

A military technician (dual status) is a Federal civilian employee who, (a) is employed under 5 USC § 3101 or 32 USC § 709(b); (b) is required as a condition of that employment to maintain membership in the Selected Reserve; and (c) is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

According to documentation provided by the applicant, on 2 October 1988, he transferred to the Michigan Air National Guard (MANG).

In July 2002, the applicant made an inquiry to the Office of Personnel Management (OPM) for corrective action under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA) due to erroneous enrollment into FERS.

On 17 May 2006, an Administrative Judge issued an initial decision affirming the Department of the Air Force's denial of the applicant's request to correct his retirement coverage and the applicant petitioned for review.

On 20 December 2006, the Merit Systems Protection Board (MSPB), Central Regional Office, found the Department of the Air Force violated the applicant's reemployment rights under the Vietnam Era Veteran's Readjustment Assistance Act of 1974 in that they had him under FERS instead of CSRS.

On 30 January 2007, the applicant petitioned for enforcement of the MSPB final decision.

On 16 February 2007, the MIANG indicated they would not comply with the MSPB decision, indicating the Adjutant General was a

state employee and did not fall under the jurisdiction of the federal MSPB.

On 23 February 2007, the Department of the Air Force indicated it had decided to cooperate and the applicant withdrew his petition for enforcement.

The applicant's spouse filed a second petition of enforcement of the MSPB decision in December 2007.

In 2008, the MIANG agreed to comply over a six-month period, and filed a settlement agreement.

On 22 January 2009, the applicant reenlisted in the MIANG and as a Reserve of the Air Force for a period of three years.

On 11 April 2010, the applicant's commander initiated an NGB Form 27, Federal Retention Evaluation/Recommendation, recommending the applicant separate on 1 December 2010 because his retention would limit the promotion potential of two technical sergeants (E-6) who occupied master sergeant (E-7)/shop chief slots.

On 16 June 2010, the applicant was notified of the results of the MIANG Enlisted Selective Retention Review Board, which did not approve his continued retention in accordance with ANGI 36-2606. Accordingly, he would be separated from the MIANG, effective 31 December 2010.

On 7 October 2010, the applicant requested to stay on military orders for no more than one year. On 7 November 2010, the applicant and his spouse inquired about the applicant's request to stay on military orders for one year or elevating their concerns to the Adjutant General due to the sensitivity of the matter.

On 14 November 2010 and 22 November 2010, the applicant and his

spouse submitted appeals to the Adjutant General requesting he be granted an extension.

On 29 November 2010, the Adjutant General notified the applicant's spouse of his determination that the Selective Retention Board acted consistent with all regulations and arrived at a purely military decision in not retaining the applicant. As such, his requested extension was not granted.

On 3 December 2010, the applicant was informed that his employment as an Aircraft Engine Mechanic was terminated, effective 1 January 2011, due to his loss of his military membership. He became eligible for an immediate civil service retirement annuity.

On 30 December 2010, the applicant was honorably discharged from the MIANG and transferred to the USAF Reserve Retired List to

await retired pay at age 60 under the provisions of AFI 36-3209. He was credited with 33 years, 8 months, and 16 days of total reserve service for retired pay.

On 19 January 2011, the applicant filed an appeal with the MSPB, Central Regional Office, indicating he involuntarily retired from the Department of the Air Force. The applicant indicated he was coerced into retirement; however, the appeal was dismissed for lack of jurisdiction.

On 17 February 2011, the National Guard Bureau office of Legislative Liaison informed the applicant's representative that the Air National Guard Manpower and Personnel Directorate reviewed the applicant's letter and determined the procedures employed by the Michigan National Guard to non-retain the applicant were completed in accordance with Air National Guard Instruction 36-2606. He was determined eligible to meet the board and given the opportunity to respond. The information received concerning the inquiry indicated that he did not respond to the decision within the allotted time of 30 days.

On 21 March 2011, the applicant was ordered by an administrative judge to provide evidence that the MSPB had jurisdiction to

adjudicate his claim. In response, the applicant indicated that he held a Title 32 dual-status position and was not a Title 5 civilian employee. As such, the applicant does not have appeal rights under MSPB and the Board does not have jurisdiction over the applicant's removal due to the failure to maintain a compatible military position involving a National Guard technician.

In August 2011, the MSPB dismissed the applicant's appeal for lack of jurisdiction to review loss of his ANG membership. The MSPB only had jurisdiction to hear loss of membership as a civil service employee-technician and retirement benefits.

AIR FORCE EVALUATION:

NGB/A1PP recommends denial, indicating there is no evidence of an error or injustice. In this case, the state of Michigan followed the appropriate procedural and program requirements during the selective retention process of the applicant. The applicant was properly notified by The Adjutant General of his non-continuation/curtailment of his tour as a result of the Enlisted Selective Retention Review Board (SRRB). He elected not to provide an official request for reconsideration. In accordance with ANGI 36-2606, there is no appeal beyond the TAG. Therefore, the decision not to retain the applicant was within the authority of TAG and cannot be overruled by the NGB. Consequently, as a dual status technician, the applicant was required to be terminated from his full-time position upon the loss of his military affiliation.

A complete copy of the NGB/A1PP evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant argues the Board can review Air National Guard

(ANG) actions and reinstatement to ANG status or to a comparable Federal Reserve status is within its authority. He compared his circumstances with other cases presented before the AFBCMR and offered their results as a possible resolution in his defense. Also, the timeliness of his reconsideration submission to his non-retention action should be excused, because he was under the credence that the action was going to be rescinded or suspended, it was reconsidered by TAG, and the non-retention action was reprisal. Although it appears that the non-retention procedures were followed properly, the AFBCMR must look beyond the surface of the action and determine any personal bias or reprisal. It is implied that force management reasons (the unit could not promote one technical sergeant to master sergeant since it would exceed the 100 percent force manning goal of 14 authorized and assigned master sergeants) led to the non-retention action; however, there are exceptions, such as the 120 percent DAPP promotion or retention of valuable over grade members. In addition, at the time of the non-retention action, the manning level was less than 100 percent due to the departure of master sergeant. Once it was revealed that the commander had other options rather than the non-retention action, and there was the contention of reprisal, he contradicted his original reason for non-retention. Since the Selective Retention Review Board and TAG made their non-retention decisions on criteria other than what the commander originally stated, relief should be granted.

A complete copy of applicant's response is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant alleges he has been the victim of an error or injustice (10 USC 1552) and that he has been the victim of reprisal and has not been afforded full protection under the

Whistleblower Protection Act (10 USC 1034). He contends that his non-selection for retention by the Selective Retention Review Board (SRRB), which resulted in his retirement from both his full-time civilian (technician) and military positions, was

in reprisal for his administrative and legal efforts to ensure that he was placed in the correct civilian retirement program. After a thorough review of the evidence before us, and noting the applicant has not availed himself of the Inspector General (IG) process, we do not find his assertions or the documentation provided sufficient to establish that his non-selection by the SRRB rendered him either the victim of an error or an injustice as defined in 10 USC 1552, or that he was the victim of reprisal as defined in 10 USC 1034. While the applicant contends his inability to participate in the Operational Readiness Inspection (ORI) was used as an excuse to recommend he not be retained by the SRRB, we are not convinced that his commander's decision to recommend he be non-retained was motivated by anything other than the goal of achieving the force management objectives of his unit. In this respect, we note the SRRB is essentially a force management tool whereby the Adjutant General of a State's National Guard evaluates the impact on a unit's force management objectives of the continued retention of members, such as the applicant, who have attained sufficient service to qualify for retirement. In this case, it appears the SRRB determined that the applicant's retention beyond his more than 33 years of service would serve to diminish the promotion opportunities of lower ranking individuals within his organization. The stated basis of the Board's decision to non-retain the applicant was well within their discretionary authority and we do not find the applicant's argument that his commander could have employed a variety of other force management tools to create the specific set of circumstances required to allow his retention without any resultant adverse impact on promotion opportunities of junior members of the unit. In our view, while a commander has several force management tools at his or her disposal, he or she must formulate the best force management strategy based on overall needs of his or her unit manning. While the applicant contends the commander could have employed Deserving Airman Promotion Program (DAPP), promotion under this program is predicated on an agreement to retire if not reassigned to a vacancy commensurate with the new grade within two years of the effective date of the promotion and there are likely secondary and tertiary effects that the commander thoughtfully considered in exercising his discretionary authority in choosing which force management programs to utilize for the overall health of his unit. Ultimately, while it may be true the commander could have moved heaven and earth to create the specific circumstances required to ensure the applicant's retention beyond his 33 years of service, we are not convinced that the commander abused his discretionary or that the SRRB decision to non-retain the applicant was arbitrary, capricious, or an act of reprisal for the applicant's previous efforts to correct his civilian

personnel records. Therefore, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-00944 in Executive Session on 8 August 2013, under the provisions of AFI 36-2603:

Vice Chair

Member

Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 18 February 2012, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, NGB/A1PP, dated 12 March 2013.

Exhibit D. Letter, SAF/MRBR, dated 22 April 2013.

Exhibit E. Letter, Applicant’s Counsel, dated 19 May 2013

Vice Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-01104

XXXXXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. The Fitness Assessments (FAs) dated 2 Mar 12 and 24 May 12 be declared void and removed from the Air Force Fitness Management System (AFFMS).

2. The Letter of Reprimand (LOR) dated 15 Dec 11 and LOR (not dated), but issued for his FA failure dated 24 May 2012 be removed.

3. The non-judicial punishment under Article 15 of the Uniform Code of Military Justice and issued on 6 Aug 12 be rescinded and reversed, and his rank be restored to technical sergeant.

4. His records be corrected to show that he was not separated on 31 May 13, under the Date of Separation (DOS) program, but on that date he continued to serve on active duty. (Examiner's Note: In his response to the advisory opinions, the applicant amended his application to include this request.)

APPLICANT CONTENDS THAT:

1. On 8 Jun 2012 he received the AFBCMR's decision to grant his previous request to have the FA scores dated 8 Apr 11, 8 Jul 11, and 2 Dec 11 be removed from AFFMS and Enlisted Performance Report (EPR) rendered for the period 2 Jun 10 through 1 Jun 11, be declared void and removed from his records. The LOR dated 15 Dec 11 and the LOR (not dated) was a result of the FA's that have since been removed from his record.

2. Due to poor use and care of the heart monitor equipment used to administer the FA, as well as the medication he was prescribed he was unable to successfully obtain a minimum passing score on the contested FAs. Specifically for the FA dated 2 March 12 he failed due to a 40.5 inch AC measurement which was inaccurate due to the 20mg of Micardis, and 150 mg of Voltaren that he was taking at the time of the FA. For the FA dated 24 May 12 he had a heart rate of 183 bpm, which he believes was altered by being too close to other individuals wearing heart rate monitors and the poor handling, storing, and distribution of the equipment.

3. He received the Article 15 as a reprisal action for his previous BCMR submission. Furthermore, the Article 15 is solely based on evidence of one Memorandum for Record, and the two LORs, which should be removed since they were issued based on the previous FA failures that are no longer a part of his record.

In support of his contentions, the applicant submitted a personal letter to the board; the contested LORs, along with the rebuttals; AFBCMR Docket Number BC-2011-05021 marked "Approved;" the Polar heart rate monitor user manual; an AF Form 418, Selective Reenlistment Program (SRP) Consideration for Airmen, and the Article 15 proceeding, dated 6 Aug 12, along with supporting documents.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant was serving in the Regular Air Force in the grade of staff sergeant (E-5) at the time of the application was submitted.

On 15 Dec 11, the applicant received a LOR for failure to attend mandatory Fitness Improvement Training Program sessions prescribed by the commander.

On 2 Mar 12, the applicant participated in a FA, attaining an overall composite score of 67.88, which constituted an "unsatisfactory" assessment. The applicant was credited with the following composite scores: Cardio (walk test) – 40/44.90 points, Abdominal Circumference – 40.50"/9.40 points, Push-ups – Exempt, Sit-ups – Exempt.

On 21 May 12 a memorandum was issued by the Director, Air Force Review Boards Agency, directing the FAs dated 8 April 2011, 8 July 2011, and 2 December 2011 be declared void and removed from the Air Force Fitness Management System.

On 24 May 12, the applicant participated in a FA, attaining an overall composite score of 66.00, which constituted an "unsatisfactory" assessment. The applicant was credited with the following composite scores: Cardio (walk test) – 38/38.30 points, Abdominal Circumference – 38.50"/13.50 points, Push-ups – Exempt, Sit-ups – Exempt.

A LOR (not dated) and AF IMT 1058, Unfavorable Information File Action (UIF), provided by the applicant and dated 30 May 12 indicate the commander was considering placing the applicant on a control roster for his FA failure dated 24 May 12 and all previous FA failures dated back to 8 Apr 11.

Examiner's Note: The LOR (not dated) was issued for the FA failure dated 24 May 2012, which was not part of the applicant's previous AFBCMR request. However, the LOR states that he "failed five fitness assessments dating back to 8 April 2011." Therefore the applicant was likely indicating the LOR was issued for all 5 FA failures of which only 2 of the failures are actually part of his record. Additionally, the comments in the UIF/Control roster indicate that it was being considered for all 5 FA failures, when officially it was only 2.

An AF IMT 1058, Unfavorable Information File Action (UIF), provided by the applicant and signed by the commander on 19 Jun 12 indicates the commander decided not to place the applicant on a control roster.

On 30 Jul 12 the applicant's supervisor indicated on a MFR that he had failed to show multiple times for mandatory physical training.

On 6 Aug 12, the applicant received non-judicial punishment according to Article 15 of the Uniform Code of Military Justice (UCMJ) for failure to go on several occasions to his appointed place of duty at the time prescribed from 23 Apr 12 to 28 Jul 2012 without authority, in violation of Article 86, UCMJ.

The applicant's last 5 FA results are as follows:

Date
Composite Score
Rating
1 Jun 2012
Exempt
Exempt
*24 May 12
66.00

Unsatisfactory
*2 Mar 12
67.88
Unsatisfactory
5 Jan 10
75.35
Good
3 Dec 08
76.85
Good* Contested FA

On 6 Dec 13, a similar request was considered and denied by the Fitness Assessment Appeals Board (FAAB), due to a lack of supporting documentation from the applicant's primary care manager and commander. The FAAB further found no evidence of testing equipment error or sufficient evidence of prescribed medications that would impact his testing ability. For these reasons, the FAAB denied his request for removal of FAs dated 2 Mar 12 and 24 May 12.

AIR FORCE EVALUATION:

In reference to the FAs dated 2 Mar 12 and 24 May 12, AFPC/DPSIM recommends denial of removing them, stating there is insufficient evidence to support the applicant's claim of faulty equipment and prescribed medication. In reference to his contentions about the heart rate monitor, the applicant has supplied multiple documents discussing care and maintenance of the monitor. However, outside the care and maintenance documents, the applicant has not provided any evidence to indicate the testing equipment was not properly maintained. Furthermore, when reviewing the evidence about his prescribed medication, there is no official medical documentation to indicate the applicant was on any medication. The only supporting documents are a print-out about the medication, which only describe the medication and identifies possible side effects.

AFPC/DPSIM recommends denial of the applicant's request to remove the LORs and Article 15, stating that while they cannot confirm the commander's action being just or not, they have concluded he/she followed proper procedures IAW AFI 51-202. Furthermore, there is insufficient evidence to indicate the commander's actions were a reprisal action.

Complete copies of the AFPC/DOSIM evaluations, with attachments, are at Exhibit C.

AFLOA/JAJM recommends denial to grant relief based on any error or injustice with the Article 15 process. Based upon the paper record submitted, they see no error or injustice that would warrant reversing the commander's decision.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In response to the Air Force evaluations, the applicant submits a personal letter to the Board indicating that key information had been taken out of the supporting documents for the Article 15. He claims the evidence was provided in the original submission, but also included it with his rebuttal. Additionally, he submitted print-outs of his patient health records which validate he was prescribed the medication (Micardis and Voltaren) that precluded him from passing the FA dated 2 Mar 12. Finally, the applicant states that on 31 May 13, he was separated from active duty under the Date of Separation program and would like to be reinstated as an E-6.

The applicant's complete response, with attachment is at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After thoroughly reviewing the evidence of record and noting the applicant's contentions, we are not persuaded the applicant has been the victim of an error or an injustice. In this respect, we note the applicant has provided insufficient evidence to show the contested FAs should be invalidated. Although he has provided documentation concerning the care and maintain of the heart rate monitored employed during the walk test, we had failed to provide an corroborating statements from the Fitness Assessment Cell, Fitness Training Leader, or eyewitnesses. While the applicant contends the LOR, dated 15 Dec 11, was issued as a result of the contested FAs failures, the evidence before us indicates the LOR was issued and the nonjudicial punishment was imposed due to his repeated failures to attend fitness training; specifically, fitness improvement training. There is no showing the nonjudicial punishment under Article 15 of the UCMJ, was improper or not within the commander's discretionary authority. Moreover, there has been no showing that is was rendered in reprisal for seeking relief through the AFBCMR. Based on the foregoing, we find no basis to show that he was not separated on 31 May 13, but on that date, continued to serve on active duty. Therefore, in view of the above and in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-01104 in Executive Session on 19 August 2014, under the provisions of AFI 36-2603:

XXXXXXXXXX, Panel Chair
XXXXXXXXXX, Member
XXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 25 Feb 13, w/atchs.
Exhibit B. Extracts from Military Master Personnel Record.
Exhibit C. Letter, AFPC/DPSIM, dated 7 Feb 14, w/atch.
Exhibit D. Letter, AFPC/JAJM, dated 7 Mar 14.
Exhibit E. Letter, SAF/MRBR, dated 21 Mar 14.
Exhibit F. Letter, Applicant, not dated.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-01161

COUNSEL: XXXXXXXX

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His records be corrected to reflect that he was not disenrolled from the United States Air Force Academy (USAFA), and that the Disenrollment Hearing be removed from his record.

2. His final grade in Astronautics (Astro) 310 be corrected to reflect a passing score.

APPLICANT CONTENDS THAT:

1. His dismissal from the USAFA was not factually substantiated and he was the victim of a conspiracy to cover-up the culture of alcohol abuse at the academy.

2. He was denied due process in his Disenrollment Hearing because he was only given four days' notice of the hearing instead of the required seven days.

3. The Superintendent of the USAFA relied on a biased and incomplete report from the Investigating Officer (IO), failed to consider newly discovered evidence and mitigating evidence, and subsequently provided incorrect statements to a Congressional inquiry.

4. His grades were changed following the initiation of his disciplinary proceedings to ensure he would not receive a graduation diploma.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 29 Jun 06, the applicant attended the United States Air Force Academy (USAFA) in cadet status.

On 28 Apr 10, the applicant's Vice Commandant initiated action to discharge the applicant from cadet status. The specific reasons for the action were as follows:

a. The applicant provided alcohol to cadets under the legal drinking age of 21, as evidenced by an Article 15, dated 19 Apr 10.

b. Two false official statements, as evidenced by an Article 15, dated 19 Apr 10.

c. Soliciting another cadet to make a false official statement, as evidenced by an Article 15, dated 19 Apr 10.

d. Consuming alcohol while prohibited, as evidenced by and AF Form 1168, Statement Of Suspect/Witness Complainant, dated 7 Apr 10, and an Air Force Cadet Wing (AFCW) Form 10, dated 6 Apr 10.

e. Violating a no contact order, as evidenced by an AFCW Form 10, dated 6 Apr 10 and;

f. Having unprofessional relationships with underclass cadets, as evidenced by an AFCW Form 10, dated 6 Apr 10.

The applicant was advised that he may present his case to a Hearing Officer, receive (if he choose to present his case to a Hearing Officer) all the rights of AFI 36-2020 and may use military witnesses provided the request for witnesses is timely submitted and, in the opinion of the Hearing Officer, the witnesses can present relevant evidence that cannot be reasonably received though videotape, deposition, interrogation, or sworn or unsworn written statement. The applicant was also advised of his right to submit statements in his own behalf, and waive the aforementioned rights. Lastly, the applicant was informed that he was to reply, in writing, no later than 5 May 10, stating the rights he choose. If he decided to waive the board proceedings, all matters he wanted reviewed by the Commandant and/or Superintendent were to be submitted on 5 May 10.

On 5 May 10, the applicant acknowledged receipt of the action and invoked his right to a hearing before a Hearing Officer. He elected not to submit statements on his behalf and not to submit a Resignation in Lieu of Disenrollment.

On 13 May 10, the Hearing Officer notified the applicant of the time, place and particulars of the hearing (17 May 10, 1300 hours, USAFA/JA Courtroom), the specific allegations in his case, the names of expected witnesses, and the documents she planned to consider at the hearing.

On 17 May 10, the hearing convened and on 25 May 10, the Hearing

Officer found by a preponderance of the evidence, the applicant committed each of the alleged offenses.

On 27 May 10, the applicant was served a copy of the findings and a verbatim transcript of the proceedings.

On 4 Jun 10, the applicant appealed the findings and requested that he be retained. He submitted written matters for the Commandant and Superintendent to consider regarding their retention/disenrollment decision.

On 18 Jun 10, the Superintendent directed the applicant be disenrolled from the USAFA due to misconduct, furnished a general (under honorable conditions) discharge, and recommended to the SECAF that he be ordered to monetarily reimburse the government for the cost of his Academy education.
On 8 Sep 10, the Secretary of the Air Force (SECAF) approved the Superintendent's Active Duty Service Commitment (ADSC) recommendation and ordered the applicant to reimburse the government for the cost of his education.

On 8 Aug 12, SAF/IGQ responded to the applicant's request for their office to review his case informing him that they have no authority to overturn the disenrollment decision by the USAFA. Additionally, they informed the applicant that they reviewed the process used by the USAFA and found no discrepancies. Lastly, they reviewed the calculation of his Astro 310 grade and concurred that his final grade was calculated correctly, without regard to other disciplinary processes going on at the time.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit C.

AIR FORCE EVALUATION:

USAFA/JA recommends denial indicating there is no evidence of an error or injustice. The applicant was afforded due process at his disenrollment hearing and additionally, the Secretary of the Air Force Personnel Council reviewed the case and decided based on the applicant's substantiated misconduct, he should monetarily reimburse the government for the cost of his USAFA education.

The applicant contends that his disenrollment hearing was conducted without giving him a seven day written notice. In accordance with AFI 36-2020, Disenrollment of United States Air Force Academy Cadets, paragraph 25.4 only states that before a hearing, the Hearing Officer provides a cadet with written notice of the time and place of the hearing, allegations he/she is charged with investigating, witnesses he/she intends to call, and documents he/she intends to consider. All of these due

process measures were complied with in the notification the applicant received from the Hearing Officer.

The applicant may have confused the seven day notice requirement with the timeframe referenced in the notification letter in accordance with AFI 36-2020, Attachment 4, which allows for seven days for the applicant to consult with civilian counsel regarding election of rights they are to make in the hearing officer venue. The applicant was put on notice on 28 Apr 10 that he had until 5 May 10, in compliance with the seven day requirement.

The applicant through his counsel identified the witness statements that the Hearing Officer considered as being unsworn statements. This is not true, in fact, the AF IMTs 1168, Statement of Suspect/Witness/Complainant, of the witnesses as well as the applicant, clearly indicate that they were sworn statements. Furthermore, all of the allegations set forth in the Article 15 process were found to be legally sufficient.

While the applicant and his counsel contend that the applicant was disenrolled as a consequence of him being a "whistleblower" due to a "cover-up" of an active conspiracy, it is important to note that the other cadets involved were held accountable for their infractions as well. Multiple agencies have conducted investigations in regard to inappropriate alcohol consumption and abuse by the USAFA baseball team and, as a result, new team rules were implemented and closer supervision of the program was put into effect. Nevertheless, there is no nexus between the team's culture and the substantiated allegations of misconduct that lead to the applicant's disenrollment.

As for the applicant's request pertaining to his astronautics grade, according to DoD Directive 1322.22, paragraph 4.5.5 and USAFA Instruction 36-3533, Requirements for Graduation, in order to graduate from the USAFA and receive a degree, a cadet must demonstrate an aptitude for commissioned service and leadership, be satisfactory in conduct, and meet all military training, physical education, and academic requirements. Based on these authorities, even if the applicant's grade in Astro 310 was changed to a passing grade, due to his misconduct, he would still not earn his degree. The applicant was deficient in both commissioned service and leadership and conduct. While the applicant argues that if his Astro 310 grade was changed to a passing grade, he would have completed all necessary work for a degree from the USAFA, an adequate academic record is not the sole basis for determining who is awarded a degree from the USAFA. The alcohol related misconduct is the basis of the applicant's disenrollment and a misconduct based disenrollment is what prevents him from being awarded a degree from the USAFA.

A complete copy of the USAFA/JA evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant's counsel on 2 May 13 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-01161 in Executive Session on 14 Jan 14, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2013-01161 was considered:

Exhibit A. DD Form 149, dated 4 Mar 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, USAFA/JA, dated 16 Apr 13.
Exhibit D. Letter, SAF/MRBR, dated 3 Dec 13.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-02419
COUNSEL:
HEARING DESIRED: YES

THE APPLICANT REQUESTS THAT:

1. Any and all references to his demotion action to the grade of Senior Master Sergeant (SMSgt), to include all referral Enlisted Performance Reports (EPRs), denial of reenlistment and any unsubstantiated allegations that formed their bases be removed.

2. His promotion to the grade of Chief Master Sergeant (CMSgt) be fully restored with the original Date of Rank (DOR) and effective date of 1 Sep 05.

THE APPLICANT CONTENDS THAT:

The demotion action taken by the 22nd Air Force Commander (22nd AF/CC) was erroneous, deficient and unjust.

The demotion authority improperly used the demotion process to address allegations of misconduct, incorrectly cited the wrong Air Force directive, and did not contain all of the specific reasons for the proposed action or a complete summary of all supporting facts, as required under Air Force Instruction.

The 22nd AF/CC did not have the legal authority to demote a CMSgt. No documentation was provided to establish delegation of authority from the Air Force Reserve Command, Vice Commander (AFRC/CV) to the Numbered Air Force Commander.

The demotion action was an arbitrary and capricious command action and subject to unlawful command influence as in United States v. Lewis, 63 M.J. 405 (C.A.A.F. 2006).

He requested a personal appearance during the demotion process in accordance with Air Force policy; however, he did not receive one. He was never given a copy of the full administrative record.

The bases for his denial of reenlistment were substantially identical to those cited in support of the demotion action; both are false and took place between 2005 and 2008.

In support of his appeal, the applicant provides a brief from counsel, copies of a Letter of Counseling (LOC), dated 8 May 07, with rebuttal; Letter of Admonishment (LOA), dated 11 Sep 07, with attachments; Letter of Reprimand (LOR), dated 5 Dec 07 and 31 May 08, with rebuttals; the Notification of Demotion, dated 9 Jun 09; appeal of the demotion action sent to the AFRC Commander (AFRC/CC); demotion action, dated 6 Jan 10, acknowledged on 18 May 10; award certificates; Enlisted Performance Reports (EPRs); civilian appraisals; two Commander Directed Investigations (CDIs), Air Force Office of Special Investigation (AFOSI) report; congressional inquiry; character reference letters, and various other documents associated with his requests.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 17 May 04, the applicant reenlisted for a period of six years in the grade of SMSgt. On 1 Sep 05, he was promoted to the grade of CMSgt.

According to the AFRC/IG report, dated 1 Dec 08, the IG conducted an investigation into allegations that the applicant had reprised against other members of his unit. The following allegations were filed:

On 12 Jun 08, the applicant restricted the Senior Noncommissioned Officer's (SNCO's) access to the squadron flying schedule in reprisal for making a protected communication, in violation 10 U.S.C. § 1034, as implemented by AFI 90-301, Inspector General Complaints Resolution. Finding: NOT SUBSTANTIATED.

On 28 Aug 08, the applicant issued a downgraded EPR to a SNCO in reprisal for making protected communication in violation of 10 U.S.C. § 1034, as implemented by AFI 90-301, Inspector General Complaints Resolution. Finding: SUBSTANTIATED.

According to an AFRC/JA letter, dated 18 Feb 09, a CDI was initiated after a second congressional inquiry raised allegations of wrongdoing against the applicant. A list of allegations reflects the applicant (1) altered civilian time cards and military pay cards between Dec 06 – Aug 07; (2) engaged in unprofessional conduct and inappropriate behavior by engaging in inappropriate personal conduct in his office; (3) engaged in unprofessional conduct and inappropriate behavior as the Flight Engineer Supervisor after a subordinate witnessed inappropriate personal conduct; (4) engaged in unprofessional conduct and inappropriate behavior by making inappropriate disclosure of a member's private medical information from Sep –

Oct 06; (5) engaged in unprofessional conduct and inappropriate behavior by inappropriately recording conversations with unit members without their knowledge or consent. All allegations were substantiated. JA stated that the investigation complied with all applicable legal and administrative requirements and there were no errors or legal irregularities.

In a letter, dated 9 Jun 09, the 514th Operations Group Commander (514thOG/CC) notified the applicant that he was recommending to the AFRC Commander (AFRC/CC) that he be demoted . The basis for the demotion action was his failure to fulfill NCO responsibilities.

According to his EPR, closing 9 Jul 09, the applicant received a referral EPR; with a performance assessment of "Does Not Meet Standards" in Section III, Item 6. There were also comments pertaining to the applicant's failure to assemble and lead a cohesive section which severely impacted squadron morale.

In a letter, dated 5 Oct 09, the 22nd Assistant Staff Judge Advocate (SJA) found that a legal basis existed to authorize the proposed demotion action. The basis for this demotion action was a violation of AFI 36-2503, paragraph 17.2 (dated 20 Jul 94), Failure to Fulfill NCO Responsibilities. The Assistant SJA noted that the actions substantiated in the IG Record of Investigation (ROI) and AFRC/CV CDI on the part of the applicant did not meet the standards expected of NCOs and opined that the proposed demotion action was authorized under the facts of the case.

According to Special Order AA-003, dated 26 Mar 10, the applicant was demoted to the grade of SMSgt, with an effective date and DOR of 6 Jan 10, in accordance with AFI 36-2503, para 17.2.

According to an AF Form 418, Selective Reenlistment Program Consideration, on 30 Apr 10, the applicant's commander non-selected him for reenlistment based on a pattern of disciplinary infractions, substandard attitude, performance and leadership which were inconsistent with the standards expected of an NCO.

On 18 May 10, the applicant acknowledged receipt of the demotion action. On 17 Aug 10, the applicant submitted an appeal to the AFRC/CC.

According to a letter, dated 7 Aug 10, the applicant submitted an Article 138 complaint alleging that his demotion to the grade of SMSgt was arbitrary and capricious. The 514th OG/CC responded, by letter, dated 22 Oct 10, stating his complaint was untimely because it was not submitted within 180 days of the demotion action. The commander advised the applicant that his complaint was denied because there was another complaint channel available to challenge any wrongs the commander may have committed during his demotion action. The letter also advised

that such complaints were not normally reviewed under Article 138. He was further advised that he had fully and vigorously exercised his procedural rights to challenge the commander's decision to demote him and the decision was fully reviewed and upheld through the procedures and appellate process of AFI 36-2503.

According to a 514th Force Support Squadron (514th FSS) letter, dated 13 Aug 10, the applicant met a reenlistment appeal board and the board recommended the applicant be allowed to reenlist. On 24 Sep 10, the 514th Air Mobility Wing Commander (514th AMW/CC) denied his appeal.

In a letter, dated 11 Jul 11, the Secretary of the Air Force Personnel Council (SAFPC) found the applicant did not serve satisfactorily in any higher grade than SMSgt and stated he would not be advanced on the Retired Reserve List under the provisions of Air Force Instruction 36-3209, Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members, para 5.14.8.

According to Reserve Order EK-5771, dated 31 Aug 11, on 5 Jan 12, the applicant was retired in the grade of SMSgt and was transferred to the Air Force Reserve Retired List, awaiting pay at age 60.

THE AIR FORCE EVALUATION:

AFRC/JA recommends denial. Prior to his last Air Force Reserve assignment the applicant had an exemplary record; however, he failed to fulfill his NCO responsibilities in this last assignment. After being provided with numerous opportunities to correct his behavior and supervisory skills, a demotion action was taken. This action was taken by the 22nd AF/CC who had been legally delegated this ability. The applicant's entire military record was reviewed by both the demotion authority and the demotion appellate authority (AFRC/CC). The demotion action is appropriate under the circumstances.

The following allegations were substantiated during a HQ AFRC/IGD reprisal investigation and a CDI directed by the AFRC/CV. The investigations substantiated allegations that, "on 28 Aug 08, you issued a downgraded EPR … in reprisal for making a protected communication. You engaged in inappropriate personal conduct in your office on 26 Apr 07, when discovered in a compromising position with a female employee, not your wife, who works on base, drinking alcohol in your office in front of subordinates on duty. You publicly communicated a veiled threat regarding the promotion opportunity of the witness who discovered and reported your indiscretions described above, an enlisted member of your unit junior in rank. You improperly disclosed medical information that had been provided to you.

The applicant claims that the demotion action taken by the 22nd AF/CC was erroneous, deficient and unjust in that the demotion authority improperly used this administrative process to address allegations of misconduct. There is valid basis for the demotion action. The numerous written counselings provided the applicant with ample opportunities to change his behavior and improve his management skills. The demotion action was not used in lieu of other more appropriate discipline; it was the appropriate tool to address this culmination of supervisory failures on the part of the applicant. Although the applicant was brought in to correct deficiencies in the unit, his actions made the situation worse. He inflamed the fires of mistrust and disrespect by secretly recording conversations, divulging private medical information in violation of the Privacy Act and acting inappropriately in his office. An example of the applicant's failure to fulfill his NCO responsibilities was his disrespectful response to his 8 May 07 LOC.

He claims the 22nd AF/CC did not have the authority to act on a demotion action for a CMSgt. However, the applicable AFI is AFI 36-2503, Administrative Demotion of Airmen, dated 20 Jul 94, which was in effect at the time of demotion initiation. The AFI has been superseded by AFI 36-2502, Airmen Promotion/Demotion Programs, dated 31 Dec 09, but that AFI does not apply to Reserve personnel. Therefore, AFPD 36-25, Military Promotion and Demotion, is the authority to demote in the Reserve, and AFI 36-2503 is used for administrative guidance.

He also claims that the demotion action was an arbitrary and capricious command action and was subject to unlawful command influence. The applicant states that the unlawful command action complaint is based on "an overreaction to a Congressman's communication with the Air Force. To his credit, the CDI Investigation Officer (IO) did document those communications and revealed that pressure from the Congressman caused headquarters to order reinvestigation of allegations previously found to be unsubstantiated." However, there is nothing in the application (or alleged in the application) that shows the findings of the CDI were based on pressure from the Congressman.

Finally, the applicant claims that he requested a personal appearance during the demotion process and was denied a personal appearance. This is simply untrue. When the 22nd AF/CC reviewed the demotion appeal he asked whether a personal hearing was held and asked for a Memorandum for the Record (MFR) summarizing the meeting. The 22nd AF/CC felt the applicant should have been provided the opportunity. The OG/CC provided an MFR that summarized his meeting with the applicant on 15 Apr 10. He discussed the circumstances surrounding the demotion and the applicant explained why each allegation was inaccurate. However, as with the application to the Board, the applicant did

not present any new evidence. Accordingly, there was no procedural deficiency because he did have a personal hearing.

The evidence provided by the applicant does not show the demotion and appellate authorities did not review his prior outstanding military record. In fact, it shows the opposite. During his demotion response and appeal, the applicant provided all of his EPRs, awards, training certificates, and numerous character statements. All of this information provided by the applicant was reviewed by both the demotion authority and the demotion appellate authority in making the final decision to demote.

The complete AFRC/JA evaluation is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

Counsel noted several facts in the advisory opinion related to the administrative record were inaccurate.

First, it incorrectly asserts that the applicant was demoted on 26 May 10. However, the demotion was effective on 6 Jan 10. Second, the opinion incorrectly asserts the applicant’s End Of Service (ETS) [sic] was 16 Apr 11; however, his Extension of Enlistment, dated 16 Aug 11, correctly reports his Expiration Term of Service (ETS) as 16 Aug 11. Third, the advisory opinion incorrectly reports that the applicant retired from the Air Force Reserve on 27 Jul 11, when he was actually transferred to the Retired Reserve on 5 Jan 12.

In addition to these inaccuracies, the advisory opinion incorrectly summarizes the applicant's claims by omitting his allegations of error and injustice relating to the claims raised during the demotion appeal action.

The advisory opinion falsely claims that the IG substantiated an allegation that the applicant “was drinking alcohol in his office with subordinates.” No such allegation was ever made or investigated and no such finding was ever made.

Rather than recapitulating the information and arguments contained within the demotion action appeal, the applicant respectfully requests the Board consider the actual merits of the allegations as discussed at length therein. The advisory opinion fails to address the underlying truth or falsity of the disputed facts it asserts as “background.” Its analysis is thus both superficial and lazy in condemning the applicant without meeting his arguments or addressing his evidence. The Board has "an abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief." Caddington v. United States, 178 F Supp. 604,607 (Ct.Cl.1959). The advisory opinion

fails to assist the Board in this most basic task.

With respect to the applicant's claim of error and injustice relating to the misuse of the demotion action to address allegations of misconduct, the advisory opinion grossly mischaracterizes the record. The demotion action was not initiated to address "supervisory failures" or lack of improvement in “management skills.” There is no discussion of the applicant's job performance or mission accomplishment in the Notification of Demotion Action, dated 9 Jun 09. Instead, the notification addresses itself exclusively to CDIs, "allegations of personal and professional misconduct," and the listing of four specific allegations of misconduct.

Counsel highlights the applicant’s outstanding performance, kudos, accolades and awards. He notes the additional rater’s comments in the applicant’s EPR that the applicant had "superior abilities" and was an "extremely valuable Senior NCO [who] helps squadron leadership manage multiple high-visibility issues daily." He also noted that the additional rater who made these comments was the officer who initiated the demotion action.

The advisory opinion selectively quotes from a Board’s opinion, which is not precedential. The assertion that AFI 36-2502, which does not apply to Reserve personnel, superseded the authority of AFI 36-2503 regarding the demotion of Reserve CMSgts is unsupported in law. AFI 36-2502 is dated 6 Aug 02, so the claim that it both superseded AFI 36-2503 and that AFI 36-2503 was the governing AFI in effect at the time of demotion initiation in this case is incomprehensible. Similarly, the language quoted from BC-2012-02002 indicates the Board determined AFI 36-2503 would continue to be used as procedural guidance when implementing demotions. Thus, this is not a situation where military commanders lacked guidance from the Secretary.

Moreover, the advisory opinion provides no document or other proof that "the commander" issued verbal instructions unlawfully modifying the expressed directive of the Secretary of the Air Force contained in paragraph 16.1.3 of AFI 36-2503 that the demotion authority for CMSgts is the HQ AFRC Vice Commander (AFRC/CV). Interestingly, the legal review of 5 Oct 09, indicates in paragraph 2.b that the designation of the 22nd AF/CC was made by the AFRC/CV, and not “the commander.” Like the other branches of the military, the Air Force is governed by written regulations and instructions, and is required to abide by them. See, e.g., WG. Cosby Transfer & Storage Corp. v. Froehlke, 480 F.2d 498 (4th Cir. 1969) "The Service's regulation itself provides the applicable law for judicial review of the agency action because it carefully defines the limits of the commander's discretion ….”

In keeping with its cavalier approach, the advisory opinion dismisses concerns raised about unlawful command influence by

writing “There is nothing in the application (or alleged in the application) that shows that the findings of the CDI were based upon pressure from the Congressman.” The application, which specifically enclosed and incorporated the demotion action appeal by reference, shows the existence of such improper influence in detail in paragraphs 29 - 40 and 79 - 81. The applicant has never been provided with the official response to the first congressional inquiry of 28 May 08. However, at Tab Q of the demotion action appeal is a copy of a document that purports to contain suggested responses. Critically, the suggested responses exonerated the applicant of virtually all wrongdoing.

The ROI clearly documents that the congressman contacted the Air Force the day after receiving a second inquiry from a former member of the applicant’s unit and complained of discrepancies in the response his office received.

The congressman requested a new investigation be conducted by new investigator(s) and communicated that "I am sure you'll agree that this is not a good situation." The IO was informed in "veiled" language by AFRC/CV and the congressman’s office that the Air Force's first response to the complaint did not reach the desired conclusions, which led to searching out facts and circumstances of alleged unprofessional conduct/inappropriate behavior from on or about 2005 until 2008."

First, by virtue of the IO’s assignment to review the findings and conclusions of the Wing/CC's response to the former SNCO’s first congressional inquiry, the not-too-subtle implication was the IO was assigned to reverse them.

Secondly, the bar was lowered from the investigation of "misconduct" and "violations of the UCMJ" to now merely looking into "unprofessional" or "inappropriate" behavior.

Thirdly, the investigation was widened from one examining discreet specific allegations into a witch-hunt involving all possible inappropriate behavior between 2005 and 2008, thus allowing reexamination of matters previously addressed and found unsubstantiated.

Lastly, the advisory opinion attempts to paper over the applicant's allegation that he was not afforded a personal hearing in accordance with paragraphs 19.2 and 19.3 of AFI 36-2503. The advisory opinion asserts about a summarized meeting between the applicant and the commander, on 15 Apr 10. This statement is simply unbelievable. No such MFR has ever been provided to the applicant. The 22nd AF/CC approved the applicant's demotion on 6 Jan 10, wherein he indicated that he "considered all materials presented by the applicant, including a rebuttal dated 21 Aug 09." Special Order AA-003 dated 26 Mar 10, confirmed the verbal orders of the commander demoting the

applicant effective 6 Jan 10. Thus, this 15 Apr 10 "meeting," which did not constitute a personal hearing, reportedly took place well after the demotion had already been approved and confirmed by the Special Order. Paragraph 19.3 of AFI 36-2503 requires the initiating commander to write a summary of the personal hearing that must be included as part of the case file and considered as part of the SJA legal review. No such summary has ever been provided to the applicant and there is no reference to any personal hearing. Moreover, on 7 Aug 10, the applicant submitted a Complaint of Wrongs under Article 138, UCMJ against the commander, specifically, for his failure to afford the applicant a personal hearing and his failure to adequately and personally investigate and address the allegations.

In further support of his appeal, the applicant provides counsel's statement; copies of letters of support; demotion notification/appeal actions and various other documents associated with his requests.

The applicant's complete response, with attachments, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After a careful review of the available evidence of record and the applicant's complete submission, we do not find evidentiary documentation that warrants restoring his grade to CMSgt or to remove any references to his demotion to the grade of SMSgt, his denial of reenlistment or the unsubstantiated allegations that formed their bases. In this respect, we note, there are four main arguments the applicant's submits that are paramount to his case. a) the demotion action is erroneous, deficient, and unjust; b) the 22nd AF/CC did not have demotion authority; c) he did not receive a personal hearing IAW the governing Air Force authority; d) his demotion action was arbitrary and capricious. However, AFRC/JA has conducted an exhaustive review of the applicant's issues and we are in agreement with their recommendation that relief is not warranted. Also pointed out in rebuttal, counsel notes that there were a few misstatements in the advisory opinion as to the applicant's effective date of promotion, his ETS and retirement date, and misplaced allegations noted in the CDIs and the IG report that falsely claimed that the IG substantiated an allegation that the applicant "was drinking alcohol in his office with

subordinates." We did not find any such allegation in the IG report. In our view, the IO investigation determined that the applicant admitted to drinking in his office; however, there was no such allegation substantiated in the CDI or the IG report. Counsel's mention of these comments is noteworthy. Further, we reviewed the applicant's complete record, including the evidence provided by the applicant himself, and these inconsistencies noted in the advisory opinion had no bearing on our understanding or the facts which led us to our determination in this case.

As a matter of clarity we provide the following:

a. Regarding counsel's argument that the demotion action was erroneous, deficient and unjust and that procedurally it was more appropriate to handle allegations of misconduct through the UCMJ. While we agree that Air Force policy requires that commanders not use administrative demotions when it is more appropriate to take actions specified by the UCMJ, the applicant was demoted based on his failure to fulfill his NCO responsibilities. The Air Force gives commanders considerable deference in such matters, and we are not convinced by the evidence provided that the administrative actions taken by his commanders were inappropriate or beyond their scope of authority, or that the actions taken were precipitated by anything other than the applicant's own conduct. Prior to the applicant's demotion several actions were used, including a LOC, two LORs, and a LOA, in an attempt to rehabilitate the applicant, prior to demoting him for failure to fulfill his NCO responsibilities. Further, we note in response to the LOC, after explaining his position, the applicant told his commanding officer, "So you have my signed LOC and to be quite frank I don't care what you do with it." Accepting counsel's argument regarding the applicant's record of outstanding performance and the applicant's promotion to CMSgt as a result thereof, we find the commander's decision to pursue demotion on the basis of the applicant's conduct, which essentially is a failure to fulfill his NCO responsibilities, a reasonable action under the circumstances. While the applicant and counsel may disagree with the commander's decision, they have not provided evidence that convinces this Board the action was arbitrary or capricious.

b. In respect to counsel's argument that 22nd AF/CC did not have demotion authority for CMSgts, we note that at the time the demotion action was initiated the governing AFI 36-2503, dated 20 Jul 94, was the authority; however, on 31 Dec 09, AFI 36-2502 was revised which superseded AFI 36-2503, but it did not apply to the Air Force Reserve members. So, while we can understand why counsel may be confounded by the Air Force's governing authority in this matter, we do not find that counsel's argument has merit. In our view, this new AFI negated the authority delegated to AFRC/CV to demote a CMSgt and the verbal order of the commander as well. Therefore, AFPD 36-25 became the

governing guidance which gives the AFRC/CC the authority to demote an Air Force Reserve member. In addition, as noted in the advisory, JA opined that while AFPD 36-25 was the governing authority, AFI 36-2503 was used as guidance. JA further notes that the applicant's demotion action was reviewed by AFRC/CC on appeal, which in our view afforded the applicant full administrative due process in the demotion action.

Additionally, we note that counsel makes reference that JA's opinion that AFI 36-2502 superseded AFI 36-2503 is incomprehensible, we would like to note that counsel is referencing the AFI 36-2502, dated 6 Aug 02; however, AFI 36-2502 was revised on 31 Dec 09, which is the authority that superseded AFI 36-2503.

c. Counsel argues that the applicant did not receive a personal hearing IAW the governing AFI in effect at the time. As noted above, AFI 36-2503, the governing directive in effect when the demotion action was initiated, was superseded prior to the demotion action being completed. Hence, it could be argued that a personal hearing was no longer necessary; nonetheless, the applicant was still afforded a personal hearing under the previous guidance. In this respect, as previously noted in JA's opinion, while considering the demotion action under appeal, the 22nd AF/CC discovered that the record did not have a summary of a personal hearing and requested a MFR summarizing the hearing. The 22nd AF/CC was advised that a hearing was held on 15 Apr 10 and the initiating commander, 514th OG/CC, provided him a summary of the hearing. The applicant acknowledged receipt of the demotion action and elected to appeal this action. The 22nd AF/CC considered the available evidence and the applicant's appeal was forwarded to the AFRC/CC, who was the approval authority, for final action. While clearly the personal hearing in this case did not occur as normally required in the original policy, the question for this Board was whether the applicant received the benefit of the personal hearing albeit not in the normal order. We believe so as we note there was still a clear opportunity for the demotion action to be stopped had the promotion authority found merit in the applicant's arguments. In the applicant's submission, he provides a copy of the appeal addressed to the AFRC/CC that was submitted by counsel, and his demotion action was upheld.

d. Counsel argues that the demotion action was the result of arbitrary and capricious action by the demotion authority that contravened the governing service regulations. In support of this contention, counsel notes a military justice court case (United States v. Lewis, 63 M.J. 405 (C.A.A.F. 2006) where the court ruled that the applicant was demoted under the UCMJ based on pressure from outside influences. Even though counsel makes the argument that the CDI(s) were the result of pressure from a Member of Congress, we do not find the circumstances under the reference case more than superficially similar to the circumstances which led to the applicant's demotion. The

applicant was administratively demoted based on a failure of his NCO responsibilities and as noted above, we did not find the evidence sufficient to establish that the commander improperly used his discretionary command authority. In our view, the involvement of the Member of Congress was at the behest of another military member assigned to the unit. Thus, we find it reasonable for the unit to respond to the expressed concerns. Based on our review of the CDI(s), it appears that those incidents of misconduct substantiated by the investigating officer were supported by sufficient evidence. Consequently, it follows that the commander had justification for the action taken. Based on the evidence presented, the applicant has not presented evidence that the demotion action was influenced by the Congressman or that the CDI(s) was conducted with a preconceived outcome. Therefore, while counsel believes the CDI(s) was the result of outside influence, we did not come to this conclusion. In our view, the commander's determination to demote the applicant was a result of the substantiated allegations, not any outside influence.

5. On balance, we concede that there were administrative errors, misstatements and confusion surrounding the demotion action at the center of this case. However, we find no basis to substitute our judgment for that of the commanders involved in this case. In our view the issue is not whether or not we believe the applicant should have been demoted, rather does the evidence support there has been an error on the part of the Air Force that raises the action to the level of an injustice. We do not think so. Based on a preponderance of evidence, we do not find the applicant has been deprived of due process and do find that, although not administratively perfect, the process was sufficient to provide him fair and equitable consideration. Therefore, in view of the above, we find no basis to recommend granting the relief sought in this application.

6. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-02419 in Executive Session on 26 Jun 14, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 16 May 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFRC/JA, dated 16 Jul 13.
Exhibit D. Letter, SAF/MRBR, dated 5 Aug 13.
Exhibit E. Letter, Counsel, dated 2 Sep 13, w/atchs.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-02735

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. Her narrative reason for separation be changed to reflect medical rather than miscellaneous/general reasons.

2. She be evaluated by a Medical Evaluation Board (MEB).

APPLICANT CONTENDS THAT:

While on active duty, she was sexually assaulted. Although she sought medical care days after the assault, she believes she was not provided adequate support or allowed the appropriate time to adjust or recover after the incident due to her chain of command's attitude towards the assault. She separated from the Air Force within a year after her assault due to her emotional problems. Her frame of mind after the sexual assault affected her ability to make a reasonable decision regarding her separation. She was not provided adequate counseling regarding her options during the discharge process.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 27 Feb 07, the applicant commenced her enlistment in the Regular Air Force.

On 17 Jul 10, the applicant presented to the emergency room reporting she was sexually assaulted the previous evening.

On 11 Jun 11, the applicant submitted a request for voluntary separation noting she was having difficulties coping with the Air Force since the sexual assault. She noted the assailant was from another branch of military service. She further noted she was having difficulties with being separated from her husband

who was her biggest supporter.

On 25 Jul 11, the applicant was honorably released from active duty with a narrative reason for separation as miscellaneous/ general reasons. She was credited with 4 years, 4 months, and 29 days of active service.

AIR FORCE EVALUATION:

The AFBCMR Medical Consultant recommends denial noting there is no evidence of an error or injustice with respect to the applicant's separation from the Air Force. While on active duty the applicant was sexually assaulted. Although she received appropriate emergent care and follow-up counseling, her medical condition was never considered to have interfered with her duties to warrant extended profile restrictions, long-standing prohibition of worldwide qualification, or referral for a Medical Evaluation Board (MEB). This is evidenced by her consistent release to duty without restrictions, except for one three-month period, throughout her period of treatment; following which she was, again, returned to duty without restrictions. She alleges she was not provided adequate support by her chain of command. However, there is no evidence showing she was subject to any reprisal, disciplinary action, or gender discrimination due to her chain of command's lack of support.

As for the portion of her request for a medical separation/retirement, the military Disability Evaluation System (DES) was established to maintain a fit and vital fighting force and can by law only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on future occurrences. Under the Department of Defense Instruction (DODI) 1332.32, Physical Disability Evaluation, a service member shall be considered unfit when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating to include duties during a remaining period of Reserve obligation. Therefore, while the applicant's record does reflect she sought and received mental health counseling prior to her separation, there is no indication that her condition was determined to be so severe as to warrant processing through the military DES.

As for her contention she was not given adequate or proper support and treatment, the medical entries in her records reflect she received regular and follow-up care throughout her military service. The Medical Consultant notes the heightened concerns for sexual assault in the military services, and the instances in which improper or no actions were taken against the

assailants. Although documentation related to the legal proceedings have not been supplied, the applicant reports that her assailant was found guilty via court-martial and sentenced to two years in prison.

The Department of Defense (DOD) and the Department of Veterans Affairs (DVA) operate under a different set of laws with different purposes. The DVA is authorized to offer compensation for any medical condition with an established nexus with military service, without regard to its demonstrated or proven impact upon a service member's retainability, fitness to serve, narrative reason for release from service, or the length of intervening time since release from service. The laws that govern the DVA compensation system allow awarding compensation ratings for conditions that were not unfitting during military service or at the time of separation. This is the reason why an individual can be found fit for release from military service for one reason and sometime thereafter receive a compensation rating from the DVA for a service-connected, but not militarily unfitting condition. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) as the level of impairment from a given service connected medical condition may vary (improve or worsen) over the lifetime of the veteran.

A complete copy of the AFBCMR Medical Consultant's evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 10 Sep 13 for review and comment within 30 days (Exhibit C). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the AFBCMR Medical Consultant and adopt his rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice with respect to her discharge

processing. The applicant contends that due to the trauma of being sexually assaulted she should have been evaluated by a medical evaluation board (MEB) and receive a medical discharge. However, we find no evidence of a medical condition of such a severity that it rendered the applicant unfit to perform her duties, thus warranting evaluation through the disability evaluation system (DES) at the time of her separation. The applicant further alleged she was not provided adequate support by her rating chain following the sexual assault. However, there is no evidence she was prohibited from seeking medical care (to include mental health) or subjected unfair treatment by her chain of command. Ultimately, while we are very sensitive to the applicant's plight, neither the evidence of record, nor the documentation provided by the applicant are sufficient for us to conclude that she should have been found unfit at the time of her separation and, thus, entitled to processing under the DES. As indicated by the AFBCMR Medical Consultant, the Department of Defense can only offer disability compensation for unfitting conditions that caused the early termination of a member's military career. On the other hand, the Department of Veterans Affairs is empowered to evaluate any medical condition incurred in the line of duty, not just those rendering a member unfit, and provide disability compensation. As such, we believe the applicant would be well-served to avail herself of the services of the DVA to ensure that any potential chronic effects of the sexual assault are appropriately treated and evaluated in the proper venue. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-02735 in Executive Session on 17 Apr 14, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2013-02735 was considered:

Exhibit A. DD Form 149, dated 18 Jun 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records
Exhibit C. Letter, AFBCMR Medical Consultant, dated 6 Sep 13.
Exhibit D. Letter, AFBCMR, dated 10 Sep 13.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-02836

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. Her records be corrected to change her mandatory separation date (MSD) from 31 Dec 12 to 31 Dec 15 to allow retirement eligibility.

2. She be reinstated into her Individual Mobilization Augmentee (IMA) position.

3. She be granted constructive service credit from the date of her 31 Dec 12 discharge.

APPLICANT CONTENDS THAT:

She was unjustly denied a MSD extension after performing almost 18 years reserve service. She received notification of disapproval for her MSD extension only two months prior to entering sanctuary despite being continually led to believe that she would be able to serve until she attained sufficient service to qualify for retirement. Health professions officers are authorized to be retained until age 68; however, she was involuntarily separated from active status when she was only 64, two months prior to entering sanctuary, when she would have been automatically retained until she qualified for retirement. She requested a MSD waiver to reach retirement eligibility, but her request was denied even though there is a critical need for her specialty.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant's military personnel records indicate that she commenced her service in the Air Force Reserve on 3 May 95.

On 8 May 07, ARPC/DPPRS notified the applicant that her MSD was recomputed and changed from 31 Dec 08 to 31 Dec 10 due to a change to Title 10, United States Code, Section 14509, as implemented by the Fiscal Year 2007 National Defense Authorization Act (NDAA).

On 4 Aug 10, by action of the Secretary of the Air Force (SecAF), the applicant's request for an extension of her 31 Dec 10 MSD to 31 Dec 16 (age 68) was disapproved; however, her retention in active status until 31 Dec 12 (age 64) was approved.

On 12 Mar 12, the applicant requested retention in active status until reaching age 68 (31 Dec 16).

On 31 Dec 12, the applicant's MSD expired.

On 13 Mar 13, AFRC/CC recommended disapproval of the applicant's request, citing over-manning (140 percent) in the applicant's specialty.

On 20 Mar 13, the SAFPC disapproved the applicant's request for retention until age 68.

On 24 May 13, by direction of the President, the applicant was honorably discharged, effective 31 Dec 12.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility, which are attached at Exhibits C, D, and E.

AIR FORCE EVALUATION:

AFPC/DPTT recommends denial indicating there is no evidence of an error or an injustice. The applicant requested an extension to her MSD to allow her the opportunity to complete 20 years of satisfactory service for retirement. The SecAF disapproved her request and she was discharged on 31 Dec 2012.

A complete copy of the AFPC/DPTT evaluation is at Exhibit C.

AFRC/A1K recommends denial indicating there is no evidence of an error or an injustice. The Secretary of the Air Force Personnel Council (SAFPC) acts as SecAF delegated authority to make decisions on MSD extension requests. As such, the command supports the decision of SAFPC and its decision precludes reinstatement and credit for retirement as requested by the applicant.

A complete copy of the AFRC/A1K evaluation is at Exhibit D.

SAF/MRBP recommends denial indicating there is no evidence of an error or injustice. The applicant is a Reserve Clinical Social Worker who was age 64 and had 17 years, 7 months, and 28 days of satisfactory service when SAFPC reviewed her request for an MSD extension on 20 Mar 13. On 12 Mar 12, the applicant submitted a request for a two-year MSD extension under Title 10, USC, Section 14703. Her reason for requesting this waiver was to retire with twenty years of service. While her unit of assignment recommended approval, the Resource Management Group (RMG) Program Manager, RMG commander, and Commander, Air Force Reserve Command (AFRC) recommended disapproval indicating that the manning in the applicant's career field did not support her retention. Specifically, the AFRC Commander indicated there is no operational requirement for approval of the applicant's request. The AFRC-wide clinical social worker (42S3/4) manning was 140 percent (22 authorized, 29 assigned). Clinical social worker (42S3/4) was not listed as a Reserve Component Wartime Health Care Specialty with critical shortages. SAFPC recognized the applicant had more than 17 years of satisfactory service toward retirement; however, they cited over-manning in the career field and recommendations for disapproval from the command as their rationale for the decision. While it is unfortunate the applicant will not receive a 20-year Reserve retirement, the manning in her career field did not support her retention beyond her MSD.

A complete copy of the SAF/MRBP evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reiterates that an additional two years would allow her the opportunity to retire with 20 years of service. She is well supported by military members that worked for her and with her, attesting to her exemplary service and meeting the needs of the Air Force Mental Health community. However, individuals that do not know her made the decision of not allowing the extension of her MSD. Upon her initial commissioning there was no waiver requirement; however, the rules were apparently changed and she was asked to submit a request for an age waiver. She was not allowed to extend her MSD for the third time due to manning; however, it was approved the first time. She does not understand how mental health cannot be considered critical in this time when men and women are seeking services in the record numbers due to the effects of wartime commitments. She argues that she is suffering from retribution as she was considered a "whistle blower" (Exhibit H).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an injustice. The applicant argues that she was consistently told that she would be able to serve long enough to qualify for a reserve retirement and that the denial of her mandatory separation date extension, so close to qualifying for retention under the provisions of sanctuary, renders her the victim of an injustice. After a thorough review of the evidence of record and the applicant's complete submission, we believe it is in the interest of justice to recommend corrective action. While there is no evidence the denial of the applicant's mandatory separation date (MSD) extension was inappropriate to the circumstances, arbitrary or capricious, or represented an abuse of discretionary authority, we believe the inordinate delay in the denial of the applicant's MSD extension, resulting in her being notified several months after her MSD had expired, and just two months prior to qualifying for retention beyond her MSD, renders her the victim of an injustice. In this respect, we note the applicant timely requested an extension of her 31 Dec 12 MSD in Mar 12; however, it appears that, for whatever reason, an entire year elapsed before the applicant's request was processed by SAFPC, resulting in her being notified of the denial five months after her MSD expired and just two months prior to her attaining 18 years of reserve service when she would have qualified for automatic retention until qualifying for a reserve retirement. In our view, and in light of the unique circumstances at play in this particular case, we believe the inordinate delay on the part of the Air Force in notifying the applicant of its decision, taken together with the resultant timing of the response to the applicant, served to create the expectation that the applicant's request would ultimately be approved. Therefore, we believe it would be in the interest of justice to recommend her records be corrected to reflect that competent authority approved her request for an MSD extension until 3 May 15 when she would have been eligible for reserve retirement and that she was not discharged on 31 Dec 12, but continued to serve as an Individual Mobilization Augmentee (IMA). Additionally, we find it appropriate to credit her with the pay and points required to ensure the period 31 Dec 12 through the date of this decision is satisfactory service for retirement purposes. In arriving at the appropriate amount of credit to be awarded, we calculated the average of her participation during the five years preceding her original MSD. While we note the applicant is requesting that her records be corrected to reflect a new MSD of 31 Dec 16, in our view, the corrections noted above constitute proper and fitting relief. With this recommendation, the applicant is free to continue to serve as an IMA, provided she is otherwise qualified, so she can attain the requisite satisfactory service

required to ensure that the period ending 3 May 15 is satisfactory service. Therefore, to preclude any further injustice to the applicant, we recommend her records be corrected to the extent indicated below.

4. We note that in her rebuttal response, the applicant indicates that she was known as a "whistleblower," the implication being the denial of her MSD extension renders her the victim of reprisal in violation of the Whistleblower Protection Act (10 USC 1034). However, after a thorough review of the evidence of record, notwithstanding our determination above of a probable injustice, we have determined the applicant has not established that the denial of her MSD extension was in any way motivated by retaliation for making protected communications. In reaching this determination, we note that other than her own uncorroborated assertions, she has submitted no evidence that she initiated a protected communication or of the existence of a reprisal motive. Therefore, absent evidence to the contrary, we find no basis exists upon which to recommend granting any relief other than that indicated below.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD REOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that:

a. On 30 Dec 12, competent authority approved her request for an extension of her mandatory separation date (MSD) until 3 May 15.

b. On 31 Dec 12, she was not discharged from all appointments, but continued to serve as a member of the Air Force Reserve.

c. She was awarded 102 paid active duty (AD) points, 21 paid inactive duty training (IDT) points, and 15 membership points for the retention/retirement (R/R) year 3 May 12 through 2 May 13, resulting in 138 total retirement points and one year of satisfactory Federal service for retirement, instead of 58 AD points, 24 IDT points, 15 membership points.

d. She was awarded 102 paid AD points, 21 paid IDT points, and 15 membership points for the R/R year 3 May 13 through 2 May 14, resulting in 138 total retirement points and one year of satisfactory Federal service for retirement.

The following members of the Board considered AFBCMR Docket Number BC-2013-02836 in Executive Session on 18 Mar 14, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 7 Jun 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, ARPC/DPTT, dated 29 Aug 13.
Exhibit D. Letter, AFRC/A1K, dated 11 Sep 13.
Exhibit E. Letter, SAF/MRBP, dated 22 Oct 13.
Exhibit F. Letter, SAF/MRBC, dated 22 Oct 13.
Exhibit G. E-mail, AFBCMR, dated 29 Oct 13.
Exhibit H. Letter, Applicant, dated 8 Nov 13.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-03314

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His records be corrected based on being the victim of a substantiated case of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 July 2007, and 10 U.S.C. § 1034 to reflect monetary damages in the amount of $1,525,000 for back pay and allowances, out-of-pocket medical expenses, interest, attorney fees and other compensatory damages allowed under the law.

In addition to the monetary requests, the applicant requests the following corrections be made to his record:

104 days of leave be restored;

He be promoted to the grade of Technical Sergeant (TSgt, E-6) retroactive to 2006 until the date he was commissioned in the Army National Guard (2008).

He be awarded the 7-skill level in Air Force Specialty Code (AFSC) 2A373, Tactical Aircraft Maintenance;

His Reentry (RE) Code of "2X" which denotes "1st term, 2nd term or career airmen considered but not selected for reenlistment" be changed;

His records reflect that he was commissioned as an officer in 2008;

His records be corrected to show that he was retired in the grade of captain (O-3) with 20 years of service.

He also requests the following documents be removed from his records:

Negative feedbacks;

The directed referral for Mental Health (MH) evaluation and all documents referencing Obsessive Compulsive Personality Disorder (OCPD) and the 15 July 2005 privacy violation;

The AF Form 418, Selective Reenlistment Program Consideration, dated 17 July 2006;

His referral EPR for the reporting period of 9 October 2004 to 8 October 2005;

The Article 15 and courts-martial action. [No documentation in applicant's Master Personnel Records (MPR)].

In lieu of the above requests, he would accept return to active duty as an officer and flight school attendance.

APPLICANT CONTENDS THAT:

His application is the result of substantiated findings from an official Secretary of the Air Force Inspector General (SAF/IG) and Department of Defense Inspector General (DOD/IG) complaint.

Very little advice is available for the Whistleblower except that it is everyone's duty to report illegal and unsafe actions. Huge laws are in place to protect Whistle Blowers and prevent reprisal; but no support after reprisal is found. He contacted well over 20 attorneys seeking information on what to request; or what being made whole is. None felt qualified enough to help him. His interpretation of being made whole is fixing him as if none of these negative events ever happened.

In July 2005, he reported unsafe aircraft maintenance practices and illegal actions by his chain of command to the IG at Eielson AFB, AK. His complaint was further reviewed by the 11th Air Force IG (11 AF/IG), Pacific Air Forces IG (PACAF/IG), SAF/IG and the DOD/IG.

As a result of his IG complaint, his commander initiated an Article 15, preferred courts-martial charges and referred him for a command directed MH evaluation. He was denied an upgrade of his AFSC to the 7-skill level, denied reenlistment, ordered not to go outside of his chain of command, assigned demeaning duties, was slandered and harassed. He also received a "1" [sic] on his referral EPR. This made him ineligible for promotion and was used to support his court-martial, discharge, removal from the flight line, demeaning duties, command directed MH evaluation, and every negative event that his chain of command put him through.

Being denied reenlistment not only crushed his lifetime dream; it left him jobless, homeless, and ill prepared for civilian life. He had no intentions of leaving the military. He would have been approved for reenlistment were it not for the reprisal actions taken against him. As a result of his re-enlistment denial and reprisal, he lost his health benefits and wages. At the time he and his wife were expecting a child.

His 7-skill level upgrade request was signed by his supervisor; however, after identifying the unsafe maintenance practices, it was denied and he was placed in training status code “T” for "failure to complete upgrade."

The wing IG stated they were not going to investigate. Feeling like he had nowhere else to turn he went to Life Skills to talk to someone. He shot himself in the foot by talking to MH. Immediately after his appointment everyone on the flight line knew about his visit to Life Skills. Shortly thereafter he was called into the flight commander’s office with his supervision chain and was involuntarily escorted by two Senior Noncommissioned Officer (SNCO's) back to MH for another evaluation. He was shamed, ridiculed, and embarrassed. Now his command had a "mental disorder" to finally get rid of him. His outreach for help was met with a diagnosis of a mental disorder, no contact orders, and his guns were taken away from him.

He was forced to use 30 days of terminal leave as a result of his non selection for reenlistment. Had he been allowed to continue service, he would have accumulated another 60 days of leave in 2007 and 2008.

Despite being kicked out; he graduated cum laude from Embry Riddle, earned a commission, and a flight school spot. He is no screw up and deserves every bit of what he is requesting.

The applicant’s complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 8 February 2001, the applicant entered the Regular Air Force.

On 12 July 2005, the applicant filed an IG complaint regarding unsafe maintenance practices IAW AFI 90-301, Inspector General Complaints Resolution.

According to the applicant’s AF Form 910, Enlisted Performance Report (AB thru TSgt), for the period ending 8 October 2005, he received a referral EPR with an overall rating of “2.” The report includes several comments regarding his behavior, performance, communication skills, respect for authority, integrity and OCPD. The rater and rater’s rater included the comment “do not promote.”

According to an AF Form 418, dated 17 July 2006, the applicant was not selected for reenlistment by the wing commander. The reasons include three command directed MH examinations performed in July, November and December 2005, indicating that he had a personality disorder which manifested as a preoccupation with details and rules, perfectionism to the point that it interfered with task completion, excessive devotion to work, inflexibility

about moral or ethical concerns, reluctance to delegate tasks and rigid or stubborn behavior. The AF Form 418 also indicates he struggled in the career field, received several Letters of Counseling (LOCs), demonstrated difficulty accepting and executing all military duties, instructions, responsibilities and lawful orders and difficulty accepting his own errors and feedback or critique. He demonstrated a preoccupation with his own personal goals of becoming an officer and a pilot to the detriment of his official duties and responsibilities. All of which is in direct opposition to his Noncommissioned Officer (NCO) responsibilities under AFI 36-2618, Enlisted Force Structure, paragraph 4.1.1. The applicant appealed the denial of reenlistment and on 10 September 2006 his appeal was denied by the Pacific Air Forces Director of Manpower and Personnel (PACAF)/A1).

The applicant's DD Form 214, Certificate of Release or Discharge from Active Duty, issued in conjunction with his 7 February 2007, release from active duty reflects he was discharged in the grade of Staff Sergeant (SSgt, E-5) with an RE Code of "2X." The applicant served six years of active duty.

According to an undated Report of Investigation (ROI), 22 allegations of reprisal were investigated in violation of 10 U.S.C. § 1034:

Allegation 1: On or about 24 June 2005, his flight commander reprised against him by decertifying him from training. (Not Substantiated).

Allegation 2: On or about 24 June 2005, his supervisor reprised against him by decertifying him from training. (Not Substantiated).

Allegation 3: On or about 18 July 2005, the 354th Aircraft Maintenance Squadron Commander (AMXS/CC) reprised against him by directing him to report to the MH Clinic for a command directed MH evaluation. (Not Substantiated).

Allegation 4: On or about 19 July 2005, his supervisor reprised against him by assigning him to cleaning duties. (Not Substantiated).

Allegation 5: On or about 19 July 2005, the 354 AMXS/CC reprised against him by removing him from flight line duties. (Not Substantiated).

Allegation 6: On or about 20 July 2005, the 354th Aircraft Maintenance Unit (354 AMU) Superintendent reprised against him by issuing him a LOR. (Not Substantiated).

Allegation 7: On or about 22 August 2005, the AMXS/CC reprised against him by serving him with consideration for nonjudicial punishment under the UCMJ. (In a memorandum dated

10 June 2011, the Director of Military Reprisal Investigations, Inspector General, Department of Defense, overturned the substantiated reprisal decision and determined it was not reprisal. The final determination was based on the applicant's violation of multiple orders and his commander's history of not following legal advice and administering strict punishment).

Allegation 8: On or about 11 October 2005, the AMXS Superintendent reprised against him by co-authoring and suggesting further downgrades of his referral EPR. (Not Substantiated for Reprisal; (Substantiated for Abuse of Authority).

Allegation 9: On or about 21 October 2005, the AMU supervisor reprised against him by endorsing his referral EPR. (Not Substantiated for Reprisal; Substantiated for Abuse of Authority).

Allegation 10: On or about 21 October 2005, the 354 AMXS First Sergeant reprised against him by approving his referral EPR as written. (Dismissed).

Allegation 11: On or about 21 October 2005, the AMXS/CC reprised against the applicant by signing his referral EPR. (Substantiated).

Allegation 12: On or about 5 May 2006, his supervisor reprised against him by recommending his non-selection for reenlistment under the Selective Reenlistment Program (SRP). (Not Substantiated for Reprisal; Substantiated for Abuse of Authority).

Allegation 13: On or about October 2006, the Maintenance Group Commander (MXG/CC) reprised against the applicant by denying him an upgrade of his AFSC. (Substantiated).

Allegation 14: On or about November 2005, his supervisor reprised against him by providing adverse information about him to the 354th Fighter Wing Judge Advocate (354 FW/JA). (Not Substantiated).

Allegation 15: On or about 1 November 2005, the 354 AMXS/CC reprised against the applicant by directing him to report to the MH clinic for a command directed MH evaluation. (Not Substantiated).

Allegation 16: On or about 7 October 2005, the 354 AMXS Superintendent reprised against him by issuing him a LOR. (Dismissed).

Allegation 17: On or about 20 July 2005, the 355 AMU Officer in Charge (OIC) reprised against him by assigning him to cleaning duties. (Dismissed).

Allegation 18: On or about 21 July 2005, the AMXS/CC reprised against him by restricting him from going outside of his chain of command. (Substantiated).

Allegation 19: On or about 25 August 2005, the 354 AMXS First Sergeant reprised against him by restricting him from meeting with the MXG/CC. (Not Substantiated).

Allegation 20: On 15 July 2005, the Medical Operations Squadron (MDOS) improperly disclosed confidential communications made by the applicant during a voluntary visit to the Life Skills clinic in violation of AFI 44-109, Mental Health, Confidentially, and Military Law, paragraph 6 and DODD 6025.18-R, C7.1., Department of Defense Privacy Program. (Substantiated).

Allegation 21: On 15 July 2005, the 354 AMXS/CC improperly referred the applicant for a command directed MH evaluation in violation of DODD 6490.1 and DODD 6490.4, Mental Health Evaluations of Members of the Military Services, and AFI 44-109. (Substantiated).

Allegation 22: On or about 1 November 2005, the 354 AMXS/CC reprised against the applicant by referring him for a command-directed MH evaluation. (Not Substantiated).

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial of the applicant's request to remove the Article 15 or courts-martial charges. The applicant did not accept punishment under Article 15 and he was never court-martialed. Therefore, JAJM does not see any error or injustice with the military justice process which would warrant granting relief.

On 18 July 2005, the applicant was allegedly asked to leave a conference room after a verbal altercation with other members of his unit. The applicant was thought to be secretly tape recording a conversation with his supervisor. He refused to leave the conference room when told to do so and had to be forced to leave. On 22 August 2005, his commander offered him an Article 15 for the incident which he declined. On 8 September 2005, the convening authority referred two charges to trial by special courts-martial. The applicant was charged with willfully disobeying a lawful command received from a commissioned officer in violation of Article 90, UCMJ, and disorderly conduct in violation of Article 134. Trial was scheduled to begin on 14 November 2005; however, on 4 November 2005, the convening authority dropped the charges and dismissed the case. No further military justice action was taken against the applicant.

The complete JAJM evaluation is at Exhibit D.

AFPC/DPSIM recommends denial of the applicant's request to remove an Article 15 indicating there is no documentation that either an Article 15 or courts-martial action was taken against the applicant. DPSIM cannot speak to the commander's action being just or not and can only identify whether proper procedures were followed. There is insufficient evidence for this case. The only evidence provided is subjective to the applicant's opinion of the situation.

The complete DPSIM evaluation is at Exhibit E.

AFPC/DPSIC recommends denial of the applicant's request for award of the 7-skill level in AFSC 2A373, Tactical Aircraft Maintenance. The applicant's assertion that his 7-level upgrade was denied in October 2006 is correctly supported by his withdrawal from training in December 2005. His Records Review RIP dated 1 February 2007 indicates his training code effective 20 December 2005 was "T-withdrawn from training – fail to progress."

The complete DPSIC evaluation, with attachments, is at Exhibit F.

AFPC/DPSIM recommends denial of the applicant's request to restore 104 days of leave. It was the applicant's choice to take 14 days of leave for courts-martial preparation. Second, the 30 days of terminal leave he was "forced" to take could have been sold. Neither the DOD nor the Air Force offers provisions for military members to take non-chargeable leave for the purpose of preparing for courts-martial, in essence, a member must use accrued (ordinary) leave. Based on the evidence provided, there is no clear indication he was mandated to use his accrued leave. According to his statement, he was forced to use 30 days of terminal leave. However, this is not an accurate assessment. His DD Form 214 indicates he had not sold any leave days up to this point in his Air Force career. Per DOD 7000.14-R, Financial Management Regulation, volume 7A, Chapter 35 paragraph 350101A2a, effective 10 February 1976, a military member is entitled to receive payment for no more than 60 days of accrued leave during a military career. Since the applicant had not sold any leave, he had the option to receive payment for the 30 days he was "forced" to take as terminal leave.

The complete DPSIM evaluation is at Exhibit G.

AFPC/DPSOA recommends denial of the applicant's request to change his RE code of "2X" as it is the correct RE code. IAW AFI 36-2606, Reenlistment in the USAF, commanders have the selective reenlistment selection or non-selection authority. The SRP considers the member's EPR ratings, Unfavorable Information File (UIF), the airman's willingness to comply with standards, and ability to meet required training and duty performance levels. His commander lists the reasons for denial

in section II and III of his AF Form 418 dated 17 July 2006.

The complete DPSOA evaluation is at Exhibit H.

AFPC/DPSOE recommends denial of the applicant's request to be promoted to the grade of TSgt. He never tested nor was he selected for promotion to the grade of TSgt. Current Air Force policy does not allow for automatic promotion. The applicant was eligible for promotion consideration to the grade of TSgt beginning with cycle 06E6. However, he became ineligible IAW AFI 36-2502, Airman Promotion Program, when he was non-recommended for reenlistment on 17 July 2006. He also became ineligible for promotion consideration when he received the 8 October 2005 referral EPR.

The complete DPSOE evaluation is at Exhibit I.

AFMOA/SGH (reviewed by a MH psychiatrist) recommends denial of the applicant's request to remove his MH diagnosis from his records. There is no evidence of improper release of Privacy Act information or an improper referral. The purpose of the medical record is to document a provider's assessment and diagnosis based on their clinical judgment. Removal of previous diagnosis would render the record incomplete. MH providers are permitted to release protected health information to commanders if in their evaluation there is a potential harm to the military mission. Per DODI 6025.18-R, Department of Defense Privacy Program, C7.11.1.1, a covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. The purposes for which the protected health information may be disclosed include: to determine the member's fitness for duty, compliance with standards, fitness to perform a particular mission or assignment or to carry out any other activity necessary for proper execution of the mission. MH providers are trained on release of information procedures, confidentiality, Health Insurance Portability and Accountability Act (HIPAA), and the Privacy Act Regulation. If in the MH provider's clinical judgment there is a potential harm to mission, the provider can release Privacy Act information to the commander.

The complete SGH evaluation is at Exhibit J.

AFPD/DPSID recommends the applicant's request to void the referral EPR for the period of 9 October 2004 to 8 October 2005 be approved based on the IG's substantiated findings. DPSID finds it was not completed IAW AFI 36-2406, Officer and Enlisted Evaluation System. The rater originally wrote the report as a "1" with many vague and derogatory comments along with the concurrence of the rater. AFI 36-2406, paragraph 3.9.1.2.1 states do not make non-specific vague comments about the individual's behavior or performance. After review by the

unit commander, he non-concurred and upgraded the report to a "2." The commander's mandatory AF Form 77, Letter of Evaluation, included many additional derogatory comments not previously mentioned and was never referred to the applicant for the opportunity to provide additional comments as required by AFI 36-2406. Referral procedures are established to allow the ratee to respond to items that make a report a referral before it becomes a matter of record.

The complete DPSID evaluation is at Exhibit K.

AFPC/DPSOR recommends denial of the applicant's request to be retired in the grade of captain with 20 years of service. He does not meet the legal requirements to be retired as a Regular officer. To retire as an officer, the applicant must have completed a minimum of 20 years Total Active Federal Military Service (TAFMS) of which at least 10 years was as an active commissioned officer.

The complete DPSOR evaluation is at Exhibit L.

AFPC/DPSIPR makes no recommendation and states per 10 U.S.C. § 531, the President of the U.S. makes all appointments of commissioned Air Force officers. The President, via Executive Order, assigned this function to the Secretary of Defense for the appointment of Reserve lieutenant colonels and below and the appointment of Regular captains and below. Enlisted members wishing to become Air Force officers may apply for appointment via a commissioning program. Upon successful completion of the commissioning program, they are nominated for appointment as a commissioned officer. The applicant was honorably discharged from the Air Force on 7 February 2007 in the grade of SSgt.

The complete DPSIPR evaluation is at Exhibit M.

AFPC/DPALS recommends denial of the applicant's requests to be reinstated as a commissioned officer and be sent to flight school. The applicant did not meet the prescribed requirements for entry into Undergraduate Flying Training (UFT) while on active duty. He was honorably discharged as an enlisted member on 7 February 2007 after serving 6 years on active duty. Since he was never appointed as an Air Force officer, he did not meet Air Force requirements for entry into UFT.

The complete DPALS evaluation is at Exhibit N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant thru counsel requests monetary compensation, including, but not limited to back pay, front pay, and all other compensatory damages allowed under applicable law and 10 U.S.C. § 1034 and DODD 7050.06, which defines corrective action as it relates to substantiated reprisal claims as "any action deemed

necessary to make the complainant whole."

Counsel requests the applicant receive back pay from the time he was discharged as a result of being denied reenlistment on 17 July 2006. The applicant would have been approved for reenlistment but for the reprisal actions taken against him. The applicant requests a total of $397,828.29 in back pay for the period of February 2007 to October 2014. He also requests 140 days of lost leave for the period of February 2007 through October 2014.

As a result of his reenlistment denial and reprisal, the applicant lost his health benefits. At the time, his wife was expecting a child and as such, the applicant requests compensation in the amount of $19,000 for all out-of-pocket medical expenses as well as the costs associated with obtaining health insurance benefits he would have otherwise maintained under his military health benefits.

Furthermore, the applicant requests pre and post-judgment interest as well as attorney fees and costs. Attorney fees and costs to date is $7,000.

The counsel's complete submission is at Exhibit Q.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We note that 22 allegations were investigated under the Whistleblower Protection Act (10 U.S.C. § 1034) and five distinct findings of reprisal were substantiated and three for abuse of authority. Based upon our own independent review of all the allegations, we agree with the IG findings as written. In view of the findings, the applicant contends the wrongful action to deny his reenlistment prevented him from continuing on active duty, earning leave, promotion(s) and the appropriate medical care. Consequently, he is requesting his records be corrected in a manner to allow him to receive monetary payments in the amount of $1,525,000 for back pay and allowances from February 2007 to October 2014, out-of-pocket medical expenses for health insurance benefits; 104 days of leave, promotion to the grade of TSgt, and other compensatory damages allowed under the law. He also contends the negative events in his records (feedbacks, documents referencing his personality disorder, his visit to MH, and the AF Form 418, dated 17 July 2006) should be removed based on the results of the IG investigation. Although the IG determined the NCO who non-recommended the applicant for

reenlistment was not authorized to do so, as noted in AFI 36-2606, commanders have total SRP selection authority. Based on the applicant's underlying behavior noted on the AF Form 418 dated 17 July 2006, it is apparent his commander had what he believed to be sufficient evidence to non-recommend the applicant for reenlistment and he has not provided evidence showing his commander abused his authority in denying his reenlistment. It appears the applicant was offered every right to which he was entitled. He submitted an appeal to the PACAF/A1 and after considering the matters raised by the applicant, the PACAF/A1 denied his appeal. Therefore, we find no basis to change his RE code or to remove the AF Form 418. Given we find no evidence of an injustice regarding the commander's decision to non-recommend the applicant for reenlistment; we also find no basis to correct his record to make him eligible for medical benefits, leave, or to promote him to the grade of TSgt. With respect to the applicant's requests to show he was commissioned in 2008; retired in the grade of captain with 20 years of service; returned to active duty as an officer and sent to flight school; as noted by AFPC/DPSIPR, the applicant was never appointed by the Secretary of Defense as an officer in the Air Force, therefore these requests are beyond the authority of the Board. With respect to the applicant's requests to remove an Article 15 and courts-martial action, as noted by JAJM and DPSIM, there is no documentation that either an Article 15 or courts-martial action was taken against the applicant. Regarding the applicant's request to remove negative feedbacks from his records; IAW AFI 36-2406, paragraph 2.9, feedbacks are not made a part of the official record, therefore there is no record to correct. With respect to the applicant's request for reimbursement for interest and attorney fees plus monetary damages in the amount of $1,525,000, the law under which this Board operates authorizes the payment of monies due as a result of a correction of the record to rectify an error and/or an injustice. Given the circumstances in this case do not warrant a correction to his record to provide the relief he is seeking and the fact the Board is without authority to award attorney fees/costs; no action will be taken on these requests. While the ROI states the commander improperly referred the applicant to MH on 15 July 2005, it is our opinion the error was procedural in nature. Given the subsequent MH examinations completed in July, November and December 2005 resulted in the same diagnosis; we do not find the procedural error, in and of itself, rises to a level of an injustice to warrant removing all the MH diagnoses from his record. The ROI also indicates the MDOS improperly disclosed confidential communications made by the applicant and based on this the applicant believes the "privacy violation notice" should be removed from his record. However, after reviewing his records, we found no evidence of this notice nor did he provide a copy with his submission. As such, we find no basis to act on this portion of his request. Should the applicant submit a copy of the document, we may be willing to reconsider this portion of his request. Therefore, we agree with the opinions and recommendations of the Air Force

offices of primary responsibility and adopt the rationale expressed as the basis for our conclusion the applicant has failed to sustain his burden of proof of either an error or an injustice. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting any of the relief sought in this portion of the application.

4. Notwithstanding the above, sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice to warrant partial relief. Having carefully reviewed this application, we agree with the recommendation of DPSID and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of an error or injustice and recommend the contested report be removed from his records. While AFPC/DPSIC recommends denial of the applicant's request for award of the 7-skill level in AFSC 2A373, given the applicant's AFSC was not upgraded due to a substantiated reprisal action, we believe corrective action is warranted. Therefore, in addition to removing the contested EPR, we also recommend the applicant be awarded the 7-skill level in AFSC 2A373. Accordingly, in the interest of justice, we recommend the applicant's records be corrected to the extent indicated below.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that

a. His AF Form 910, Enlisted Performance Report (AB thru TSgt), for the period of 9 October 2004 through 8 October 2005 be removed from his record.

b. His DD Form 214, Certificate of Release or Discharge from Active Duty, issued in conjunction with his separation on 7 February 2007 be amended in Item 11, Primary Specialty, to reflect "AFSC 2A373, Tactical Aircraft Maintenance Craftsman."

The following members of the Board considered AFBCMR Docket Number BC-2013-03314 in Executive Session on 17 February 2015 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

All members voted to correct the records as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2013-03314 was considered:

Exhibit A. DD Form 149, dated 27 June 2013, w/atchs.
Exhibit B. Applicant's Military Personnel Records
Exhibit C. Report of Investigation, SAF/IG, (withdrawn)
Exhibit D. Memorandum, AFLOA/JAJM, dated 11 February 2014.
Exhibit E. Memorandum, AFPC/DPSIM, dated 12 February 2014.
Exhibit F. Memorandum, AFPC/DPSIC, dated 20 February 2014, w/atch.
Exhibit G. Memorandum, AFPC/DPSIM, dated 24 February 2014.
Exhibit H. Memorandum, AFPC/DPSOA, dated 24 February 2014.
Exhibit I. Memorandum, AFPC/DPSOE, dated 25 February 2014.
Exhibit J. Memorandum, AFMOA/SGH, dated 20 March 2014.
Exhibit K. Memorandum, AFPC/DPSID, dated 11 April 2014.
Exhibit L. Memorandum, AFPC/DPSOR, dated 20 April 2014.
Exhibit M. Memorandum, APFC/DPSIPR, dated 30 May 2014.
Exhibit N. Memorandum, AFPC/DPALS, dated 10 June 2014.
Exhibit O. Letter, SAF/MRBR, dated 27 July 2014.
Exhibit P. Letter, Counsel, dated, 3 September 2014.
Exhibit Q. Letter, Counsel, dated 5 September 2014, w/atchs.
Exhibit R. Admin Close Letter, Counsel, dated 22 September 2014.
Exhibit S. Letter, SAF/MRBC, undated.
Exhibit T. E-mail, Counsel, dated 30 December 2014, w/atch.

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-03646

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her DD Form 214, Certificate of Release or Discharge from Active Duty, be changed to reflect her rank as staff sergeant (E-5), instead of senior airman (E-4).

APPLICANT CONTENDS THAT:

According to a letter from the Secretary of the Air Force (SECAF), she served satisfactorily in the higher grade of staff sergeant (E-5), in accordance with 10 U.S.C. § 1212.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant's military personnel records indicate she enlisted in the Regular Air Force on 1 Mar 00.

On 24 Mar 11, the applicant was administratively demoted to the grade of senior airman (E-4), with a new date of rank of 2 Feb 11, in accordance with Air Force Instruction 36-2502, Airman Promotion/Demotion Programs, paragraph 6.3.4, Failure to fulfill Responsibilities.

On 24 May 11, a review was conducted by the Secretary of the Air Force Personnel Council (SAFPC) under the authority delegated by the SECAF, and determined the applicant did serve satisfactorily in the higher grade of staff sergeant (E-5).

On 25 May 11, because of this finding, the SECAF found therefore be entitled to disability severance pay in that grade under the provisions of 10 USC § 1212.

On 1 Jun 11, the SECAF directed the applicant be separated from active service with a physical disability rating of 20 percent

for left hip pain and low back pain.

On 31 Aug 11, the applicant was honorably discharged in the grade of senior airman (E-4) for physical disability with entitlement to disability severance pay and was credited with 11 years and 6 months of total active service.

The remaining relevant facts pertaining to this application are described in the letter prepared by the Air Force office of primary responsibility, which is attached at Exhibit C.

AIR FORCE EVALUATION:

AFPC/DPSOE recommends denial indicating there was no evidence of an error or injustice. The applicant did not hold the grade of staff sergeant (E-5) at the time of her separation from active duty. She was promoted to E-5, effective 1 Sep 06, and on 24 Mar 11, was administratively demoted to the grade of senior airman (E-4), with a new date of rank of 2 Feb 11. She was honorably discharged in the rank of staff sergeant, effective 31 Aug 11, but this was for severance pay purposes only. The DD Form 214 reflects the grade the member held while on active duty at the time of separation.

A complete copy of the AFPC/DPSOE evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The adverse action taken during her last year of service was too harsh. The time for her name to be removed from the control roster, which was a result of a Letter of Reprimand (LOR), was steadily approaching at the time she received her demotion action. She provided copies of documents, to include a LOR, dated 8 Dec 10, denied permissive TDY request, and an approved application for Air Force Reserve membership, which she believes shows some inconsistencies in the actions taken against her by her former commander. After receiving her first LOR, she visited the Inspector General's office to sign acknowledgement of Whistleblower Rights. She also went to the Area Defense Counsel for assistance with writing her rebuttal to the second LOR she received. Additionally, she has also provided a copy of her AF IMT 1288, Application for Ready Reserve Assignment, indicating her attempt to seek further consideration to become a military member under the Reserve capacity. Lastly, she provided two character statements indicating their support of granting her request (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends her administrative demotion was disproportionate to the circumstances and cites a finding by SAFPC indicating that she served successfully in the grade of staff sergeant (E-5) in support of her request. After a thorough review of the evidence of record and the applicant's complete submission, to include her rebuttal response, we are not convinced that she has been the victim of an error or injustice. While the applicant believes the SAFPC finding that she served successfully in the higher grade somehow indicates that her administrative demotion was erroneous, lacked a sufficient basis, or was disproportionate to the circumstances, we are not convinced the applicant is the victim of an error or injustice. In this respect, we note that SAFPC's finding the applicant successfully served in the higher grade was made for the sole purpose of computing the applicant's disability benefits should she be retired or separated for physical disability. Such a finding permits the Air Force to disability retirement or severance pay using the higher grade, rather than the grade held on the last day the applicant was on active duty. Therefore, we do not find the documentation presented or the

applicant's arguments sufficient to conclude that her administrative demotion lacked a sufficient basis, was disproportionate to the circumstances, or represented an abuse of discretionary authority. Therefore, in view of the above and in absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-03646 in Executive Session on 29 Apr 14, under the provisions of AFI 36-2603:

, Panel Chair

, Member

, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 20 Jul 13, w/atchs.

Exhibit B. Applicant's Master Personnel Records

Exhibit C. Letter, AFPC/DPSOE, dated 6 Sep 13.

Exhibit D. Letter, SAF/MRBR, dated 14 Nov 13.

Exhibit E. Letter, Applicant, dated 13 Dec 13, w/atchs.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-04268
COUNSEL:
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He receives the following relief based on being the victim of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 Jul 07, and Title 10 U.S.C. § 1034:
1. His demotion to the grade of Staff Sergeant (SSgt, E-5) be reversed and removed from his records.
2. His Enlisted Performance Report (EPR) for the period ending 12 Aug 09 be void and removed from his record.
3. His referral EPR for the period ending 29 Jun 10 be void and removed from his record.
4. He be promoted to the grade of Master Sergeant (MSgt, E-7) in the Calendar Year (CY) 2010 promotion cycle.
5. He receives back pay and allowances.

APPLICANT CONTENDS THAT:

In a 23-page statement, the applicant's counsel presents the following major contentions:
In 2008 he was subject to retribution from his leadership. The retribution began after he raised concerns about inappropriate remarks made by a squadron commander and a senior enlisted individual. There was also safety concerns regarding an aircraft that was experiencing flight control and electrical problems. His leadership withheld his selection as the Squadron Flight Engineer of the Year and issued an unjustified "3" EPR which was later changed to a "5" by his commander.
His unit withheld a request for reassignment because he filed an Inspector General (IG) complaint.
He was improperly referred for a command directed Mental Health (MH) evaluation and issued a Letter of Reprimand (LOR) for stating he was going to make an IG complaint or an Article 138 complaint.
He was demoted to the grade of SSgt for making protected communications which was improper and unjust.
The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 6 Dec 95, the applicant entered the Regular Air Force.

According to an AF Form 910, Enlisted Performance Report (AB thru TSgt), for the period ending 12 Aug 09 his supervisor gave him an overall rating of "3." However, his commander non-concurred and the EPR was upgraded to a "5."

On 1 Jun 09, he filed an IG complaint with the 18th Wing Inspector General (18th WG/IG), Kadena AB, JA alleging his commander reprised against him for an Equal Opportunity (EO) complaint he filed in Nov 08 by selecting another person as the Flight Engineer Professional of the Year (POY). The applicant alleged his commander attempted to influence personnel to vote for a particular presidential candidate, berated an aircraft commander for not flying an aircraft with a missing tool and placed a crew in jeopardy by having them fly without de-icing systems.

In an e-mail dated 8 Jun 09, the applicant wrote to the Secretary of the Air Force Inspector General (SAF/IGE) advising of reprisal by his former commander and that he planned to submit an IG complaint to the Department of Defense (DOD) IG due to the unique situation and the people involved at the 18th WG/IG level (friendship). In the e-mail, he requested whistleblower protection stating that on 13 Apr 09, he was not selected for POY and was reprised and discriminated against for being outspoken and going against the grain of his leadership's philosophy and operational expectations with regards to morale and safety issues.

In a letter dated 8 Jun 09, the 18th WG/IG informed the applicant his reprisal allegation complaint was dismissed IAW AFI 90-301, Inspector General Complaints Resolution, paragraph 5.4. There was protected communication, however, there was no unfavorable or favorable personnel action taken. Both the Pacific Air Forces (PACAF/IGQ) and SAF/IGQ stated the POY award would not be considered withholding a favorable personnel action. The issue of the voting e-mail was dismissed. The Staff Judge Advocate (SJA) reviewed the e-mail and determined it read neutral and did not constitute an attempt to influence or interfere with the outcome of an election. The other two issues dealing with flight safety were determined command issues and were referred to the 18th Operations Group Commander (18th OG/CC).

In a memorandum dated 15 Jun 09, the 18th OG/CC informed the applicant the allegations of flight safety during the two sorties were investigated and determined to be unfounded. He noted there may have been instances of unclear communication; however, based on the facts presented he did not believe safety of flight was ever in jeopardy.

In an e-mail dated 26 Jun 09, SAF/IGQ informed the applicant that his concerns were already addressed and a thorough review of the complaint yielded no compelling evidence to disagree with the conclusions of the 18th WG/IG. The applicant was advised

that absent new and relevant evidence, they had no recourse except to file any future correspondence without action or response.

On 14 Sep 09, the applicant filed an IG complaint alleging his unit leadership took reprisal action against him for filing an IG complaint in Jun 09.

According to AF Form 1768, Staff Summary Sheet, dated 15 Oct 09, the applicant requested his commander's recommendation for reassignment to the 99th Airlift Squadron (Presidential Support), Joint Base Andrews NAF, MD.

On 9 Dec 09, his commander non-recommended him for reassignment stating "Member not medically qualified."

On 4 Jan 10, he received a LOR for willfully disobeying a commissioned officer by failing to disclose a medical condition in his application for reassignment and extortion by making a statement in front of a witness that he would be submitting an Article 138 complaint against his commander for holding up his assignment application. In his response, he states he did not intend to be disrespectful and understood he could improve his tone. He also stated that he had no intent to extort, threaten or injure anyone and believed an Article 138 complaint was appropriate.

In a letter dated 18 Feb 10, the IG DOD Military Reprisal Investigations (MRI) concurred with the declination to investigate the reprisal allegation In Accordance With (IAW) 10 U.S.C. § 1034.

In a letter dated 23 Feb 10, PACAF/IGQ informed the applicant that the 18th WG/IG thoroughly investigated his allegation that his superintendent rated him an overall rating of "3" on his Aug 09 EPR in reprisal for making a protected communication on 26 May 09 to the 18th WG/IG in violation 10 U.S.C. § 1034. The 18th WG/IG concluded the responsible management official did not reprise against the applicant or abuse their authority. Further, based on the evidence they concluded there was insufficient justification to conduct an investigation under AFI 90-301 and 10 U.S.C. § 1034. As a result, they recommended the allegations be dismissed. The applicant was advised his case was thoroughly reviewed by the Complaints Resolution Directorate, SAF/IG and final approval determined by the Special Inquiries Directorate, DOD IG/MRI IAW 10 U.S.C. § 1034.

On 19 Mar 10, the applicant acknowledged receipt of the proposed demotion action to the grade of SSgt dated 15 Mar 10. He indicated he had consulted legal counsel, would submit written statements in his own behalf and requested a personal hearing.

In a letter dated 24 Mar 10, the applicant's Area Defense Counsel (ADC) requested the pending demotion action to the grade

of SSgt not be processed stating the unit had not used the "progressive" approach to discipline. An overview of his entire military record was provided to the demotion authority.

In a letter from the 961st Airborne Air Control Squadron Commander (961st AACS/CC) dated 1 Apr 10, the applicant was notified that the demotion authority approved the recommendation that he be demoted to the grade of SSgt. Per Special Order AA-02 dated 19 Apr 10, the applicant was demoted to the grade of SSgt with a Date of Rank (DOR) and effective date of 31 Mar 10.

According to another letter from the 961st AACS/CC dated 13 May 10, he was referred for a MH evaluation. The reasons for the referral was his refusal to fly on an aircraft although it was deemed airworthy, attempting to prove retaliation for not winning an annual award, an emotional outburst on an E-3 aircraft in which he left his duty position with the engines running, reporting to the 18th WG, 5th Air Force and PACAF safety offices that he thought there was a Top Secret Memorandum For Record (MFR) program to record everything he was saying and that the program could injure him or destroy his career. He also reported to his physician that he was under significant stress.

According to his EPR ending 29 Jun 10, he received a referral EPR with an overall rating of "3." The specific reasons for the referral EPR include his administrative demotion to the grade of SSgt for failure to meet NCO responsibilities and a Letter of Admonishment (LOA) for disrespecting commanding officers during an Article 138 redress.

In an e-mail dated 30 Jun 10, the applicant submitted allegations of reprisal to the IG DOD Hotline. He alleged that he received a referral EPR for making protected communication and was demoted to the grade of SSgt in reprisal for submitting an AF Form 457, USAF Safety Hazard Report. In letters to Members of Congress he wrote that he was referred for a mental health evaluation, removed as a Noncommissioned Officer in Charge (NCOIC) and received an unfavorable EPR.

In a letter dated 22 Nov 10, the PACAF/IGQ notified the applicant the IG DOD/MRI requested they review the following allegations in violation of 10 U.S.C. § 1034:

a. On or about 25 Jan 10, his commander removed him from his position as NCOIC in reprisal for making a protected communication (AF Form 457).

b. On or about 15 Mar 10, his commander initiated administrative demotion in reprisal for making a protected communication.

c. On 31 Mar 10, he was administratively demoted by his group commander in reprisal for making a protected communication.

d. On 13 May 10, his commander referred him for a MH evaluation in reprisal for making a protected communication.

e. On 30 Jun 10, he was issued a referral EPR for making a protected communication.

f. On 16 Jul 10, his commander upheld the referral EPR in reprisal for making a protected communication.

The 18th WG/IG conducted a complaint analysis into the allegations and after a thorough examination of all the facts, concluded the responsible management officials did not reprise against the applicant, or abuse their authority. Further, based on the evidence they concluded there was insufficient justification to conduct an investigation under AFI 90-301 and 10 U.S.C. § 1034. As a result, they recommended the allegations be dismissed. Further, the case was thoroughly reviewed by SAF/IG and IG DOD/MRI IAW 10 U.S.C. § 1034.

In an e-mail to the IG DOD dated 1 Dec 10, the applicant requested further review from an IG at any level based on new documentation. He submitted two binders to the IG DOD who delegated the situation back to the 18th WG/IG and never interviewed him face to face. He was bounced around multiple IG's and requested a local IG reopen his case.

Per Special Order ACD-02090 dated 16 May 13, the applicant was placed on the Temporary Disability Retired List (TDRL) in the grade of Technical Sergeant (TSgt, E-6), highest grade satisfactorily held, effective 27 Sep 13 with a 60 percent compensable disability rating. He was credited with 17 years, 9 months and 22 days of active duty service.

AIR FORCE EVALUATION:
AFPC/DPSOE recommends denial of the applicant's requests to reverse the demotion action and to promote him to the grade of MSgt for Promotion Cycle 10E7. DPSOE recommends the request for set aside of the demotion be time barred. Due to the passage of time, DPSOE is unable to verify the applicant's contentions concerning the specifics regarding the demotion action as official documentation (demotion package) is no longer available. DPSOE further recommends the request for promotion to the grade of MSgt be denied as he was ineligible for consideration and/or was never selected prior to his placement on the TDRL in the grade of TSgt.
The complete DPSOE evaluation is at Exhibit C.
AFPC/DPSID recommends denial of applicant's requests to remove the contested EPRs ending 12 Aug 09 and 29 Jun 10. The applicant did not file an appeal through the Evaluation Report Appeals Board (ERAB) IAW AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports, due to the applicant's retirement from active duty. The applicant has not provided substantiating documentation or evidence to prove his assertions that the

contested evaluations were rendered unfairly or unjustly, and has merely offered his view of events in the light that is most beneficial to him. Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all members of the rating chain, not only for support but also for clarification. The applicant has failed to provide any information from rating officials on the contested reports. It is determined that the report was accomplished IAW all applicable Air Force policies and procedures. DPSID contends that once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The burden of proof is on the applicant. The applicant has not substantiated that the contested report was not rendered accurately and in good faith by all evaluators based on knowledge available at the time.
The complete DPSID evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The advisories which state the application was filed late is incorrect as the application was filed just as he was retiring. As active duty time is excused, the application is timely filed.

DPSOE attempts to blame the applicant that his demotion paperwork is no longer in his records. The demotion action should have been retained three years; however, it is clear that the demotion package was lost less than three years of when it was finalized. Therefore, the applicant's time of filing had no impact on the availability of the demotion package.

The loss of the demotion package is indicative of the improper processing and impropriety of the demotion from the beginning. He had an outstanding record prior to making protected complaints. He rightly complained about improper racial comments about the President by senior members of his squadron and about the safety of an aircraft that was impounded a week later. After these complaints, his supervisory chain issued him negative paperwork for issues that occurred long ago. These actions did not warrant even counseling at the time they occurred, but somehow they became serious enough after the complaints. The only purpose for the demotion action was to punish the applicant for making protected statements.

DPSID acknowledges the applicant made protected statements and also acknowledged he received adverse actions but then states there is no connection. They also state that his supervisors and raters were within regulatory guidance in taking their actions. The facts are clear the applicant made protected statements, his duty performance did not change in anyway, but how he was treated by his supervisory chain did change for the

worse. The negative comments on his performance reports and adverse actions constitute reprisal and are improper.

The only reason he was ineligible for promotion was the improper reprisal and retaliation taken against him. He tested for promotion to the grade of MSgt and easily should have made the cut off for promotion. If his commander had not improperly demoted him, he would have been promoted in due course. The Secretary of the Air Force obviously believed the demotion was improper as he was retired in the grade of TSgt.

Because of the reprisal actions by his chain of command, the applicant developed Post-traumatic Stress Disorder (PTSD). He has now been medically retired. The only way to make him whole is to overturn the demotion action, remove the adverse EPRs and promote him as appropriate.

The applicant's complete submission is at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice to warrant reversing his demotion to the grade of SSgt, promoting him to the grade of MSgt with back pay or removing the contested EPRs from his record. We note the applicant alleges that he has been the victim of reprisal and discrimination and has not been afforded full protection under the Whistleblower Protection Act (10 U.S.C. § 1034). However, the evidence reflects the applicant's IG complaints and allegations of reprisal were thoroughly investigated by the 18th WG, PACAF and DOD IG/MRI offices and it was concluded there was no evidence of reprisal. Moreover, based upon our own independent review of the available evidence, the applicant has not established that the administrative actions taken by his superiors were an act of reprisal or arbitrary and capricious. While counsel's arguments are duly noted, he has not provided substantial evidence which, in our opinion, successfully refutes the assessment of the case by the Air Force Offices of Primary Responsibility (OPR). Therefore, aside from DPSOE's recommendation to time bar the applicant's requests, we agree with the opinions and recommendations of the Air Force OPR's and adopt the rationale expressed as the basis for our conclusion that the applicant has failed to sustain his burden of proof that he has been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting any of the relief sought in this application.
5. The applicant's case is adequately documented and it has not

been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-04268 in Executive Session on 20 Nov 2014 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2013-04268 was considered:

Exhibit A. DD Form 149, dated 21 Aug 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFPC/DPSOE, dated 15 Nov 13.
Exhibit D. Memorandum, AFPC/DPSID, dated 8 Aug 14.
Exhibit E. Letter, SAF/MRBR, dated 12 Sep 14.
Exhibit F. Letter, Applicant’s Counsel, dated 7 Oct 14.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-04596
XXXXXXX COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Referral Enlisted Performance Report (EPR) for the period 14 March 2012 through 13 March 2013 be removed from his records.

APPLICANT CONTENDS THAT:

His EPR was unjustly downgraded in all categories. He was not able to get his chain-of-command to adjust his EPR prior to the close-out. He sought assistance from his chain-of-command and the Inspector General (IG), and it was recommended that he proceed to the Air Force Board for Correction of Military Records (AFBCMR).

In support of his request the applicant provides copies of his EPRs, rebuttal response to his referral EPR, Performance Feedback Worksheets, On-the-Job Training Record Continuation Sheet, electronic communiqués, and AF Form 102, Inspector General Personal and Fraud, Waste & Abuse Complaint Registration.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 30 April 2013, the applicant filed an IG complaint for retaliation or abuse of authority against his rater for giving him a referral EPR.

In a letter dated 30 September 2013, HQ AFGCS/IGQ advised the applicant that they concurred with DoD/IG's review and the Air Force determination that reprisal did not occur and that further investigation was not warranted. The applicant was invited to petition the Board for further consideration of this matter.

?
THE AIR FORCE EVALUATION:

AFPC/DPSIDE recommends the applicant submit an AF Form 948, Application for Correction/Removal of Evaluation Reports, with all required supporting documentation, through the vMPF

Evaluation Appeals, as he has not exhausted his administrative remedies, prior to seeking relief from the Board. The first avenue of relief is through the Evaluation Report Appeals Board (ERAB). The ERAB returned the applicant's request without action, pending additional documentation. If the applicant wishes to void the contested report, he must provide factual, specific, and substantiated information that is from credible officials or agencies and is based on firsthand observation. If the administrative appeal is unsuccessful, the applicant may resubmit the DD Form 149, Application for Correction of Military Records.

The complete DPSIDE evaluation is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

On 25 April 2014, a copy of the Air Force evaluation was forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The application was timely filed.

2. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. In this respect, we note this Board is the highest administrative level of appeal within the Air Force. As such, an applicant must first exhaust all available avenues of administrative relief provided by existing law or regulations prior to seeking relief before this Board, as required by the governing Air Force Instruction. The Air Force office of primary responsibility has reviewed this application and indicated there is an available avenue of administrative relief the applicant has not first pursued. In view of this, we find this application is not ripe for adjudication at this level, as there exists a subordinate level of appeal that has not first been depleted. Therefore, in view of the above, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that he has not exhausted all available avenues of administrative relief prior to submitting his application to the BCMR; and the application will only be reconsidered upon exhausting all subordinate avenues of

administrative relief.

The following members of the Board considered this application in Executive Session 8 July 2014, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in AFBCMR BC-2013-04596:

Exhibit A. DD Form 149, dated 23 September 2013, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSIDE, dated 17 April 2014.
Exhibit D. Letter, SAF/MRBR, dated 25 April 2014.
Exhibit E. Report of Investigation - WITHDRAWN

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-04804
COUNSEL:
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He be reinstated in the United States Air Force or, as an alternative, his characterization of discharge be upgraded from general (under honorable conditions) to honorable.

APPLICANT CONTENDS THAT:

He was unfairly discharged as there was insufficient basis for the discharge. His reprimands were controversial and he made a reprisal complaint against his supervisor which was never investigated.

In support of his appeal, the applicant provides a personal statement, a statement from his counselor, and copies of his discharge file.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force who served on active duty from 4 January 2011 to 14 March 2013.

The applicant received one Letter of Counseling (LOC) and four Letters of Reprimand (LORs) between 4 November 2011 and 19 December 2012. On 23 January 2013, he was notified of his commander’s intent of recommending him for a general (under honorable conditions) discharge for “Misconduct – Minor Disciplinary Infractions.” The applicant acknowledged receipt of his commander’s notification and submitted a statement in his own behalf. Subsequent to the file being found legally sufficient, the discharge authority approved the separation and directed the applicant be discharged with a general (under honorable conditions) discharge without probation or rehabilitation.

The applicant was released from active duty on 13 March 2013 and discharged effective 14 March 2013 with a general (under honorable conditions) characterization of service and a narrative reason for separation as "Misconduct: Minor Disciplinary Infractions." He served 2 years, 2 months, and 11 days on active duty.

AIR FORCE EVALUATIONS:

AFPC/DPSOR recommends denial. DPSOR states that based on the documentation on file in the master personnel records, the discharge, to include the separation program designator (SPD) code, narrative reason for separation, and characterization of service, was appropriately administered and within the discretion of his discharge authority. The applicant did not submit any evidence or identify any errors or injustices in the discharge processing.

The complete DPSOR evaluation is at Exhibit B.

COUNSEL'S REVIEW OF AIR FORCE EVALUATION:

He respectfully requests a reexamination of the Uniform Code of Military Justice (UCMJ) definition of false official statement and the removal of this alleged offense from consideration of his client's request for either reinstatement onto active duty or an upgrade to his discharge characterization.

The counsel's complete rebuttal is at Exhibit D.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission to include counsel's rebuttal in judging the merits of the case; however, the Air Force office of primary responsibility has adequately addressed these contentions and we are in agreement with their

recommendation. While we note the applicant's counsel believes an error occurred with regard to the applicant's "official statement," sufficient evidence has not been provided which would persuade us that the commander acted inappropriately in deciding to issue the applicant a Letter of Reprimand or that his decision represented an abuse of discretionary authority in making that decision. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-04823 in Executive Session on 24 June 2014, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2013-04823:

Exhibit A. DD Form 149, dated 20 Aug 13, w/atchs.
Exhibit B. Letter, AFPC/DPSOR, dated 9 Dec 13.
Exhibit C. Letter, SAF/MRBR, dated 25 Apr 14.
Exhibit D. Letter, Counsel, dated 23 May 14.

Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-05004

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. He receive a medical retirement.

2. His two non-selections for promotion to the grade of major while he was in the Individual Ready Reserve (IRR) in nonparticipating status be removed from his record. (His record was administratively corrected to remove his second non-selection.)

APPLICANT CONTENDS THAT:

1. He was unjustly separated through the force shaping program after failing his PT test, when he should have been processed for medical retirement through a medical evaluation board (MEB) due to his knee injuries and multiple knee surgeries.

2. Because of his medical condition, he had no unit of affiliation after 1 Oct 11, so there was no basis for him to be evaluated by a promotion board after that date. He was unaware he would be considered for promotion in the IRR. Moreover, he had no notice of the hearing and was denied representation and due process.

The applicant's complete submission, with attachments, is at Exhibits A and E.

STATEMENT OF FACTS:

The applicant initially entered the Air Force Reserve on 11 Apr 06, after serving less than a year in the Marine Corps.

On 8 Apr 11, the applicant failed his annual Fitness Assessment (FA), due to failing the cardio (walking) portion of the test.

On 11 May 11, the applicant received an Officer Performance Report (OPR) covering the period 11 Apr 10 through 10 Apr 11, which included the following statement in Block IV: "Failed PT test; walk portion incomplete due to intentional slowing..."

On 11 Jul 11, after a Force Shaping Board selected the applicant for involuntary separation, the Medical Group reviewed his medical records and determined an MEB/PEB was not required.

On 1 Oct 11, the applicant was furnished an honorable discharge, with a narrative reason for separation of "Force Shaping (Board Selected)," accepted separation pay, was credited with 6 years and 8 days of total active service, and was assigned to the Nonobligated Nonparticipating Ready Personnel Section (NNRPS), effective 2 Oct 11.

On 14 Jan 13, while in the NNRPS, he met and was non-selected for promotion by the Calendar Year 2013 (CY13) Line

and Non-Line Nonparticipating Reserve Major Promotion Selection Board. The quota for this Board was one selectee.

According to the documents submitted by the applicant, on 30 Sep 13, the Department of Veterans Affairs (DVA) rated his injuries at a 10 percent disability rating for injuries to his right knee and 10 percent for his left knee, for a combined compensable disability rating of 20 percent.

Under Reserve Order HB-001542, dated 29 Oct 13, the applicant was transferred from the NNRPS to the Inactive Status List Reserve Section (ISLRS), effective 2 Oct 13.

The remaining relevant facts pertaining to this application are contained in the memoranda prepared by the Air Force offices of primary responsibility (OPRs), which are attached at Exhibits C and F.

AIR FORCE EVALUATION:

ARPC/PB recommends denial indicating there is no evidence of an error or an injustice. Following his discharge from active duty on 1 Oct 11, the applicant was assigned to the Nonobligated Nonparticipating Ready Personnel Section (NNRPS). Although members in the NNRPS are not in a participating status, in accordance with Title 10 United States Code (USC) §14301, all officers on the Reserve Active Status List (RASL) must be considered for promotion when eligible. Although the applicant cites disqualifying medical conditions as the reason he was separated from active duty, he was separated due to force shaping. The applicant was correctly assigned following release from active duty and was correctly considered by the promotion board in CY13. A review of the applicant's military records determined a deferral for promotion from active duty was incorrectly carried over in the Reserve. This pass-over was removed from his records, and as of this date his record reflects he is a one-time pass over.

A complete copy of the ARPC/PB evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In further support of his request, the applicant submitted a personal statement reiterating his claim that his medical condition was severe enough to interfere with the performance of his duties; explaining in great detail why he was not physically fit enough to pass the FA, his knee injuries were the only reason he failed the FA, and it was his injuries which led to his separation; states that at the time of his Force Shaping Board he had already requested an MEB; suggests he was "blacklisted" from entering the Air Force Reserve and Air National Guard after his separation; and, through the use of multiple rhetorical questions, appears to make a host of accusations against his leadership when he was assigned to Holloman AFB, NM, but then states "I make no accusations or allegations against anyone or anything at this point" (Exhibit E).

ADDITIONAL AIR FORCE EVALUATION:

The BCMR Medical Consultant recommends denial indicating there is no evidence of an error or an injustice. If the applicant's medical condition warranted processing through the military Disability Evaluation System prior to his discharge from active duty, this would be validated by 12 or more months [or sooner depending upon the severity of impairment and the expected recovery] of sustained or cumulative Physical Profile Serial Reports, AF Form 422, prohibiting worldwide qualification, or Duty Limiting Condition Reports, AF Form 469, with a check mark in Block 37 to indicate the applicant's medical conditions warranted MEB/PEB processing. Moreover, if an individual had a disqualifying medical condition for which he or she received a waiver for non-participation in any Fitness Assessment (FA) activity for 12 or more months, an MEB would be warranted. This applicant has supplied no documentation reflecting the aforementioned documentation for MEB/PEB or an alternate medical basis for release from military service. Concerning the applicant's stress and possible related headaches, no evidence has been provided to indicate the headaches interfered with his ability to perform military duties. Moreover, although the applicant has undergone multiple surgical procedures, the underlying pathology interfering with his ability to function can be captured under

Veterans Affairs Schedule for Rating Disability (VASRD) code 5003, for degenerative arthritis. He did not present evidence of warranting a higher disability rating for his degenerative arthritis or bilateral knee pain. Finally, the applicant is reminded that under Operating Title 38 U.S.C the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to [and independent of] its demonstrated or proven impact on a service member's retainability, fitness to serve, narrative reason for separation, or the intervening period since the date of separation. With this in mind, Title 38 USC, which governs the DVA compensation system, was written to allow awarding compensation ratings for conditions that were not individually unfitting during military service or at the time of separation. Based upon the limited supplied medical evidence, the applicant has not met the burden of proof of error or injustice that warrants a change in reason for discharge to medical separation of retirement.

A complete copy of the BCMR Medical Consultant's evaluation is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

A copy of the additional Air Force evaluation was forwarded to the applicant on 11 Feb 15, for review and comment within 30 days (Exhibit G). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission, to include his rebuttal response to the advisory opinions in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force offices of primary responsibility (OPRs) and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. The Board notes ARPC/PB determined one of the applicant's two non-selections for promotion to the grade of major should not have been on his record and therefore administratively corrected his record to remove one non-selection. In addition, the Board notes the applicant makes several vague references in his rebuttal statement to the possibility that he was the victim of reprisal however, he also states very clearly that he is making no allegation and is accusing no one at this point. The Board takes claims of reprisal very seriously. If the applicant believes he has been the victim of reprisal under the Whistleblower Protection Act, he should file a timely claim with the Inspector General of the Air Force (SAF/IG) so his concerns and be properly investigated. Without a formal complaint, the Board will take no further action on the issue or reprisal in this case. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-05004 in Executive Session on 8 Sep 15, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining AFBCMR Docket Number BC-2013-05004 was considered:

Exhibit A. DD Form 149, dated 10 Oct 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, ARPC/PB, dated 13 Feb 15.
Exhibit D. Letter, SAF/MRBR, dated 21 Jul 14.
Exhibit E. Letter, Applicant, not dated.
Exhibit F. Memorandum, BCMR Medical Consultant, dated 8 Dec 14.
Exhibit G. Letter, SAF/MRBR, dated 11 Feb 15.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-05186

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her AF Form 707, Officer Performance Report (OPR) (Lt thru Col), rendered for the period 16 September 2012 through 26 June 2013, be filed in her Officer Selection Record (OSR).

The corrected AF Form 709, Promotion Recommendation (PRF), be placed in her OSR.

Her corrected record be considered by a Special Selection Board (SSB) for the Calendar Year 2013B (CY13B) P0613B Colonel Central Selection Board (CSB).

Her corrected Defense Meritorious Service Medal (DMSM) be filed in her OSR and considered by the CY2013 CBS. (administratively corrected).

APPLICANT CONTENDS THAT:

Her final OPR from the Joint Staff, corrected DMSM, or the correct version of her PRF were not timely submitted to be filed in her OSR for consideration by the CY2013B CSB, as required by Air Force directives and policies. Her supervisor failed to forward her OPR to her senior rater and submitted a DMSM that had significant errors, which resulted in the need for it to be rewritten. The erroneous version of the DMSM was placed in her records at the Air Force Personnel Center (AFPC) during consideration for the CY2013 Colonel CSB. Subsequent to the board convening the corrected version of the DMSM was submitted and the corrected version of her PRF was never forwarded to AFPC. Her case is under investigation by the Joint Staff Inspector General.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of lieutenant colonel (0-5).

On 7 November 2014, the applicant was notified that her DMSM citation awarded for the period January 2011 to July 2013 would be filed in her OSR and reflected on her Officer Selection Brief. In addition, she would be granted SSB consideration by the CY13B (16 Sep 13) Colonel Central Selection Board.

The applicant filed a complaint through the DoD/IG, alleging her rater reprised against her by not submitting her Officer Performance Report in time for her promotion board. Additionally, the applicant alleged that her end of tour award did not contain the pertinent information related to the time she spent in Afghanistan. The DoD/IG referred her complaint

of whistleblower reprisal to the Joint Staff IG (JSIG) for further action. The JSIG conducted an investigation into her allegations. The investigation failed to disclose any evidence that demonstrated intent on the part of her rater to take any reprisal action against her. The conduct of which the applicant complained did not rise to the level of behavior that violated any standard, regulation or law.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility (OPR), which are attached at Exhibits C and D.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial to the applicant's request to substitute her contested PRF due to the lack of support from her evaluators. In accordance with (IAW) Air Force Instruction (AFI) 36-2406, Officer and Enlisted Evaluation Systems, the Board will not consider nor approve requests to change (except for deletions) an evaluator's ratings or comments if the evaluator does not support the change. When an evaluator supports changing ratings, all subsequent evaluators must also agree to the change. In this case, the applicant will need to provide a memorandum of support from the Senior Rater and MLR President, who made the content/rating change(s), detailing the error and the need for a correction. In addition, the memorandum will need to address any content changes between reports and the reason for the change(s).

AFPC/DPSID recommends approval with regard to the contested OPR. The applicant contends that her contested OPR was not included or presented to the CSB for consideration, along with the correct PRF that was forwarded to AFPC. IAW with AFI 36-2406, the applicant's OPR was required to be in her records 60 days after its close-out date. The report was required to be in her records by 26 August 2013. In this case, by no fault of the applicant, the rating chain failed to meet the 60 days suspense. The CSB convened on 16 September 2013 and the applicant's evaluators had not signed and finalized her OPR until 25 September 2013.

A complete copy of the AFPC/DPSID evaluation is at Exhibit C.

AFPC/DPSOO recommends approval of SSB consideration, if the AFBCMR grants approval that the contested OPR be considered by the CY2013 CSB. However, AFPC/DPSOO recommends denial of SSB consideration based on AFPC/DPSID's recommendation to deny the applicant's request to substitute her P0613B PRF.

A complete copy of the AFPC/DPSOO evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 12 December 2014 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice with respect to the applicant's request to substitute the corrected version of her P0613B PRF in her OSR. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and

recommendation of AFPC/DPSID and adopt its rationale as the basis for our conclusion that absent support from her Senior Rater and MLR President, insufficient evidence has been presented to favorably consider this portion of the applicant's request.

4. Notwithstanding the above, sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice with respect to the applicant's contested OPR. After a thorough review of the applicant's complete submission and the totality of the evidence provided, we believe some measure of relief is warranted. In this respect, we note the comments of AFPC/DPSID indicating that through no fault of the applicant, her contested OPR was not processed IAW governing directives; 60 days after its close-out date. Consequently, the delay in her OPR submission corroborates her assertion that it was not reviewed by the CY2013 CSB. Therefore, we believe that including the OPR in the applicant's OSR with promotion consideration by SSB provides the applicant full and fitting relief and equitable promotion consideration. Based on our recommendation to favorably consider her OPR via an SSB, we also recommend the OPR dates be changed prior to the board convening date as indicated below. Additionally, we are in agreement with the recommended administrative correction with regard to the DMSM.

5. The applicant alleges she was the victim of reprisal. As noted above, the applicant's allegation of reprisal was investigated by the JSIG and found to be unsubstantiated. We note the applicant's contention that she experienced adverse personnel actions in reprisal for making a protected communication to officials in her chain of command. As such, based on the authority granted to this board pursuant to Title 10 U.S.C. Section 1034, we reviewed the complete evidence of record to determine whether we conclude the applicant has been the victim of reprisal. Based upon our own independent review, we do not conclude the applicant was the victim of reprisal. The applicant has not established that the delay in processing her OPR, and that her end of tour award did not contain the pertinent information related to the time she spent in Afghanistan were rendered in retaliation for making a protection communication.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that

a. Her AF Form 707, Officer Performance Report (Lt thru Col), rendered for the period 16 September 2012 thru 26 June 2013, was signed by all evaluators after 26 June 2013 and before 16 September 2013, and accepted for filing in her Officer Selection Record (OSR).

b. Her AF Form 707, rendered for the period 16 September 2012 thru 26 June 2013, be considered for promotion to the grade of colonel by a Special Selection Board (SSB) for the Calendar Year 2013B (CY13B) (16 September 2013) (P0613B) Colonel Central Selection Board (CSB).

The following members of the Board considered AFBCMR Docket Number BC-2013-05186 in Executive Session on 3 February 2015 and 2 March 2015, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 1 November 2013, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSID, dated 22 October 2014.
Exhibit D. Letter, AFPC/DPSOO, dated 7 November 2014.
Exhibit E. Letter, SAF/MRBR, dated 12 December 2014.

Exhibit F. JSIG Report of Investigation - WITHDRAWN.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2013-05413

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

The Officer Performance Report (OPR) rendered for the period 2 May 10 through 7 Mar 11 be removed from his records.

APPLICANT CONTENDS THAT:

He received a "Does Not Meet" marking in Section III. Performance Factors on the contested report. His duty performance during the reporting period was satisfactory and above Air Force standards. During this reporting period he decreased the rate of fitness failures, improved mission focus, performed a mission reorganization, saved tax dollars and resources.

The comment in Section IV. Rater Overall Assessment of the contested report regarding his removal from command due to a steep decline in unit morale and subsequent loss of confidence was unfair, unjustified, rendered in retaliation and is not an accurate assessment of his duty performance.

The "Does Not Meet" markings in Section IX, Performance Factors, on the contested report are unproven and unjustified. He met and exceeded Air Force standards in leadership skills, judgment and decision making.

His rater and additional rater had undue influence over his authority within the unit which is illegal under the Uniform Code of Military Justice (UCMJ).

During his feedback, negative comments were made regarding him being a Naval Academy graduate.

The evidence shows the scores for the unit climate assessment (UCA) were within the average scores for the Air Force and only a 13 point decrease from the previous year UCA.

He did not receive any input or feedback from his rater regarding receiving a referral performance report.

After being relieved from command, his rater assigned him to a

position below his grade and skill level.

During his command, he was held responsible for actions taken by his operations officer during a temporary duty (TDY) and conference.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 26 May 93, the applicant entered the Regular Air Force.

On 7 Mar 11, the applicant was removed from command due to a loss of confidence by his rater and received a command directed referral performance report.

On 8 Mar 11, the applicant filed an AF Form 102, Inspector General Personal and Fraud, Waste, and Abuse Complaint Registration, alleging abuse of authority, retribution and reprisal by his commanders. The Commander, 18 AF directed an investigation into the applicant's allegations. The investigation was conducted from 14-29 Apr 11. The applicant also filed a Congressional Complaint regarding the same issues as the IG complaint. The specific allegations and findings are as follows:

Allegation 1. On 7 Mar 11, Col M-- relieved the applicant from command in reprisal for his making a protected communication (PC).

FINDING: NOT SUBSTANTIATED.

Allegation 2. On or about 30 Mar 11, Col M--, issued a referral OPR to the applicant in reprisal for his PC.

FINDING: NOT SUBSTANTIATED

Allegation 3. On or about May 11, Col M--, withheld a nomination for decoration for the applicant in reprisal for making a PC.

FINDING: NOT SUBSTANTIATED.

Allegation 4. On or about 7 Mar 11, Col O-- approved the decision to relieve the applicant from command in reprisal for making a PC.

FINDING: NOT SUBSTANTIATED.

Allegation 5. On or about 30 Mar 11, Col O-- approved the decision to issue a referral OPR to the applicant in reprisal for making a PC.

FINDING: NOT SUBSTANTIATED.

Allegation 6. On or about May 11, Col O-- concurred with the decision to withhold a decoration for the applicant in reprisal for making a pc.

FINDING: NOT SUBSTANTIATED.

On 18 Jul 11, AMC/IGQ notified the applicant that his Reprisal Complaint Analysis (RCA) complaint had been reviewed and determined his allegations lacked evidence of a violation of law, instruction, regulation or policy and was dismissed in accordance with the provisions of AFI 90-301, Inspector General Complaints Resolution. He was further informed that due to the nature of his complaint, it would be reviewed by the Secretary of the Air Force's Complaints Resolution Directorate (SAF/IGQ) and the office of Military Reprisal Investigations, Department of Defense Inspector General (DoD-IG).

On 20 Jun 12, the applicant was notified his complaint was reviewed by SAF/IGQ and DoD-IG Whistleblower Reprisal Investigations Directorate who concurred with findings of AMC/IG and dismissed the applicant's complaint.

On 1 Jul 12, the applicant was retired and credited with 20 years and 9 days of active service.

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial indicating there is no evidence of an error or an injustice.

The applicant did not file an appeal through the Evaluation Appeals' Board (ERAB); however, the ERAB reviewed the request and was not convinced the contested report was inaccurate or unjust and denied the request for relief.

The applicant's wing commander directed a UCA at the end of 2010. The applicant was ordered to report and discuss the results of the UCA with his rater and additional rater. As a result of the UCA, his rater issued him a Letter of Counseling (LOC).

The evaluators are required to consider the significance and frequency of such incidents in assessing the performance and potential of their ratees. Only the evaluators can determine how much an incident influenced the report. In accordance with AFI 36-2406, Office and Enlisted Evaluation Systems, paragraph 1.3.1, evaluators are strongly encouraged to comment in performance reports on misconduct that reflects a disregard of the law, whether civil or the UCMJ, or when adverse actions as Article 15, Letters of Reprimand, Admonishment, or Counseling, or placement on the Control Roster have been taken. The inclusion of the referral comment on the contested report was appropriate and within the rater's authority to document the incident. Moreover, a final review of the contested report was accomplished by the additional

rater and subsequent agreement by the reviewer served as a final "check and balance" in order to ensure the report was given fair consideration in accordance with all applicable Air Force policies and procedures.

The memorandum from his rater relieving him from command noted the applicant was notified repeatedly regarding significant issues with his leadership style and the impact it had on the unit. It further stated he was provided ample recommendation and opportunities to rectify the situation. The applicant's evaluators afforded him every opportunity to improve the unit climate; however, after his failure, they had no choice but to remove him from command. Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record, and is a representation of the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all the members of the rating chain-not only for support, but also for clarification/explanation. The applicant has not provided any evidence of support from his rating chain. Without such documentation, the appropriate conclusion is that the contested OPR is accurate as written and was accomplished in direct accordance with all applicable Air Force policies and procedures. As for the supporting statement provided by the applicant, while individuals outside of the rating chain are entitled to their opinion of the applicant's duty performance and the events occurring around the time the OPR was rendered, they are not in a better position to evaluate the applicant's duty performance than those who were assigned that responsibility.

A complete copy of the AFPC/DPSID evaluation is at Exhibit C.

AFPC/JA concurs with the findings of AFPC/DPSID and recommends the requested relief be denied. The applicant alleges the contested OPR was inaccurate and improperly rendered due to retaliation and improper command influence. While the applicant indicated he attached documentation that would show the errors, injustices, and retaliation he underwent, other than four character references, and an email string, he has only provided his account of the events in an effort to establish the alleged wrongdoings against him. The applicant has not provided any evidence to corroborate his allegations. In fact, the writers of the character statement do not have any personal knowledge of the events that formed the basis of the referral report. Furthermore, the email string does nothing more than to suggest the command might want to be on the look-out for possible issues with the applicant's leadership style. Furthermore, the emails do not establish any prejudgment or command influence on the part of the commanders in his chain of command. The applicant has not provided any evidence other than his own assertions in support of his allegations.

A complete copy of the AFPC/JA evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant refutes virtually every point made by the OPRs and alleges had the Air Force conducted a proper investigation from the start the evidence that would have established his case would not have been destroyed.

When he took over the squadron, it had many issues left from the previous commander, to include low morale, fitness failures, waste of resources, safety, and lack of discipline. However, during his short tenure, he was able to reduce the number of fitness failures, decrease spending, improve safety, and ensure timely and fair discipline to the unit.

When the contested report was originally filed, it was returned twice for improper information and wording, which his rater and additional rater knew was not in compliance with the regulation. Many of his accomplishments were not included in the contested report, such as a higher safety record, perfect inspection results, his being lauded multiple times, and initiatives of his that were benchmarked by 18 AF/CC and AMC/CC. Furthermore, a 13 point change over the course of one UCA without follow-up is not statistically reliable or significant. There was not a "check and balance" of his referral OPR because his rater and additional rater conspired during the process. His rating chain knew of all of his accomplishments, but chose to ignore them. His leadership style was effective and produced positive results. His UCA score was average and in some cases above average.

He requests an investigation into this matter, to include the willful destruction of records. A review of his official record before and after the contested OPR should be conducted because this will show the contested OPR is not indicative of his performance over his 20 year plus career.

Applicant's complete response is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant alleges he has been the victim of an error or injustice (10 USC 1552) and that he has been a victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC 1034). He alleges his OPR, rendered for the period ending 7 Mar 11, be removed from his records due to his rater's retaliation and undue influence against him in the squadron. After a thorough review of the evidence of record and the applicant's complete submission, to include his rebuttal, we are not convinced he has been the victim of an error or injustice (10

USC 1552) or the victim of reprisal (10 USC 1034). We do not find the applicant's assertions and the documentation presented in support of his appeal sufficiently persuasive to override the rationale provided by the Air Force offices of primary responsibility. Additionally, we are not persuaded by the evidence provided that the contested report is not a true and accurate assessment of his performance and demonstrated potential during the specified time period or that the comment contained in the report was in error or contrary to the provisions of the governing instruction. Furthermore, the applicant did not provide persuasive evidence to establish the contested report was not an accurate reflection of his performance. Each evaluator has the obligation when writing the performance report to consider any incidents of substandard duty performance and the significance of the substandard performance in assessing the member's overall performance and potential. In this respect, it appears the statement regarding the applicant's supervisory performance was the basis for the contested report. The applicant has not submitted any persuasive evidence showing the rater's assessment of his supervisory skills was inappropriately reflected on the report in question. Furthermore, it appears the applicant was provided ample counseling and opportunities to improve his supervisory skills. Lastly, in regards to the applicant's request for an investigation of this matter, to include his allegations of the willful destruction of records, we note the Board is not an investigative body and that the applicant had the option to file a complaint with the Inspector General. We note the applicant did utilize this option; however, none of his allegations of wrongdoing were substantiated and, in the absence of evidence to the contrary, we find no basis to question this finding. Therefore, we agree with the opinions and recommendations of the Air Force OPRs and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice or reprisal. In view of the above and in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2013-05413 in Executive Session on 21 Apr 15 under the

provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 20 Dec 13, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFPC/DPSID, dated 7 Oct 14.
Exhibit D. Memorandum, AFPC/JA, dated 15 Oct 14.
Exhibit E. Letter, SAF/MRBR, dated 30 Oct 14.
Exhibit F. Letter, Applicant, 5 Nov 14.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-03766

COUNSEL: XXXX

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His AF Form 707, Officer Performance Report (Lt thru Col), rendered for the period 2 June 2013 thru 30 December 2013, be declared void and removed from his permanent record.

APPLICANT CONTENDS THAT:

Through counsel, the applicant makes the following key contentions:

His contested OPR should be removed due to the substantive error and bias in the form of unlawful command influence and reprisal. He was quietly asked behind closed doors by the group commander, his rater, on behalf of the wing commander, to downgrade a senior non-commissioned officer's (SNCO) Letter of Reprimand (LOR), a day after it was issued. He continued the processing of the SNCO's LOR and decided to place it in his personnel information file (PIF). Subsequently, he was abruptly removed from command eight days later; although, there is no documented feedback on leadership or judgment and decision making, corrective actions, or any legal actions.

His contested OPR was referred due to several comments and ratings. Specifically, it indicated in block IV, he was challenged by issues not related to maintenance, unwilling to seek assistance and accept counsel; and relieved early from command; Block IX2, he does not meet standards, leadership skills; Block IX5, he does not meet standards, judgment and decisions; Block XI, he refused to accept counsel from senior non-commissioned officers and senior officers to include decisions violating AFI 36-3003, Military Leave Program. Specifically, by approving a permissive temporary duty (PTDY) for a separating member who was not authorized PTDY and; wrongfully granting convalescent leave for a member, and as a squadron commander, he failed to requisition officers, leaving two positions vacant.

In regards to his refusal to accept counsel from SNCOs, he gave a LOR to a SNCO who directly refused to obey his lawful order and placed it in his PIF, which was not outside the scope of his discretionary authority. Shortly after issuing the LOR, his rater informed the SNCOs of the squadron that he would listen to any concerns they had pertaining to him and the squadron. They spoke with his rater and were informed that the incident involving the SNCO was not the only reason for his relief. The SNCO's LOR was removed from his PIF, one day after his relief of command. His commander undermined his authority and condoned the flaunting of authority by the SNCO. His contested OPR does not specifically mention the SNCO incident; however, it is clearly the catalyst for the referred OPR.

His allegations of wrongfully approving PTDY, wrongfully granting convalescent leave for a member, and failure to requisition officers leaving two positions vacant are simply untrue. These specific allegations of wrongdoing and failure are not sufficiently significant to warrant a referral. What remains is the issue with the SNCO which was not rebutted by the wing commander. His referred OPR is an attempt to disguise unlawful command influence as performance deficiencies.

He took command on 10 July 2012 and his annual OPR with a thru date of 9 June 2013 was outstanding. He received benign feedback in January 2013. He initiated a Unit Climate Assessment (UCA) in March 2013 and made adjustments to his leadership. There was nothing during this period which gave rise to any adverse concerns for his leadership or

judgment by his leadership. Immediately upon assumption of his new rater's supervision on 1 August 2013, he relied on the March UCA results with no personal history and in direct opposition to his previous rater, it was concluded in his initial feedback that he didn't meet standards in communication skills. His rater further stated that he did not care what his previous rater thought. As such, his comments could only have been derived from the prior rating period which could not be applied by regulation. Subsequently, on 16 October 2013, he was relieved of command, two months after is rater arrived.

The mission success is specifically excluded as a reason for the referred OPR because his squadron was a high performing organization. His initial feedback was grounded in the UCA of March 2013; however, an UCA cannot form the basis for a referred OPR. Also, a UCA, as in this case from a prior reporting period has absolutely no application to the referral period.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Air Force in the grade of major (O-4).

On 5 February 2014, the contested OPR was referred to the applicant by his commander, due to a rating of not meeting standards as it relates to his performance factors, such as, leadership skills, judgment and decisions. In addition, during the reporting period he was challenged by issues not related to maintenance, unwilling to seek assistance and accept counsel, causing him to be relieved early from command.

On 19 February 2014, the applicant provided a statement on his own behalf in regards to the referral report. Specifically, he refuted the allegations for the referral action in its entirety. He further indicated that he was only made aware that he did not meet standards after his removal from command. At no point was he made aware that his career was in jeopardy.

On 24 February 2014, applicant's wing commander considered his response and determined to uphold the referral OPR.

On 7 May 2014, the applicant filed a complaint through the AMC/IGQ, alleging he was unfairly relieved of command by the group and wing commander. AMC/IGQ determined the applicant's case did not have the elements of reprisal but had the potential for abuse of authority. The case was referred to the commander of the Air Force Expeditionary Center (AF EC) for resolution. The AF EC commander directed an investigation (CDI) to look into the allegations made by the applicant. The CDI did not substantiate any wrongdoing by the commanders who removed the applicant and none of the allegations were substantiated.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force offices of primary responsibility (OPR), which are attached at Exhibit C and D.

AIR FORCE EVALUATION:

AFPC/DPSID recommends the removal of the comment in Section XI, which states, "to include decisions violating AFI 36-3003 by approving PTDY for separating member who was not authorized PTDY and wrongfully granting convalescent leave for a member." However, based on lack of corroborating evidence provided by the applicant and the presumed legitimacy of the original crafting of the OPR, recommendation is that the applicant's report not be voided in its entirety from his permanent record.

The applicant filed a similar appeal through the Evaluation Reports Appeal Board (ERAB); however, the ERAB was not convinced there was an error or injustice and denied the applicant's request for relief.

The applicant received a "Directed by Commander" referral OPR after being removed from command for refusal to

accept counsel from senior non-commissioned officers and senior officers. The evaluators are obliged to consider such incidents, their significance, and the frequency with which they occurred in assessing performance and potential. Only the evaluators know how much an incident influenced the report. The rating chain appropriately chose to comment and document on the underlying wrongdoing, which caused the report to be referred to the applicant for comments and consideration to the next evaluator. The applicant provided no evidence within his case to show that the referral comment on the OPR was inaccurate or unjust; therefore, the inclusion of the referral comment on the OPR was appropriate and within the evaluator's authority to document given the incident. Moreover, a final review of the contested evaluation was accomplished by the additional rater and the reviewer which served as a final "check and balance" in order to ensure that the report was given a fair consideration in accordance with the established intent of the current Officer and Enlisted Evaluation System in place. Based upon the applicant being removed from command, its mentioning on the contested report was proper and in accordance with all applicable Air Force policies and procedures.

The applicant claims his refusal to downgrade a LOR as advised is the reason for his referral OPR. There is no evidence to prove that this incident is in direct correlation to the comment in Section IV line 6 and Section XI "Challenged by issues not related to Maintenance (mx), unwilling to seek assistance and accept counsel; relieved early from command" of the 2014 referral OPR. It is clear that this incident was not the determining factor for the applicant being removed from command, there was clearly other incidents that occurred that lead him to be relieved from duty. The burden of proof is entirely on the applicant to prove an error or injustice.

The applicant argues his rater almost immediately, with no personal history, concluded that he did not meet standards in communication based upon the results of the unit climate assessment. The unit climate assessment was completed while he was in command and the survey concluded that his subordinates were in agreement that the squadron had problems with favoritism and unfair treatment. The applicant's rater believes that the applicant's performance, judgment, and leadership skills were inadequate and documented this on his referral evaluation. The fact that the group commander did provide feedback during the reporting period shows that he communicated his expectations to the applicant; the applicant did not improve his communication skills during the rating period therefore it was necessary to document the applicant's deficiencies within the OPR.

The applicant was accused of violating AFI 36-3003, by approving a PTDY for a separating member who was not authorized and granting convalescent leave. The PTDY was cancelled prior to final approval and it was determined the applicant was completely within his authority to grant the aforementioned convalescent leave. Therefore recommendation is that the mentioning of these violations should be removed from the applicant's referral report.

The applicant has provided insufficient documentation or evidence to prove his assertions that the contested evaluation was rendered unfairly or unjustly, and has merely offered his opinion of events in the light that is most beneficial to him. Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. Furthermore, statements from all the evaluators during the contested period are conspicuously absent. In order to effectively and successfully challenge the validity of an evaluation report, it is necessary to hear from all the members of the rating chain and not only for support, but also for clarification and explanation. Once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The applicant has not substantiated that the contested OPR was not rendered in good faith by all evaluators based on knowledge available at the time.

A complete copy of the AFPC/DPSID evaluation is at Exhibit C.

AFPC/JA recommends denial. The applicant's argument that his referral OPR was the result of improper command influence and reprisal is not supported by a preponderance of the available evidence. As to the unlawful command influence argument, the evidence shows that notwithstanding any discussions that took place between the applicant and his superior commander, the applicant went ahead and took the action to file a LOR in a senior non-commissioned officer's PIF. Therefore, the applicant was not in fact unlawfully constrained by higher command from taking the action he believed was correct. Moreover, there is nothing improper about a senior officer mentoring a subordinate commander on philosophies of handling various aspects of command.

The reprisal argument is likewise not supported by the evidence. From the moment the applicant's commander took

command he expressed concerns with the applicant's leadership style. The applicant's actions with regard to the handling of the case involving the senior NCO was at most just one of the reasons supporting the applicant's removal from command. Problems with communication skills, failure to heed counsel from superior and inflexibility were also problems the applicant's commander noted in feedback sessions. In addition, the referral OPR listed other specific failures related to the applicant's performance as commander. It is clear the commander's decision to relieve the applicant of command was not an action of reprisal based upon a disagreement over the handling of one disciplinary matter, but rather represented the culmination of a number of exhibited failures in leadership and communication. When assessing the legality of a discretionary action like that of relieving a subordinate commander of command, the person taking the action, like any government official, is entitled to the presumption that he/she acted properly. The applicant has failed to establish clearly convincing evidence of bad faith or abuse of discretion on the part of his rater. On the contrary, the evidence shows that he had serious well documented misgivings about the applicant's performance as commander from day one. Therefore, for these and the other reasons expressed by AFPC/DPSID, the applicant has failed to articulate any error or injustice.

A complete copy of the AFPC/JA evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant refutes the allegation of his refusal to accept counsel from senior non-commissioned officers. He contacted every senior non-commissioned officer in each respective leadership position during his tenure of command and they kindly vouch for his high military standards, integrity, and leadership skills. Most importantly, they have debunked allegations that he did not listen to their counsel. Their impression of his command has been misrepresented in his contested OPR. He received no counsel, corrective actions, or feedback in terms of leadership, judgment, or decision making during the period covered by his OPR. The report in his file is not an accurate reflection of his performance.

The OPR referred to the culmination of a number of failures in leadership and communication exhibited by him, regarding a unit climate assessment completed in March 2013, which was outside the scope of the contested OPR. These events actually occurred during his previous rating period. If this fact is excluded because they were covered in his last reporting period and his previous rater indicated he followed his counsel and addressed his concerns, then consideration should be given that the UCA by Air Force Instruction 36-2706, Equal Opportunity Program Military and Civilian, does not count as an official document, investigation, or complaint. Nevertheless, the UCA pointed out perceptions that needed addressing. As the unit commander, he addressed these perceptions and his previous rater concurred. In fact, the unit was awarded the maintenance effectiveness award for 2013 under his tenure as commander. When his rater took command, he read and interpreted the UCA completely differently than his previous rater. He chose to supersede his previous rater's action and focus on the perception of discipline in the unit and favoritism. His previous rater focused on communicating policies to everyone in the unit and understood the discipline process, as he was there to hear the rationale behind each action. As supported by his first sergeant, there were no concerns about excessive discipline or deviations from standard discipline practices within the squadron or across other squadrons. In addition, the chief of personnel division, his supervisor during his first year of command echoed, "there were no concerns with unfair discipline practices or favoritism within the squadron".

His rater elected to take a unit controlled document, addressed during the previous reporting period, and use it to document what he perceived to be continuing problems in the unit. Subsuming the command decisions made by his predecessor, he used the UCA as a document to provide a basis of performance deficiencies in the squadron and stated that he did not "listen to senior officer counsel." Outside the UCA, there was never any counsel, corrective actions, or feedback provided to him in the area of leadership, judgment, and decision making.

When he was relieved of command by the wing commander, he was informed that the action occurred because he gave a decorated SNCO a LOR. However, it appears the wing commander's concern is based on the UCA observations about the perception of discipline being unfairly administered. Revisiting the facts, he witnessed a SNCO violate a direct order. In turn, he issued him a LOR based on the corrective action of the rest of the squadron. The SNCO went to the group commander, seeking intervention. The group commander, his rater, proceeded to ask for a lessor corrective

action. He did not perceive this as mentoring rather, as undue command influence. In fact, he was advised by his interim first sergeant that the corrective action he proposed was consistent with the squadron's corrective action practices.

He is stymied as to where a documented case of failure to heed counsel comes to bear. Regardless of the UCA, he followed his rater's direction up to the point he was relieved of command. During his tenure as commander, anyone violating a direct order received a LOR. If he had given the SNCO anything different, the action would have surely been perceived as favoritism. Had his rater provided him counsel in writing, as opposed to behind closed doors, he would still have stayed his course. The only difference would be that his direction would have been documented.

He further argues that he fulfilled his role as commander to the fullest and acted with full integrity. He took care of his subordinates, performed the mission at a high level, and made decisions that were in the best interest of the squadron and the airman he served. Although painful, he made honest decisions and followed the documented guidance given to him by his superiors.

The applicant's complete response, with attachments, is at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice with respect to the removal of the applicant's contested OPR. After reviewing all of the evidence provided, to include the supporting statements from senior non-commissioned officers we are not persuaded the contested OPR is inaccurate or that its contents violate governing directives. We have noted the applicant's contentions concerning the contested report and his allegations that the OPR is not an accurate reflection of his performance. However, while the applicant may believe this is the case, there is insufficient evidence provided to believe that the OPR in question constitutes error or injustice by a preponderance of the evidence. Therefore, we agree with the opinion and recommendation of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion. In the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. Notwithstanding the above, sufficient relevant evidence has been presented to warrant corrective action with respect to the comment in Section XI, of the applicant's contested OPR, which states, "to include decisions violating AFI 36-3003 by approving PTDY for separating member who was not authorized PTDY and wrongfully granting convalescent leave for a member." In this respect, we note the comments of AFPC/DPSID indicating that the PTDY was cancelled prior to final approval and it was determined the applicant was completely within his authority to grant the aforementioned convalescent leave. We agree with their assessment and believe the removal of this statement from the OPR is warranted and recommend the applicant's record be corrected as indicated below.

5. The applicant alleges he was the victim of unlawful command influence and reprisal. As noted above, a CDI did not substantiate any wrongdoing by the applicant's commanders and his allegations of reprisal were investigated by the AMC/IGQ, which were also found to be unsubstantiated. Nevertheless, we noted the applicant's contentions that he experienced reprisal by the issuance of a referral OPR and the removal from command for giving a decorated SNCO a LOR. As such, based on the authority granted to this board pursuant to Title 10 U.S.C. Section 1034, we reviewed the complete evidence of record to determine whether we conclude the applicant has been the victim of reprisal. Based upon our own independent review, we do not conclude the applicant was the victim of reprisal. The applicant has not established that his contested OPR or him being relieved from command were actions in retaliation for issuing a SNCO a LOR.

6. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that the Air Force Form 707, Officer Performance Report (Lt thru Col), rendered for the period 2 June 2013 thru 30 December 2013, Section XI, be amended by deleting the words “to include decisions violating AFI 36-3003 by approving PTDY for a separating member who was not authorized PTDY and wrongfully granting convalescent leave for a member.”

The following members of the Board considered AFBCMR Docket Number BC-2014-03766 in Executive Session on 20 August 2015 under the provisions of AFI 36-2603:

Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 11 September 2014, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFPC/DPSID, dated 21 April 2015.
Exhibit D. Memorandum, AFPC/JA, dated 6 May 2015.
Exhibit E. Letter, SAF/MRBR, dated 29 May 2015.
Exhibit F. Letter, Applicant, dated 25 June 2015, w/atchs.
Exhibit G. IG Hotline Completion Report – WITHDRAWN.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-00350
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. Her referral Enlisted Performance Report (EPR) for the period of 27 Jan 12 through 26 Jan 13 be removed from her records. (Administratively Corrected)

2. Her Promotion Sequence Number (PSN) to the grade of Staff Sergeant (SSgt, E-5) be reinstated.

APPLICANT CONTENDS THAT:

She was harassed and sexually assaulted.

She was labeled as a troublemaker and singled out for relatively small or unsubstantiated misconduct to cover up the real problems, sexual harassment and assault. The Article 15 and other punishments were used against her as a way to cover up what was really going on. She repeatedly complained about the aggressive environment but her complaints only aggravated the situation and a lot of the markdowns on her EPR and punishment during this period were the result of reprisal.

In support of her requests, she provides a chronological sequence of events, a letter from her wing commander disapproving the recommendation for administrative discharge and an Air Force Times article.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 27 May 08, the applicant entered active duty.

According to a letter from the 99th Air Base Wing (ABW) Commander dated 4 Dec 13, a Commander Directed Investigation (CDI) (unrelated to this case) was initiated on 4 Sep 12 following allegations of sexual harassment in the applicant's unit. The investigation did not substantiate sexual harassment; however, it did highlight a lack of accountability and failure

of leadership. The squadron commander took administrative action for those involved, directed additional sexual assault awareness and equal opportunity training, and reiterated the Air Force's zero tolerance policy.

According to the 99 ABW Commander's letter dated 4 Dec 13, her commander notified her on 15 Jan 13 that he was recommending her discharge from the Air Force for a series of minor disciplinary infractions, to include the following:

a. Record of Individual Counseling (RIC), dated 14 Apr 10, for disobeying an order regarding the required uniform of the day.

b. Letter of Reprimand (LOR), undated, from her immediate supervisor for driving 33 Miles Per Hour (MPH) in a 15 MPH zone and talking on a cell phone while driving a Government Owned Vehicle (GOV) on/about 9 Aug 10.

c. Letter of Counseling (LOC), dated l Mar 12, from her work center supervisor for failure to go on 28 Feb 12.

d. LOR, dated 8 Mar 12, from her unit first sergeant for failure to go on 8 Mar 12.

e. LOC, dated 11 Apr 12, from the noncommissioned officer in charge of supply operations for suspicion of physically assaulting her partner and threatening to inflict bodily harm on 6 Mar 12.

f. LOR, Unfavorable Information File (UIF) and Control Roster (CR) action on 13 Sep 12 from her squadron commander for causing a disturbance requiring police response at Manch Elementary School on 7 Sep 12.

g. Article 15, dated 3 Jan 13, from her squadron commander for dereliction of duty, specifically for leaving her place of duty and leaving the facility unsecured on 12 Dec 12.

According to the 99 ABW Commander's letter dated 4 Dec 13, in a letter dated 18 Jan 13, she responded to the commander's discharge recommendation and made a series of allegations including sexual harassment in the workplace. The discharge was put on hold pending an investigation. Additionally, on or about 1 Feb 13, the applicant requested and was granted an alternate duty location outside of the 99th Logistics Readiness Squadron (LRS) and was detailed to the 99 ABW Safety Office.

According to the 99 ABW Commander's letter dated 4 Dec 13, she was issued a written no-contact order on 8 Feb 13 by the First Sergeant to stay away from another member of the 99 LRS per a request from Security Forces investigators because the applicant was discussing the open investigation with the said person. Additionally, the applicant was verbally counseled by the First Sergeant of the 99 LRS to stay out of the squadron based on the

amount of time she was spending outside of her place of duty at the Safety Office, the ongoing investigation, as well as her statements that she felt threatened, uncomfortable, and unsafe in the squadron.

According to the 99 ABW Commander's letter dated 4 Dec 13, she was arrested on 23 Jun 13 for domestic assault of her partner. She was issued a no-contact order by the Safety Office following the domestic assault incident with her partner. She was issued an LOR on 28 Jun 13 for the incident.

According to the 99 ABW Commander's letter dated 4 Dec 13, the applicant in a letter to her Congressman asserted her behavior was due to Post Traumatic Stress Disorder (PTSD) and depression.

On 3 Oct 13, the discharge authority disapproved the administrative discharge recommendation In Accordance With (IAW) AFI 36-3208, Administrative Separation of Airmen, paragraph 5.56, and directed the applicant be retained.

In a letter dated 4 Oct 13, the USAF Warfare Center Commander replied to her Congressman stating that the applicant's allegations were taken seriously and carefully investigated. He was continuing to review the case to ensure he is satisfied that no further action is required.

Per Special Order Number ACD-01658, dated 17 Apr 14, she was placed on the Temporary Disability Retired List (TDRL) effective 28 Apr 14, in the grade of Senior Airman (SrA, E-4) with a compensable percentage for physical disability of 70 percent.

Her DD Form 214, Certificate of Release or Discharge from Active Duty, reflects she was retired effective 28 Apr 14 with a narrative reason for separation of "Retirement Disability, Temporary, Enhanced." She served 5 years, 11 months and 1 day on active duty.

In an email dated 5 Feb 14, SAF/IG states there is no evidence anywhere in the system of records that would suggest that there was reprisal.

AIR FORCE EVALUATION:

AFPC/DPSID states that under the provisions of AFI 36-2603, Air Force Board for Correction of Military Records, the applicant's request that her referral EPR ending 26 Jan 13, has been resolved through pertinent administrative procedures which do not require referral to the Air Force Board for Correction of Military Records.

The Board is the highest level of administrative appeal within the Department of the Air Force. The Board will not consider a

case until all avenues of administrative relief have been exhausted. DPSID reviewed the application and determined the first avenue of relief would be through the Evaluation Report Appeals Board (ERAB). Therefore, her application was forwarded to the ERAB and the request to void the EPR rendered for the period of 27 Jan 12 through 26 Jan 13 was approved. The referral EPR will be replaced with an AF Form 77, Letter of Evaluation, stating "Not rated for the above period. Report was removed by Order of the Chief of Staff, USAF."

The complete DPSID evaluation is at Exhibit C.

AFPC/DPSOE recommends denial of the applicant's request for reinstatement of her PSN to the grade of SSgt. She was considered and tentatively selected for promotion to the grade of SSgt during Cycle 12E5 and was given a PSN of 6618.0 which would have incremented on 1 Feb 13; however, she was placed on the control roster in Sep 12 and her line number was removed IAW AFI 36-2502, Airman Promotion/Demotion Programs, Table 1.1., Rule 5.

The complete DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 28 Jul 14, copies of the Air Force evaluations were provided to the applicant for review and comment within 30 days (Exhibit E). As of this date, this office has not received a response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice to warrant reinstating her PSN to the grade of SSgt. We note the applicant alleges that she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 U.S.C. § 1034). However, the available evidence of record reflects the reasons for her placement on the control roster which resulted in her losing her line number. Based upon our own independent review of the available evidence, the applicant has not established the actions by her superiors to place her on the control roster were an act of reprisal. We note that officers of the government, like other public officials, discharge their duties correctly, lawfully, and in good faith. The applicant has not provided sufficient evidence

the commander's actions were arbitrary or capricious. The control roster actions which resulted in her losing her line number appears to comply with the governing AFI and we find no evidence to indicate that the decision to place her on the control roster was inappropriate. As such, we agree with the opinion and recommendation of the Air Force office of primary responsibility (DPSOE) and adopt the rationale expressed as the basis for our decision the applicant has failed to sustain her burden of having suffered either an error or injustice. Therefore, aside from the administrative correction to remove her referral EPR for the period ending 26 Jan 13 from her record, we find no basis to recommend granting the additional relief sought in this application.

5. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered Docket Number BC-2014-00350 in Executive Session on 28 Aug 14, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to Docket Number BC-2014-00350 was considered:

Exhibit A. DD Form 149, dated 22 Jan 14, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSID, dated 21 Apr 14.
Exhibit D. Letter, AFPC/DPSOE, dated 2 May 14.
Exhibit E. Letter, SAF/MRBR, dated 28 Jul 14.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-00821
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her leave that was previously revoked, be restored.

APPLICANT CONTENDS THAT:

She is the victim of sexual assault by her previous commander and her leave was revoked pending the investigation. She believes there is an injustice because she was ordered not to leave the area until further notice by her commander.

In support of her request the applicant provides copies of an email, her Leave and Earnings Statements and a no contact order.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the United States Air Force on 17 May 90. She was progressively promoted to the grade of senior master sergeant (E-7) and is currently serving on active duty.

AIR FORCE EVALUATION:

AFPC/DPSIM recommends denial indicating there is no evidence of an error or an injustice. IAW AFI 36-3003, Military Leave Program, paragraph 6.1 "Annual Leave. Another name for annual leave is "ordinary" leave. Normally members request leave, as accruing, within mission requirements and other exigencies. Member's failure to use leave, as accruing, can result in loss of accrued leave at Fiscal Year (FY)-end leave balancing or upon retirement or separation from active duty." Additionally, IAW paragraph 4.1.2. "…Scheduling leave prevents loss of leave at fiscal year (FY)-end balancing, retirement, or separation from active duty. Both management and members share responsibility in managing leave balances throughout the FY." She is responsible for monitoring her leave balance and scheduling with management in order to prevent lost leave. The applicant did not schedule leave in a timely manner prior to the end of the FY. Even if her leave was not canceled, she would have still gone over her use/lose balance.

The applicant provides her Leave and Earning Statement (LES) which reflects she lost 16 days of leave. Also included was a no contact order dated 5 Sep 13, which informed the applicant her 'place of duty was in her private residence until further notice.' Her Master Military Pay Account (MMPA) reflects 16 lost days, cancellation of ordinary leave on five (5) occasions from May-Sep, and eight (8) instances of ordinary leave.

The complete DPSIM evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant contends the 16 lost days were due to being penalized as reprisal for speaking out against her commander at the time; he allegedly committed sexual assault against her. She includes a copy of her cancelled deployment orders for which she had planned to take leave en route 23-30 Sep 13. This leave would have taken her under the 75 days allowed to carry into the FY.

In further support of her request she provides a letter from the Special Victims' Counsel, Air Force Legal Operations Agency and various other documents associated with her request.

The applicant's complete submission, with attachments, is at Exhibit D.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission, to include her rebuttal response, in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility (OPR) and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. Should the applicant provide substantial evidence to show how the alleged sexual assault prevented her from taking leave, we may be willing to reconsider her application. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following documentary evidence pertaining to AFBCMR Docket Number BC-2014-00821 was considered:

Exhibit A. DD Form 149, dated 19 Feb 14, w/atchs.
Exhibit B. Memorandum, AFPC/DPSIM, dated 5 Jun 14.
Exhibit C. Letter, SAF/MRBR, dated 27 Jun 14.
Exhibit D. Applicant's Rebuttal

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-00824

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His demotion from the grade of Senior Master Sergeant (SMSgt/E-8) to the grade of Master Sergeant (MSgt/E-7) be overturned.

2. He receive all back pay for lost wages from 15 Oct 06 through present date.

APPLICANT CONTENDS THAT:

His demotion action to the grade of MSgt was unjust and should be overturned.

He was denied proper notice throughout the entire process which led to his demotion.

The proposed Non-Judicial Punishment (NJP) by way of an Form 2627 was erroneous, deficient and unjust, in that it stated he violated Pennsylvania Code of Military Justice (PCMJ), Section (§)2016 (Failure to obey an order or regulation) and PCMJ, §2045 (Conduct prejudicial to good order and discipline), which do not exist. However, failure to obey an order or regulation is PCMJ, §6016 and §6045 provides for punishment for conduct prejudicial to good order and discipline. So he could not have been properly notified if the notification document does not cite the proper sections of the PCMJ.

He was not given due process because the alleged violations of the PCMJ do not provide any specifications regarding the alleged misconduct and was wholly insufficient as required by procedural due process.

He was denied the opportunity to see the materials that were being used as the basis of his punishment and denied the protections afforded under Air National Guard Instruction (ANGI) 36-2503, Administrative Demotion of Airmen.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

Based on information provided by the applicant, a memorandum, dated 29 Jun 06, from the Commander, 193rd Special Operation Wing, notified the applicant of his intent to proposed adverse action against the applicant for his actions, on 13 Jun 06, which resulted in a fuel leak. On 7 Aug 06, the applicant responded to the Proposed Adverse Action requesting the action be dismissed.

On 14 Aug 06, the commander notified the applicant that based on a review of the evidence presented by the applicant, he was revising his original decision to suspend the applicant for 15 days and reducing the suspension to 7 days. In addition, he notified the applicant of his appeal rights to the Adjutant General and an administrative hearing.

On 16 Aug 06, the commander preferred charges against the applicant under the PCMJ, for failure to obey order or regulation and conduct prejudicial to good order and discipline.

On 21 Aug 06, after consulting with counsel, the applicant accepted the NJP and waived his right to demand trial by court-martial. He elected to present written matters and requested a personal appearance before the commander.

On 24 Aug 06, the commander recommended a demotion to the grade of Master Sergeant (MSgt), in accordance with ANGI 36-2503, para 3.7.

On 24 Aug 06, the applicant requested an administrative hearing in regards to the adverse action punishment of 7 day suspension.

On 28 Aug 06, the applicant submitted an appeal indicating the reduction to the grade of MSgt is not a permissible action.

On 1 Sep 06, the Staff Judge Advocate (SJA) found the case file legally sufficient, with the exception of the reduction in grade to MSgt. The SJA indicated that in accordance with Section 5301 of the PCMJ, the commander was permitted to reduce the applicant to the grade of MSgt; however, in accordance with ANGI 36-2503, Administrative Demotion of Airmen, only the State Adjutant General vests demotion authority for the grades of MSgt and above and based on the conflict of law and since the punishment had not yet been imposed, the applicant's request was not "ripe" for appeal.

On 27 Sep 06, according to a memorandum, the commander withdrew the 7 day suspension under the Proposed Adverse Action.

According to Special Order (SO) A-7, dated 6 Oct 06, on 15 Oct 06, The Adjutant General (TAG) of Pennsylvania Air National Guard (PA ANG), demoted the applicant to the grade of MSgt for failure to fulfill his Non-Commissioned Officer (NCO) responsibilities.

According to a memorandum, dated 10 Oct 13, from TAG, the denied the applicant's appeal, dated 21 Aug 13, and determined that his

appeal was untimely based on his submission 6 years after the events occurred. In addition, the TAG noted that he had reviewed the issues raised in regard to alleged error in the processing of the demotion action and reassignment actions and determined that any perceived errors were administrative in nature and did not result in an injustice.

According to the Military Personnel Data System (MILPDS), on 2 Jan 15, the applicant was transferred to the USAF Reserve Retired List, awaiting pay at age 60. He was credited with 33 years, 9 months, and 7 days of satisfactory Federal service.

AIR FORCE EVALUATION:

NGB/A1PP recommends denial indicating the applicant's request is untimely. A1PP notes that over six years passed before the applicant appealed the decision of the PAANG and more than seven years before he petitioned the Board. Since the TAG is the final authority and subsequently directed the demotion, A1PP finds this request without warrant. A1PP cannot comment on whether the NJP was proper since the demotion was based on a violation of the PCMJ; nor can they comment on the civilian administrative action.

A1PP states AFI 36-2503's paragraph 2 identifies demotion authorities. Paragraph 2.1 states, "TAG will exercise demotion authority for enlisted members serving in the ranks of MSgt, SMSgt, and Chief Master Sergeant (CMSgt)." Paragraph 2.3 notes, "Depending on an ANG enlisted member's military status, a member reduced in grade by court martial, judicial or Non-Judicial Punishment (NJP) under the UCMJ or State Military Code, is demoted to the same grade as a Reserve of the Air Force in the Air National Guard of the United States (ANGUS)."

A1PP cannot comment on whether the NJP was "proper", as the applicant was charged with violating a State Military Code within the PCMJ. However, on 6 Oct 06, the TAG authorized and directed the applicant be demoted from SMSgt to MSgt for failure to fulfill NCO responsibilities. This authority is within the TAG's discretionary authority IAW AFI 36-2503's paragraph 2.1. and was coordinated with legal counsel. Paragraph 7.2 of ANGI 36-2503 confirms, "Demotion orders may be revoked only with the approval of TAG when it has been determined that the order was published without the proper authority." Since the TAG directed the demotion, the demotion cannot be overturned without the TAG's approval.

The complete A1PP evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel reiterates his original contentions the NJP was fundamentally improper because of the lack of due process by

depriving the applicant of proper notice of his alleged misconduct. Counsel cites several reasons the applicant was deprived due process:

a. The Form 2627 that proposed the NJP cited two sections of the PCMJ that do not exist and was legally insufficient. Further, the Form 2627 did not provide any specifications regarding the applicant's alleged failure to obey an order or regulation or conduct that was prejudicial to good order and discipline. The existence of both of these fundamental flaws only solidifies the applicant's deprival of due process.

b. The applicant's chain of command conspired to conceal the report that was the basis of the punishment in violation of ANGI 36-3503, § 4.1.1 through 4.1.5. The applicant did not receive the specific reasons for the proposed demotion; a complete summary of the supporting facts; instructions for the airman to acknowledge the notification and concur or non-concur; or an explanation of the airman's right to consult with legal counsel.

c. The applicant's chain of command intentionally hid the information that he was entitled to see before he was demoted.

d. The illegal action by the operation wing deprived the applicant of due process.

Counsel refutes the untimely recommendation because the applicant elected not to challenge his 2006 demotion action out of fear of reprisal. He was explicitly told that if he challenged the demotion, the careers of his spouse and daughter, would be jeopardized.

He has been victimized by the deliberately illegal acts of his chain of command and their actions are clearly unjust, unethical, and illegal, but the only service member to be punished in this situation is the applicant.

Counsel's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION:

The 193rd Wing Staff Judge Advocate (SJA), PA ANG, submitted information to the JA for the Air National Guard Readiness Center (ANGRC). First, he questions the Board's jurisdiction to correct military justice records of a NJP under a State Code of Military Justice. However, assuming that jurisdiction rest with the Board, he notes that he was the SJA at the wing at the time of the Section 5301 proceedings in question.

He had had extensive conversations about the proceeding with the then Commander of the 193d MXG, who has retired. However, despite his repeated offers of assistance, the commander completed the MA-SJA Form 2627 on his own, and declined his offer to review the

same. It is his recollection the applicant requested and received the advice of an Area Defense Counsel (ADC), and the nature of the offenses he was accused of was explained to him and known by defense counsel, the ministerial errors on the MA-SJA Form notwithstanding.

At the time that he subsequently reviewed the MA-SJA Form 2627, he was advised by the former commander that neither the applicant nor his counsel had raised any objection with respect to the errors, that they had not requested a correction, and that both were fully aware of the substance of the matters the applicant was being punished for. The ADC never raised any concerns with his office.

He would contend the errors complained of are ministerial and the applicant was afforded a full and fair hearing, and that he had the benefit of counsel who never raised any issue with respect to the MA-SJA Form 2627.

The complete review, provided to ANGRC/JA is at Exhibit F.

APPLICANT'S REVIEW OF the ADDITIONAL AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to counsel on 17 Apr 15 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit G).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant’s complete submission, including counsel’s response to the Air Force evaluation, in judging the merits of the case; however, we find no evidence of error in this case and after thoroughly reviewing the documentation that has been submitted in support of applicant's appeal, we do not believe he has suffered from an injustice. In addition, based upon the presumption of regularity in the conduct of governmental affairs and without evidence to the contrary, we must assume the applicant's demotion was proper and in compliance with appropriate directives. Further, while we note counsel’s objection to the PA state NJP action, we remind the applicant and counsel, that in Sep 06, the applicant and military counsel was made aware of a conflict in PA state law and ANGI 36-2503, and upon legal review the adverse action was withdrawn and the applicant was demoted by the Adjutant General of the State of PA. Should the applicant provide additional evidence that his rights were violated, and his demotion by the Adjutant General was erroneous, we do not find

that he has established his burden of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-00824 in Executive Session on 4 Jun 15 and 19 Aug 15 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 7 Feb 14, w/atchs.
Exhibit B. Pertinent Excerpts from Personnel Records.
Exhibit C. Letter, NGB/A1PP, dated 22 Aug 14.
Exhibit D. Letter, SAF/MRBR, dated 26 Sep 14.
Exhibit E. Letter, Counsel, dated 21 Oct 14.
Exhibit F. Letter, 193 SOW/JA thru NGB/A1, dated 6 Feb 15.
Exhibit G. Letter, SAF/MRBR, dated 17 Apr 15.

RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS
IN THE MATTER OF: DOCKET NUMBER: BC-2014-01223 COUNSEL: HEARING DESIRED: YES
APPLICANT REQUESTS THAT:
1.
The findings of the Inspector General of the Air Force(SAF/IG) Report of Investigation (ROI) substantiating findingsof reprisal against him be set aside.

2.
The letter of reprimand (LOR) issued incident to the findings of reprisal be set aside.

APPLICANT CONTENDS THAT:
1.
The Investigating Officer (IO) failed to interview a critical witness, the commander (CC) responsible for hiring theindividual for the Active Guard Reserve (AGR) vacancy in thismatter, as part of the investigation into the alleged reprisal,despite his request for them to do so. During the matter inquestion, he discussed with the commander the qualities neededfor the AGR vacancy in questions. He told the commander that there was a disconnect between the field and the AGR Review Board (ARB) process. Since none of the AGR candidates had command experience, it was his recommendation to look outsidethe AGR candidates and particularly at an Air Reserve Technician(ART) candidate who had been a commander. His commander agreedwith that approach and directed him to check with the ARTcandidate's leadership to verify his suitability for the job.Unfortunately, he failed to provide written justification for that decision to consider a candidate other than AGR candidates as required by AFI.

2.
The IO made erroneous "findings of fact," which were reliedupon to substantiate that the applicant committed reprisal. The ROI focuses on statements he made about the complainant being"damaged goods" and "in the penalty box." He does remember parts of each conversation, and regrets them. His negativeopinion of the complainant conveyed by those statements was as aresult of her personal appeal to the commander. He had no knowledge of what was in her appeal, only that she had gone around the established appeal process from adverse Board decisions and received special treatment based on her personalrelationship with the commander. One witness connected his

negative remarks about the complainant because she "whined tothe boss about the ARB process." That witness was mistaken. He had no idea that she had complained about the ARB process. This same witness stated that he placed the protected communicationon the applicant's desk. He had no recollection of this event,nor ever seeing the protected communication, and testified tothat effect under oath.

3.
The IO wrongfully used the fact that he did not conduct aninterview when hiring for the AGR vacancy in question, when hehad conducted interviews for three positions during his tenureas a Numbered Air Force (NAF) commander as evidence of inconsistency to support a finding of reprisal. Before becomingthe NAF/CC he had never conducted an interview to hire for a position. It seems unfair to ascribe bad motives to him for not interviewing for the AFR vacancy in question when he had neverused the interview process before. As the NAF/CC, he receivedadvice to interview, saw the advantages of it, and repeated thatapproach. It had nothing to do with his previous experienceelsewhere.

4.
The IO's analysis of answers to the four "acid test" questions used to determine if there was an abuse of authorityresulting in reprisal actions (AFI 90-301, Inspector GeneralComplaints Resolution, Chapter 6, Reprisal Complaints) was fatally flawed, resulting in an erroneous conclusion substantiating reprisal. He strongly objects to how the IOconcluded that he knew about the protected communication. During his testimony, he was shown the alleged protected communication. He had not seen it before and told the IO so. He did tell the IO that it was similar to an email he had seen from another AGR officer and somehow, from this exchange, the IOconcluded that he had seen the protected communication. Additionally, as he understood it, no reprisal action can befound if a different personnel action would have been takenregardless of any protected communication. That was exactly thecase here. Assuming he

was wrong to have placed such a highpremium on command experience and an AGR should have beenselected, the ROI erroneously states that the AGR candidate“rack and stack” spreadsheet on top of the vacancy packageidentified the complainant as the #1 candidate. That was not true; she was the #2 candidate.

The substantiated finding of a reprisal and the LOR later placedin his record marks the only blemishes in his otherwise distinguished record. The blemishes are the result of significant errors and injustices, and they need to be corrected. The applicant’s complete submission, with attachments, is atExhibit A.

STATEMENT OF FACTS:

The applicant’s military personnel records indicate that heserved in the Air Force Reserve in the grade of brigadiergeneral (O-7) during the matter in question.

The SAF/IG initiated an investigation to address the followingallegation pertaining to the applicant:

Allegation. The applicant reprised against the complainant bynot selecting her for a colonel (O-6) AGR position in violationof 10 USC Section 1034, Military Whistleblower Protection Act.

Finding: SUBSTANTIATED

In Feb 10, the SAF/IG ROI S6803P was released. By a preponderance of evidence, based upon the findings of fact andsworn testimony, the allegation that the applicant reprisedagainst the complainant by not selecting her for the position inviolation of 10 USC Section 1034, Military Whistleblower Protection Act, was substantiated. The following findings offact are described in the noted report:

1) On 22 Mar 07, the complainant met an ARB in which sherequested a two-year extension to her date of separation (DOS).

2) On 10 Apr 07, the complainant was informed the ARB deniedher two-year extension.

3) In late Jul to early Aug 07, the complainant met with thevice commander (CV) to address policy violations relating to theARB process.

4) On 13 Aug 07, the complainant sent a letter to the CCaddressing her concerns about the ARB process and asking him toreconsider extending her AGR tour.

5) On 23 Aug 07, the CC informed applicant of his decision toapprove an extension of the complainant’s AGR tour.

6) On 27 Mar 08, the applicant received an email from the CVcontaining a copy of a letter written by another personnelofficer contending policy violations in the AFR ARB processsimilar to the complainant’s letter last year.

7) On 23 May 08, the complainant submitted an application forthe noted O-6 AGR vacancy.

8) Jun-Jul 08 the hiring office produced a “rack and stack” ofeligible candidates for the noted AGR vacancy announcement wherethe complainant and another AGR member were listed at the #1candidates (tied) for the position.

9) In Jun 08, applicant told a peer of the complainant thatcomplainant was “not one of the top candidates” for the positionand that complainant was “in the doghouse for getting somethingthat some of the other folks didn’t get.”

10) In Jun 08, the applicant told a member of the CC’s staffthat the complainant was “damaged goods” because she had “whinedto the boss about the ARB process and got her appealoverturned.”

11) In Jun 08, the applicant told another member of the CC’sstaff that the complainant is “not going to get a job up here”because of the “stunt she pulled” with the CC.

12) In Jul 08, the applicant non-selected the complainant tofill the AGR vacancy announcement.

Reprisals against military members for making protecteddisclosures are prohibited under 10 USC Section 1034. Department of Defense Directive (DODD) 7050.06, MilitaryWhistleblower Protection, and AFI 90-301, Inspector General Complaints Resolution, provide standards and criteria to evaluate allegations of reprisal. AFI 90-301, requires theanswering of four questions (known as the “Acid Test”) whenanalyzing a reprisal complaint. The questions/answerspertaining to this ROI are as follows:

1) Did the member make or prepare a communication protected bystatute, DoD Directive, or AFI 90-301?

ANSWER: YES

2) Was an unfavorable personnel action taken or threatened, orwas a favorable action withheld or threatened to be withheld following the protected communication?

ANSWER: YES

3) Did the official responsible for taking, withholding, orthreatening the personnel action know about the protectedcommunication?

ANSWER: YES

4) Does the evidence establish that the personnel action wouldhave been taken, withheld or threatened if the protectedcommunication had not been made?

ANSWER: NO
On 4 Jun 10, Department of Defense Inspector General (DoD-IG)concurred with the SAF/IG conclusion that the applicant didreprise against the complainant by not selecting her for the AGRposition in violation of 10 USC Section 1034.
On 16 Jul 10, the applicant received a LOR from the CC forimproperly retaliating against the complainant in violation ofthe very laws and Air Force regulations he was duty-bound tofollow and uphold.
On 9 Sep 10, the applicant provided written matters in responseto the LOR. He apologized for his errors in this matter andtook full responsibility for the decisions he made. He indicated that his intent was to select the best qualifiedofficer with command experience. He never intended to slightany AGR member or any particular career field. On 5 Oct 10,after consideration of all matters, the CC decided the LORshould remain in effect.
On 4 Sep 12, the applicant requested SAF/IG reopen the investigation, making similar allegations to the matter under review. Among his many contentions, he argued that the Investigating Officer failed to interview the CC, whose testimony would have been crucial to a fair and thoroughinvestigation. In support of his request, the applicantprovided a copy of an affidavit from the CC, a copy of which wasalso provided in support of his application to the AFBCMR. The applicant's remaining arguments were as follows:
1) He did not know about the protected communication (personalletter from the complainant to the CC, therefore, therecould be no reprisal.
2) He was not the selecting official for the position inquestion; the CC was. Since he knew about the protectedcommunication and selected another officer, this can onlymean the complainant was not the best officer for the job.That was his conclusion as well, and the affidavit providedby the CC substantiates this point.
3) The command went through a fair and thorough selectionprocess and selected the best candidate for the AGR position. Two of the four witnesses cited in ROI agreedwith the selection at the time, as did the CC and severalother senior officers.
4) He was a NAF/CC from the time the ROI was released until Sep11, and did not have time to dispute the ROI. Since that time, he appealed the investigation with DoD-IG and wasunsuccessful twice. Their only recommendation was for himto appeal through the AFBCMR.
On 5 Sep 12, SAF/IG acknowledged the applicant's 4 Sep 12 emailrequest, promising him a review of his file and an assessment ofwhat he presented in the email.
On 10 Oct 12, SAF/IG advised the applicant that based on an exhaustive review of the facts and circumstances of the applicant's case, to include the new and material evidenceprovided (affidavit from the CC), they were not convinced thatthe original outcome of the investigation should be disturbed.
On 13 Aug 13, the Acting Secretary of the Air Force havingdetermined the applicant did serve satisfactorily in the gradeof major general (O-8) within the meaning of Section 1370(d),Title 10, U.S.C., directed he be transferred to the RetiredReserve in the grade of major general.
On 15 Dec 14, the AFBCMR provided Counsel with copies of aSAF/GC legal opinion pertaining to the Board's ability to correct Inspector General and other investigative records aswell as a copy of the applicant's appeal to SAF/IG for reconsideration and the noted response for review and commentwithin 30 days (Exhibit F). As of this date, no response hasbeen received by this office.
AIR FORCE EVALUATION:
AF/REG did not provide a recommendation; instead they reiteratedtheir responsibility as the Air Force Reserve Senior LeaderManagement office for the assignment and retirement actions ofall Air Force Reserve general officers, including the applicant.They further stated that in response to the 4 Jun 10 DOD-IG concurrence with the SAF/IG ROI finding that the applicantreprised against the complainant, a review of the applicant'scase file resulted in the CC at that time issuing the applicanta LOR.
A complete copy of the AF/REG evaluation is at Exhibit C.
APPLICANT'S REVIEW OF AIR FORCE EVALUATION:
Through counsel, the applicant refutes the AF/REG advisory,stating that is does not well serve the Board, the integrity ofthe process, nor him. The advisory is asking the Board, ineffect, to add its concurrence to SAF/IG, DoD IG, and AFRC/CC,all because they are who they are. A house of cards has been built; it rests on a ROI that they have shown is not onlyunworthy of hosannas (praise), but which brings into seriousquestion both the fairness accorded the applicant in the investigatory process and the judgment of the investigatingofficer. He humbly asks the Board to right the wrong associatedwith the findings of the ROI substantiating reprisal and, bycorrecting the record, remove the stain unfairly placed on hiscareer and reputation.
Counsel's complete response is at Exhibit E.

THE BOARD CONCLUDES THAT:
1.
The applicant has exhausted all remedies provided byexisting law or regulations.

2.
The application was timely filed.

3.
Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends the ROI was fatally flawed because the IO didnot obtain evidence from the central figure in the case, thecommander, who provided the extension of the complainant's dateof separation (DOS) following her personal appeal, and also thehiring authority for the AGR vacancy position in this matter.He argues that he did not withhold a personnel action againstthe complainant for a protected communication between her andthe commander. Additionally, he refutes the IO's analysis ofthe four "acid test" questions used to determine the abuse ofauthority resulting in reprisal actions, and the IO's accusations of inconsistent hiring practices supporting reprisalactions. The presumption of regularity in the conduct ofgovernment affairs dictates that, absent evidence to the contrary, it should be presumed that the SAF/IG ROI substantiating the alleged reprisal actions against the applicant was appropriate to the circumstances and was carriedout in accordance with the governing regulations. While the applicant did not present any evidence that was not previouslyconsidered by the SAF/IG, consideration of this Board, however,is not limited to the events which precipitated the ROI findings. In this respect, it may base its decision on mattersof objectivity rather than simply on whether rules and regulations which existed at the time were followed. Under this broader mandate, and after careful consideration of all thefacts and circumstances of applicant's case, we are persuadedcorrective action is warranted based on objectivity in theinterest of justice.

The applicant contended the SAF/IG ROI was fatally flawed because the IO did not obtain evidence from the central figure,the commander responsible for hiring the individual for the AGRvacancy in this matter that clearly would have compelled adifferent conclusion. In his 23 Feb 12 sworn affidavit the commander expounded on the deliberations and thought processesinvolved in the hiring of the individual for the AGR vacancy; hegave guidance to put special emphasis on placing colonel (O-6)selects (overabundance at the time) while simultaneously takinga hard look at extending current O-6s. The complainant wasalready on an extension of her DOS and her selection would haverequired yet another extension, running counter to his aforementioned guidance. He opined that he would not haveplaced the complainant in the AGR vacancy position because she wasn't the right officer for that job, and that never in his conversations with the applicant on this matter was there anymention of reprisal of retaliation against the complainant.Furthermore, the applicant's counsel argued that the failure tointerview the key witness in the case; the commander responsiblefor hiring the individual for the AGR vacancy in this matter aswas requested by the applicant, is inexplicable and unjustifiable, and even standing alone would warrant correctiveaction. In this respect, we agree with the applicant andcounsel and find the IG ROI conclusory.
In his written statement to the Board, the applicant reiteratedthe portion of his testimony to the IO that it was brought tohis attention the complainant had made a personal appeal to thecommander; however, he was unaware of what was in that personalappeal, but he admitted having a negative opinion of the complainant based on the fact she had gone around the established appeal process for adverse board decisions and received special treatment. While we note the DoD-IG originallyapproved the SAF/IG report, subsequently conducted their ownreviews, and SAF/IG conducted two additional reviews of theirown, all reaffirming the key findings made by the investigatingofficer, substantiating the allegation of reprisal; we are notconvinced the applicant reprised against the complainant by notselecting her for the AGR position in this matter. In this respect, the Board analyzed the individual elements of thereprisal acid test; while there were disagreements with elementsone through three; we concluded that element four was notsatisfied, in that the complainant would not have been selectedfor the AGR vacancy position even if she had not made theprotected communication (personal appeal). The rationale for that conclusion is primarily in the form of the rack-and-stackcandidate listing prepared by someone other than the applicantthat established another AGR member as the leading candidate.Additionally, the commander responsible for hiring the individual for the AGR vacancy position in this matter in hissworn affidavit indicated he would not have placed the complainant in that position because she was not the rightofficer for this job. For those who thought that the applicantwas looking for any excuse to avoid selecting the complainant,he could have done so very easily by selecting the leadingcandidate, but did not do so. In the applicant's 8

Sep 10written response to the LOR, he reiterated that he applied well-reasoned criteria, consistent with past hiring procedures indetermining that the #5 candidate on the rack-and-stack listmost closely fit the command senior leadership's desire and needof a commander's perspective and input into the AGR process.The candidate selected was a graduated group commander and camehighly recommended by his wing commander and career field functional leader. Prior to announcing the selected candidate,the applicant discussed the proposal to hire the #5 candidatewith the commander and received his approval to do so. To address the ROI finding that the applicant was inconsistent inhis hiring actions by not interviewing candidates for the AGR vacancy position; in his testimony, the applicant offered thathe did not incorporate "interviewing of candidates" into hishiring process techniques until after the matter in question,when he became the NAF/CC. While we note that the ROI determined that the selection process of this AGR VacancyAnnouncement was not accomplished in a procedurally correctmanner and the applicant's decision to not interview any of thecandidates was inconsistent with his actions during recent hiring opportunities; the evidence presented convinces us thatthe applicant and the commander believed the #5 candidate onrack-and-stack list selected for this position gave them thecommand experience dimension they wanted to bring to this headquarters position. The Board finds these facts and circumstances persuasive and the evidence sufficient to concludethe IO was predisposed to a preconceived outcome to the investigation. The IO failed to pursue any exculpatoryinformation which would have confirmed the facts as related bythe applicant. Therefore, in the interest of justice, werecommend the applicant's records be corrected to the extentindicated below.

4. The applicant's case is adequately documented and it has notbeen shown that a personal appearance with or without counselwill materially add to our understanding of the issues involved.Therefore, the request for a hearing is not favorablyconsidered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that the Letter of Reprimand rendered 16 July 2010 be declared void and removed from his records.

The following members of the Board considered AFBCMR DocketNumber BC-2014-01223 in Executive Session on 2 Mar 15 under the provisions of AFI 36-2603:

All members voted to correct the records as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2014-001223 was considered:

Exhibit A. DD Form 149, dated 17 Feb 14, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AF/REG, dated 6 May 14, w/atchs.
Exhibit D. Letter, SAF/MRBR, dated 7 Oct 14.
Exhibit E. Letter, Counsel, dated 20 Oct 14.
Exhibit F. Letter, AFBCMR, dated 15 Dec 14, w/atchs.

7/16/2015
X

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-01339

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) received on 1 April 2013 be set aside and his grade of technical sergeant (E-6) be restored.

His referral AF Form 910, Enlisted Performance Report (EPR) (AB thru TSgt), rendered for the period 20 June 2012 thru 19 June 2013, be declared void and removed from his record.

APPLICANT CONTENDS THAT:

He did not commit the offenses in which he was charged with by his commander, resulting in unjust treatment and punishment. This was his first ever offense and his commander punished him with an erroneous Article 15 and a reduction in rank. His commander further tried to use a separation board for his release from the Air Force; however, the board did not favor the decision. The board found him not guilty of two out of three charges on his Article 15. Hence, the Article 15 should be void.

His commander is in violation of Article 93, UCMJ, cruelty and maltreatment, for refusing to withdraw his Article 15 and continuing to charge him with offenses from which he has been found innocent. He submitted a congressional and Inspector General (IG) complaint; however, the congressman failed to follow-up on his case and the IG stated there was no foul on the behavior of the commander.

His referral EPR will keep him from remaining in the Air Force beyond his current enlistment.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant's military personnel records indicate he enlisted in the Regular Air Force on 17 June 1998. His expiration term of service was 17 May 2015.

On 18 January 2013, the applicant received a Letter of Admonishment (LOA) for non-compliance in conducting quality checks on recruits.

On 18 March 2013, the applicant was notified of his commander's intent to impose NJP under Article 15 of the Uniform Code of Military Justice (UCMJ) for dereliction in the performance of his duties by failing to refrain from misusing his government vehicle (GOV) for personal use, two specifications of failure to obey a lawful general regulation by wrongfully taking action to qualify an ineligible recruit in the delayed enlistment program (DEP) and developing a

personal relationship with a recruit, and signing a travel voucher, which is an official record, with the intent to deceive in violation of Articles 92 and 107, respectively, of the UCMJ.

On 26 March 2013, after consulting with legal counsel, the applicant waived his right to trial by court-martial and elected to submit matters on his behalf and request a personal appearance.

On 1 April 2013, the commander found the applicant committed only the offenses alleged under Article 92 and imposed punishment of reduction to the grade of staff sergeant (E-5), forfeitures of $200.00 pay per month for two months, suspended through 30 September 2013 and attend a financial management class by 27 June 2013, and a reprimand.

On 8 April 2013, the applicant appealed the punishment. The basis of the appeal was that the punishment imposed was unjust and disproportionate to the offense committed. Specifically, the recruit was never ineligible to join the Air Force, his relationship with the recruit was purely professional, and he had no reason to misuse a GOV because he had a rental car during the alleged timeframe. He felt a Letter of Reprimand (LOR) or a suspended reduction in grade would be an appropriate punishment instead of NJP action. The appellate authority denied his appeal and the action was filed in an UIF. The record was reviewed and determined to be legally sufficient.

On 21 May 2013, the applicant received a LOR for failing to refrain from using his Government Travel Card (GTC) for personal expenditures, in violation of Article 92, UCMJ. Specifically, he used his GTC 18 times, from 28 September 2012 through 26 November 2012, totaling $3,497.86.

On 21 May 2013, the applicant was issued an AF Form 1058, Unfavorable Information File Action (UIF), indicating the commander's intent to establish a UIF and place him on the control roster based on the 21 May 2013 LOR.

On 28 May 2013, the applicant acknowledged receipt of the UIF/control roster and his intent to provide information to be considered before a final decision is made.

On 5 June 2013, the applicant's first sergeant indicated the applicant provided a letter from his landlord in response to his 21 May 2013 LOR/Control Roster.

On 8 July 2013, the AFRS/IG concluded an investigation of the applicant's complaint filed on 11 Apr 2013, which contained an allegation against a member of his squadron indicating that the applicant's personal safety was placed at risk because he was directed to work an 18-hour workday, an allegation of a perceived double standard on duty times, child care arrangements, and uniformed wear at the Military Entrance Processing Station (MEPS), and he alleged misrepresentation for the purpose of his meetings with members of the recruiting squadron headquarters. However, these allegations were determined not to be in violation of any instruction or law and were dismissed without any further action. Also, the applicant claimed his Article 31 rights were read in front of leadership; however, this allegation was closed without further action because it was determined there was no violation of instruction or law.

The applicant further alleged that government documents were falsified by the annotation of his nephew attending delayed entrance program (DEP) meetings while living in Indiana, however, it was determined this was not retaliation against him because he was not subject to an unfavorable personnel action. As such, he was not entitled to a response because it was considered a third-party complaint. Also, his allegations of squadron personnel practicing illegal booking procedures were determined to be a command issue and were referred for review. The applicant was informed that he would be made aware of the determination.

Lastly, the applicant requested his allegation of reprisal against his commander be removed. Therefore, this allegation was dismissed and no further action was taken. .

On 18 July 2013, the applicant requested his NJP offered on 18 March 2013 be set aside; however, his commander denied his request.

On 18 July 2013, the applicant received a LOR for a false official statement, in violation of Article 107, UMCJ. Specifically falsely indicating he completed a financial management class.

On 18 July 2013, an AF Form 366, Record of Proceedings of Vacation of Suspended Non-judicial Punishment, was initiated to notify the applicant of his commander's intent to vacate the suspended portion of his NJP action due to the dereliction in the performance of his duties, in violation of Articles 92, UCMJ.

On 18 July 2013, the applicant's EPR was referred to him due to the rating and comments relative to his Article 15, as well as, the impeding removal from his special duty assignment. He acknowledged receipt and elected to submit comments. Specifically, the applicant indicated there were false negative comments on his report, several accomplishments were not reflected, and inaccuracy in indicating he received a reprimand and forfeiture of $400 dollars pay, as well as, the circumstances surrounding his Article 15 were not resolved.

On 26 July 2013, after consulting with legal counsel, the applicant elected to submit matters on his behalf and requested a personal appearance regarding his NJP vacation action.

On 31 July 2013, the commander found the applicant violated the conditions of his suspension. Specifically, the applicant's commander found he failed to adhere to the additional condition of attending a financial management class by 27 June 2013 and thereby imposed punishment of forfeitures of $200.00 pay per month for two months.

On 13 September 2013, the applicant received a LOR for driving on a military installation with a suspended license, no insurance, and no registration, in violation of Article 92, UCMJ.

On 17 September 2013, the AFRS/IGQ concluded a reprisal complaint filed by the applicant on 2 June 2012. Specifically, his complaint alleged that an attempt of force was made on him to sign a Memorandum for Relief of Cause that had not yet been signed by his commander. The investigation was reviewed under the military whistleblower protection and consideration was given for the possibility for abuse of authority. The investigation failed to disclose any evidence that demonstrated actions outside the scope of authority granted under applicable law, regulation, or policy. Furthermore, the AFRS/IGQ concluded there was no abuse of authority in the applicant's case.

On 23 September 2013, the applicant was notified of a hearing before an administrative discharge board to investigate his commander's recommendation that he be discharged without the opportunity for probation and rehabilitation (P&R) due to his Article 15 non-judicial punishment, receipt of the vacation of suspended non-judicial punishment, three LORs, one LOA, and placement on a Control Roster for his misconduct in order to correct inappropriate behavior. He did not recommend probation or rehabilitation.
On 23 September 2013, the applicant acknowledged receipt of the hearing, consulted with legal counsel, elected the hearing, and acknowledged his right to submit statements in his own behalf.

On 2 October 2013, the applicant's commander recommended he receive an under honorable conditions (general) discharge based upon the specific reasons contained in his notification letter.

On 11 December 2013, a discharge board convened and after presentation of the applicant's case and deliberation, the board members returned a finding that he should be retained.

On 7 January 2014, the administrative discharge case was found to be legally sufficient.

On 17 January 2014, the discharge authority concurred with the findings and recommendation of the Administrative Discharge Board and directed the applicant to be retained.

On 18 January 2014, the applicant requested his NJP offered on 18 March 2013 be set aside; however, his commander denied his request.

On 24 February 2014, the applicant's commander recommended his relief from recruiting for cause due to his failure to adapt as a military member after multiple disciplinary actions and for his failure to maintain a security clearance.

On 31 July 2014, according to special orders AC-014163, the applicant was relieved from active duty and retired,

effective 1 August 2014 in the grade of staff sergeant, with a narrative reason for separation of "Temporary Early Retirement Authority," issued a reentry code of 2V (Applied for retirement, or retirement approved) and separation program designator (SPD) code SBE (Early Retirement). He was credited with 16 years, 1 month, and 14 days of active service.

On 12 September 2014, the Secretary of the Air Force found the applicant did not serve satisfactorily in any higher grade and determined he would not be advanced under the provisions of Title 10 United States Code (U.S.C.) Sections 8964.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force offices of primary responsibility (OPR), which are attached at Exhibit C and D.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. A commander considering a case for disposition under Article 15 exercises largely unfettered discretion in evaluating the case, both as to whether punishment is warranted, and if so, the nature and extent of punishment. The exercise of that discretion should generally not be reversed or otherwise changed on appeal or by the Board absent good cause. In this case, the applicant claims he did not commit the three offenses his commander "charged" him with, and that the punishment was unjust as this was his first offense ever. As support, he submitted the findings of the Administrative Discharge Board (ADB) from December 2013. The applicant advised the ADB declared he was "not guilty" on two out of three charges on his Article 15. After carefully reviewing the record and the package submitted by the applicant, we cannot find good cause to reverse or otherwise change the Commander's decision, even after considering the information provided by the applicant that the ADB found he did not commit two of the alleged offenses. The applicant's commander was in the best position to review the evidence presented in the applicant's case at the time of the Article 15. The applicant had consulted counsel and accepted the Article 15. Furthermore, the applicant appealed the Article 15, and the appellate authority, after considering all of the evidence upheld the Article 15. There are not any facts indicating any irregularities with the Article 15 process. If the applicant disagreed with the misconduct allegations he could have turned down the Article 15, but he chose not to do so at the time.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit C.

AFPC/DPSID recommends denial. Based upon the aforementioned recommendation from the Article 15 subject matter expert and lack of corroborating evidence provided by the applicant, his request to void the contested EPR should not be granted. The applicant has not provided compelling evidence to show that the report was unjust or inaccurate at the time it was written. Evaluators are obliged to consider such incidents, their significance, and the frequency with which they occurred in assessing performance and potential. Only the evaluators know how much an incident influenced the report. In accordance with AFI 36-2406, Officer and Enlisted Evaluation Systems, evaluators are strongly encouraged to comment in performance reports on misconduct that reflects a disregard of the law, whether civil law or the UCMJ, or when adverse actions have been taken. In this case, the applicant received an Article 15 and the rating chain appropriately chose to comment and document on the underlying wrongdoing, which caused the report to be referred to the applicant for comments and consideration to the next evaluator. The applicant provided no evidence within his case to show that the referral comment on the EPR was inaccurate or unjust, therefore, the inclusion of the referral comment on the EPR was appropriate and within the evaluator's authority to document given the incident. Moreover, a final review of the contested evaluation was accomplished by the additional rater and a subsequent agreement by the reviewer/ commander served as a final "check and balance" in order to ensure that the report was given a fair consideration in accordance with the established intent of the current Officer and Enlisted Evaluation System in place. Based upon the legal sufficiency of the Article 15 as rendered, and no evidence that the Article 15 punishment was ever set aside, its mention on the contested report was proper.

Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all the members of the rating chain-not only for support, but also for clarification/explanation. The applicant has failed to provide any information/support from any rating official on the

contested EPR. As such, the referral report was accomplished in direct accordance with all applicable Air Force policies and procedures. Once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The burden of proof is on the applicant. The applicant has not substantiated that the contested EPR was not rendered in good faith by all evaluators based on knowledge available at the time.

A complete copy of the AFPC/DPSID evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 30 September 2014 and 9 April 2015 for review and comment within 30 days (Exhibit E). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant alleges his commander punished him with an erroneous Article 15 and a reduction in rank and his referral EPR will hinder him from remaining in the Air Force. After a thorough review of the evidence of record and the applicant's complete submission, we do not find the evidence provided sufficient to override the rationale provided by the Air Force offices of primary responsibility. We also note that the applicant filed two complaints with AFRS/IG; however, the first complaint were third party allegations and according to AFRS/IG he was not entitled to a response and in the second complaint alleging reprisal AFRS/IGQ concluded the investigation failed to disclose abuse of authority and any evidence that demonstrated actions outside the scope of authority granted under applicable law, regulation, or policy. While the applicant alleges his commander is in violation of Article 93, UCMJ, cruelty and maltreatment, for refusing to withdraw his Article 15 and continuing to charge him with offenses from which he has been found innocent, he has not demonstrated that the Article 15 process was not legally sufficient or the contested report is not a true and accurate assessment of his performance and demonstrated potential during the specified time period. The applicant has not provided evidence to persuade us to the contrary and therefore, we agree with the opinion and recommendation of the Air Force offices of primary responsibilities and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. In the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-01339 in Executive Session on 27 May 2015 under the provisions of AFI 36-2603:

Chair
Member

Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2014-01339 was considered:

Exhibit A. DD Form 149, dated 20 March 2014, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFLOA/JAJM, dated 10 June 2014.
Exhibit D. Memorandum, AFPC/DPSID, dated 8 April 2015, w/atchs.
Exhibit E. Letters, SAF/MRBR, dated 30 September 2014 and 9 April 2015.
Exhibit F. AFRS/IG Complaint Analysis – WITHDRAWN.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-02847

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

Her records be corrected to reflect the following relief based on being the victim of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 July 2007, and 10 U.S.C. § 1034:

Her administrative demotion to the grade of Staff Sergeant (SSgt, E-5) be rescinded and she be reinstated to the grade of Technical Sergeant (TSgt, E-6).

All adverse actions following the administrative demotion be removed from her records.

APPLICANT CONTENDS THAT:

Her commander took adverse actions against her after she contacted the 75th Air Base Wing Equal Opportunity office (75 ABW/EO) in November 2013 and the 552nd Air Control Wing Inspector General (552 ACW/IG) in January 2014.

On 10 February 2014, she was notified that she was being demoted to the grade of SSgt for failing to fulfill the responsibilities of a Noncommissioned Officer (NCO) as outlined in AFI 36-2618, The Enlisted Force Structure. She submitted exculpatory evidence which proved the allegations and actions taken against her were arbitrary and capricious.

It is clear she is the victim of reprisal and actions of the commander represent abuse of authority. She has utilized several avenues to address this issue.

In support of her requests, she provides copies of the administrative demotion and other various documents associated with her requests.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 14 March 2001, the applicant entered the Regular Air Force.

According to a letter dated 24 February 2014, the 552nd Air Control Group Commander (552 ACG/CC) approved the administrative demotion of the applicant to the grade of SSgt for failure to fulfill NCO responsibilities.

According to AF Form 3070, Record of Nonjudicial Punishment Proceedings (AB thru TSgt), dated 26 February 2014, the applicant received an Article 15 for violation of Article 90, Uniform Code of Military Justice (UCMJ) for failure to obey a lawful order. She was demoted to the grade of Senior Airman (SrA, E-4) with a new Date of Rank (DOR) of 10 March 2014 and forfeiture of $200.00, suspended through 9 September 2014.

On 31 March 2015, the applicant was honorably discharged in the grade of SrA with a narrative reason for separation of "Misconduct (minor infractions)." She was credited with 14 years and 17 days of active duty service.

In an e-mail dated 1 June 2015, SAF/IG advised that the reprisal investigation regarding the applicant's Article 15, Letter of Reprimand (LOR), Unfavorable Information File (UIF) and reinstatement of rank was on-going.

The AFBCMR is the highest administrative level of appeal in the Air Force. AFI 36-2603, AFBCMR, paragraph 4.7.3 requires that if an applicant has not exhausted all available effective administrative remedies, the application will be denied by the Board on that basis.

In a letter dated 2 June 2015, SAF/MRBR provided the applicant an opportunity to request that her case be administratively closed until such time as her case is resolved through the appropriate IG authority and requested she respond within 30 days (Exhibit G). As of this date, this office has not received a response.

AIR FORCE EVALUATION:

AFPC/DPSOE recommends denial of the request that her administrative demotion to the grade of SSgt be rescinded and she be reinstated to the grade of TSgt. The commander acted within his authority to demote the applicant IAW AFI 36-2502, Airman Promotion/Demotion Programs, paragraph 6.3.4 (failure to fulfill NCO responsibilities).

The applicant was notified on 11 February 2014 of her commander's intent to recommend she be demoted to the rank of SSgt for failure to fulfill NCO responsibilities. After considering the applicant's appeal, several character statements and the Staff Judge Advocate's legal review, the demotion authority approved the

demotion action on 24 February 2014.

On 3 March 2014, the applicant received an Article 15 for failure to obey a lawful order from a superior commissioned officer. It is the opinion of DPSOE that the demotion action taken against the applicant was procedurally correct and there is no evidence of any irregularities or that the case was mishandled in any way. A legal review conducted by the 75 ABW/JA found the file legally sufficient as the actions taken were permissible administrative actions taken at the discretion of the applicant's supervisors/commanders.

A complete copy of the AFPC/DPSOE evaluation is at Exhibit C.

AFPC/DPSIM recommends denial of the applicant's request to remove the Non-judicial Punishment (NJP) and defers the reprisal recommendation to the IG for determination.

DPSIM cannot determine if the commander's actions were just or not and can only identify whether or not the commander followed proper procedures. After careful review, DPSIM determined the commander followed the proper procedures in the administration of punishment IAW AFI 51-202, Non-Judicial Punishment.

A complete copy of the AFPC/DPSIM evaluation is at Exhibit D.

AFLOA/JAJM recommends denial of the applicant's request to remove the NJP. After careful review of the record, JAJM cannot find any clear injustice, error or good cause to reverse or otherwise change the commander's decisions with respect to the NJP.

NJP is authorized by Article 15, UCMJ (10 U.S.C. § 815) and governed by the Manual for Courts-Martial (Part V) and AFI 51-202. This procedure permits commanders to dispose of certain offenses without trial by court-martial unless the service member objects. Service members first must be notified by their commanders of the nature of the charged offenses, the evidence supporting the offenses and the commander's intent to impose the punishment. The member may consult with a defense counsel to determine whether to accept the NJP or demand trial by court-martial. Accepting the proceedings is simply a choice of forum; it is not an admission of guilt. NJP is also not, when imposed, a criminal conviction.

On 26 February 2014, the applicant was offered NJP for violation of two lawful orders from a superior commissioned officer, in violation of Article 90, UCMJ. After consulting with an attorney, the applicant accepted the NJP and submitted written statements. On 10 March 2014, the 729th Air Control Squadron Commander (729 ACS/CC) found that she committed the offenses and punished her with a reduction to the grade of SrA, forfeiture of $200.00 pay, suspended and a reprimand. The applicant decided to appeal and submitted matters on behalf of her appeal. The appeal was denied by both the 729 ACS/CC and the 552 ACG/CC. The applicant was administratively demoted for the underlying issues that led to the

no contact orders, but she still chose to disobey her commander and make contact with both airmen. There are no procedural errors that prejudiced the applicant in any way with regard to the NJP process. She was afforded all of her due process rights and the NJP was properly executed. The punishment was well within the range of permissible punishments.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 3 June 2015 for review and comment within 30 days (Exhibit H). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has not exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. In this respect, we note this Board is the highest level of administrative appeal within the Air Force. As such, an applicant must first exhaust all available avenues of administrative relief provided by existing law or regulations prior to seeking relief before this Board, as required by the governing Air Force Instruction. We note that the applicant has an IG case pending and in view of this, we find that consideration of the applicant's appeal by this Board is not appropriate at this time. Therefore, the applicant is advised that if she is not successful in obtaining the relief she seeks through available administrative channels, she may then consider resubmitting her appeal to this Board.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD DETERMINES THAT:

The applicant be notified that she has not exhausted all available avenues of administrative relief prior to submitting her application to the AFBCMR; and the application will only be reconsidered upon exhausting all subordinate avenues of administrative relief.

The following members of the Board considered AFBCMR Docket Number BC-2014-02847 in Executive Session on 8 July 2015 under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 14 July 2014, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFPC/DPSOE, dated 26 September 2014.
Exhibit D. Memorandum, AFPC/DPSIM, dated 24 November 2014.
Exhibit E. Memorandum, AFLOA/JAJM, dated 12 February 2015.
Exhibit F. E-mail, SAF/IG, dated 1 June 2015 (Withdrawn).
Exhibit G. Letter, SAF/MRBR dated 2 June 2015.
Exhibit H. Letter, SAF/MRBR, dated 3 June 2015.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-03298

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His records be corrected to reflect that he was appointed into the medical corps (MC) in the grade of major in Jan 12, instead of being appointed in the grade of captain in Aug 13 and he receive medical special pays and bonuses effective said date.

2. His promotion to major be effective in Jan 12, instead of Nov 14.

3. He receive 100 percent Constructive Service Credit (CSC) for Line of the Air Force (LAF) time rather than 50 percent credit.

APPLICANT CONTENDS THAT:

1. The denial of his original accession request was due to a misapplication of the rules and was further motivated by reprisal due to his contribution to a medical exception to policy pertaining to another officer.

2. He met all the requirements to serve as a Flight Surgeon and served unsupervised in that role from Oct 12 through Nov 13. The stated requirement that he complete a three-year residency before being accessed into the MC was a violation of AFI 44-119, Medical Quality Operations.

3. He worked as a full time Flight Surgeon for over a year but received only 50 percent CSC for this time, which unfairly delayed his promotion to major.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

In Jan 12, while serving in the grade of captain (O-3), according to the documents provided by the applicant, he submitted his initial Competitive Component Transfer (CCT) request to enter the MC.

On 3 Apr 12, the applicant's CCT request was disapproved because it lacked approval of the gaining and losing career field manager, which is required based on provisions of AFI 36-2106, Competitive Category Transfer.

On 8 Apr 13, according to AFPC/DPANF, the applicant resubmitted his CCT request.

On 5 Nov 13, the senate confirmed the applicant's appointment in the grade of major (0-4).

On 7 Nov 13, the applicant's CCT order was published transferring him from the LAF to the MC in the grade of major with a date of rank of 18 Apr 10.

On 14 Nov 13, the applicant was notified via email that his (CSC) was incorrectly computed. Specifically, the applicant was inadvertently given 100 percent credit for LAF time instead of 50 percent credit. The corrected total was computed as 9 years, 7 months, and 12 days. As at least ten years CSC is required for appointment in the grade of major, the applicant should not have been appointed in the grade of major (O-4), but instead appointed in the grade of captain (O-3).

On 15 Nov 13, according to AFPC/DPANF, the applicant's CSC was re-evaluated to reflect a total credit of 9 years, 2 months, and 22 days (because transfer date was adjusted from 1 Oct 13 to 1 Aug 13).

On 20 Nov 13, the CCT order was amended changing the applicant's transferred effective date to 1 Aug 13 and his rank to captain with a date of rank of 9 May 08. As a result, the applicant became eligible for consideration for promotion to the grade of major (O-4) by the CY13 Maj Medical Services Corps (MSC) Central Selection Board (CSB). As such, he was considered by a Special Selection Board (SSB) for the noted CSB on 9 Jun 14 and was selected for promotion. As a result, he was promoted to the grade of major (O-4) on 14 Nov 14, with a date of rank of 9 May 14.

AIR FORCE EVALUATION:

AFPC/DPANP recommends denial indicating there is no evidence of an injustice. The applicant opted to enter the Air Force as a pilot. In 12, he decided to pursue becoming a pilot-physician but was not qualified to practice medicine independently and lacked several requirements necessary to enter the MC. He lacked board certification, completion of residency training, and the necessary work experience. However, due to senior leader interest, he was afforded an unprecedented and wholly unique opportunity. The applicant references AFI 44-119, but misunderstood its context. This applies to physicians who were already accessed and are subsequently discovered to lack

specific skill sets that require supervision until the officer achieves full competency. The AF does not access fully qualified physicians that are known in advance to lack clinical currency or require supervision. Recognizing the applicant's future value to the Air Force, he was afforded special arrangements that made it possible for him to enter the MC, even though he was not fully qualified to do so and did not become qualified for entry into the MC until Sep 12. He did not resubmit his CCT request until Apr 13. The request was not approved by Congress & the President until Nov 13. As for his requests for special pays, he was not eligible to sign special pay contracts until this time because he was not yet part of the MC. He missed his promotion board in Sep 13 because he was not yet part of the MC, but met the special selection board the next May and received the date of rank he would have originally received had he met the board in Sep 13.

The applicant was not eligible for medical special pay until he was approved for entry into the MC in Nov 13. He submitted an Additional Special Pay (ASP) contract in Dec 13, resulting in the 30 Nov 14 active duty service commitment. Medical Special Pay (MSP) contracts cannot be backdated earlier than the first day of the month in which they are signed. He was not eligible for MSP earlier, because his CCT had not been approved by the President or Congress until Nov 13. The applicant received one year credit toward his MSP date which set his variable special pay (VSP) rate. Once approved in Nov 13 to enter the MC, his VSP could be back paid to his effective date of entry into the MC (Aug 13). The applicant was paid VSP from 1 Apr 13 instead of 1 Aug 13 by mistake. This was resolved with Defense Finance and Accounting System (DFAS) in Mar 14 to collect the four month overpayment.

After review of the processing of the applicant's case, no evidence of any adverse influence was found by the OPR. To the contrary, rather than being wronged, he was afforded unique advantages that made it possible for him to enter the MC.

A complete copy of the AFPC/DPANP evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant refutes virtually every point made by the OPR and argues that he was a fully qualified physician when he initially attempted to transfer into the MC starting in 2009. The OPR conveniently omits the fact that he never should have waited for Congressional approval in 2013. The only reason he waited five additional months for Congressional approval was because their office incorrectly calculated his grade. If they had done their job correctly, he would have joined the MC as a Captain and met the medical promotion board in Sep 13. He was forced to wait for a supplemental selection board to convene at the end of May 14. Not only was he denied promotion and pay because of

these errors, he interviewed for a highly competitive program in Oct 14 and was not selected. Having the grade of major could have bolstered his chances. The pilot-physician program is an elite and challenging program. There are only 12 in the AF and it would seem that the AF would make efforts to assist a member in achieving this goal instead of trying to dissuade him. In support of his response, the applicant provides copies of an Inspector General (IG) complaint, emails pertaining to his case and excerpts from his personnel records (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility (OPR) and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an injustice. His argument on rebuttal, that the delay in his appointment caused him to be deprived of opportunities he would have been eligible for had his appointment not been delayed, were considered. However, even if the applicant had provided evidence of specific opportunities to compete for advancement, other than speculation and conjecture; he has provided no evidence he would have been selected for said opportunities if not for the fact that he held the grade of captain at the time of his application. Argument and conjecture are not a basis for a determination that an applicant has been the victim of an error or injustice. Ultimately, while the applicant's arguments are duly noted, in our view, the Air Force went to great lengths to tailor a program that recognized the applicant's potential to serve as a pilot-physician. While it is clear that his CSC was initially erroneously calculated, we believe the Air force went to great efforts to correct the error by backdating his accession into the medical corps (MC) for the sole purpose of making him eligible for promotion consideration by the Sep 13 CSB and subsequent consideration by the Jun 14 SSB. In our view, this represents full and fitting relief. Finally, we note the applicant claims that he is the victim of reprisal in violation of 10 USC 1034, the law also known as the Whistleblower Protection Act. However, other than his own uncorroborated assertions, the applicant has presented no direct evidence that a favorable personnel action was withheld, or that such action was threatened to be withheld, or that an unfavorable action was taken or threatened, in retaliation to a protected communication. Even if we assume for the sake of argument that there was a protected communication, the applicant has presented no evidence whatsoever of a reprisal motive being

present in his dealings with various Air Force officials as he sought to resolve the issues related to his transfer to the medical corps and his subsequent promotion to the grade of major. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-03298 in Executive Session on 25 Feb 15, under the provisions of AFI 36-2603:

The following documentary evidence pertaining AFBCMR Docket Number BC-2014-03298 was considered:

Exhibit A. DD Form 149, dated 7 Aug 14, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFPC/DPANP, dated 1 Dec 14.
Exhibit D. Letter, SAF/MRBR, dated 6 Jan 15.
Exhibit E. Letter, Applicant, undated, w/atchs.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-03425

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her records be corrected to reflect the following relief based on being the victim of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 July 2007, and 10 U.S.C. § 1034:

Her Letter of Counseling (LOC) dated 21 January 2014 be removed from her records.

She be reinstated to the grade of Technical Sergeant (TSgt, E-6).

APPLICANT CONTENDS THAT:

On 20 January 2014, in two Memorandum for Record (MFRs) to her commander she documented patient safety concerns and actions that made her uncomfortable.

The LOC was an act of reprisal for using her chain of command to advise of the actions that made her uncomfortable.

Revoking the LOC would prevent its use in the vacation of her suspended Nonjudicial Punishment (NJP) and the reduction to the grade of Staff Sergeant (SSgt, E-5).

She has addressed this issue through her squadron and group chain of command and the base Inspector General (IG) with no resolution.

In support of her requests, the applicant provides copies of letters to her commander dated 20 January 2014, LOC dated 21 January 2014, a letter from the 455th Expeditionary Medical and Dental Operations Squadron Commander (455 EMDOS/CC) dated 7 March 2014, and AF Form 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment, dated 19 February 2014.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of SSgt.

According to AF Form 3070A, Record of Nonjudicial Punishment Proceedings (AB thru TSgt), dated 22 August 2013, the applicant received an Article 15, in violation of Article 92, Uniform Code of Military Justice (UCMJ) for dereliction in the performance of her duties in that she willfully failed to refrain from having an unprofessional relationship. The applicant was reduced to the grade of SSgt, suspended through 26 February 2014.

On 21 January 2014 while deployed to Afghanistan the applicant received a LOC for failure to follow a direct order from her flight chief in violation of Article 92 of the Uniformed Code of Military Justice.

According to AF Form 366 dated 19 February 2014, the applicant's suspended punishment was vacated for violating the conditions of the suspension by failing to obey a lawful order while deployed. Consequently, she was reduced to the grade of SSgt with a Date of Rank (DOR) of 27 August 2013 and effective date of 26 February 2014 due to violation of Article 92 for failure to obey a lawful order.

In an e-mail dated 17 October 2014, SAF/IG advised the AFBCMR staff that there was no SAF or DOD IG investigation on file. SAF/IG located documentation regarding a complaint; however, it was referred to the command and no action was taken.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial of the applicant's requests as they cannot find any clear injustice, error or good reason to reverse or otherwise change the commander's decisions with respect to the NJP or vacation action. The applicant does not make a compelling argument that the Board should overturn the commander's vacation action on the basis of an injustice. She was put on notice of the basis for the vacation proceedings when she was served the AF Form 366 on 19 February 2014. On 24 February 2014, after consulting with an attorney, the applicant submitted a response and requested a personal appearance with her commander. On 26 February 2014, her commander found she violated the conditions of her suspension and vacated the suspension. The commander's ultimate decision on the vacation action is firmly based on the evidence of the case, to include her own statement she submitted to the commander in her response to the LOC which states, "I realize that there were a number of actions that I could have taken to mitigate the problems and resulted in a better outcome." The decision to vacate the suspended portion of the NJP action by

her leadership was fitting, appropriate and just.

A complete copy of the AFLOA/JAJM evaluation is at Exhibit C.

AFPC/DPSIM recommends denial of the request to remove the LOC. DPSIM states they can only discuss if proper procedures were followed in the administration of the action. After careful review, it was determined the LOC was properly administered In Accordance With (IAW) AFI 36-2907, Unfavorable Information File (UIF) Program, paragraph 3.5. The person who initiates a Record of Individual Counseling (RIC), LOC, Letter of Admonishment (LOA) or Letter of Reprimand (LOR) may send it to the member's commander for information, action or for their approval for file in the UIF or Personal Information File (PIF).

A complete copy of the AFPC/DPSIM evaluation is at Exhibit E.

AFPC/DPSOE recommends denial of the applicant's request to be reinstated to the grade of TSgt based on the recommendations of DPSIM and JAJM to deny the removal of the LOC and vacation of the NJP.

A complete copy of the AFPC/DPSOE evaluation is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

She submitted two MFRs notifying the flight commander, about inappropriate workplace practices by the flight chief, such as kissing airmen on the forehead and group hugs, in addition to describing the incident with a patient collapsing. She felt uncomfortable and concerned about events in the work environment and used her chain of command to route these concerns. She believes the LOC given the following day was out of retaliation by the flight chief for submitting the MFRs. She requested a meeting with her group commander and explained the situation and the events surrounding her deployment.

In further support of her requests the applicant provides copies of a letter from the 455 EMDOS/CC dated 7 March 2014 and SF 600, Chronological Record of Medical Care, dated 24 January 2014.

The applicant's complete submission, with attachments, is at Exhibit H.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to

demonstrate the existence of error or injustice to warrant removing the contested LOC from the applicant's record or to reinstate her to the grade of TSgt. We note the applicant alleges that she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 U.S.C. § 1034). While we note the applicant filed an IG complaint, the evidence reflects that it was returned to her command with no action taken. Nevertheless, we reviewed the evidence of record to reach our own independent determination of whether reprisal occurred. Based on our review, we do not conclude the applicant has been the victim of reprisal. The available evidence reflects the reason for the LOC dated 21 January 2014, was due to her failure to obey a lawful order which ultimately led to the vacation of her NJP and reduction to the grade of SSgt. The applicant has not established that the LOC or other actions were rendered in retaliation to making a protected communication. The LOC appears to comply with the governing AFI and we find no evidence to indicate that the decision to issue the LOC was inappropriate. Therefore, it is our determination the applicant has not been the victim of reprisal based on the evidence of record in this case. Therefore, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt the rationale expressed as the basis for our decision the applicant has failed to sustain her burden of proof of having suffered either an error or injustice. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-03425 in Executive Session on 6 August 2015 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2014-03425 was considered:

Exhibit A. DD Form 149, dated 6 August 2014, w/atchs.
Exhibit B. Applicant's Master Personnel Records.

Exhibit C. E-mail, SAF/IG, dated 17 October 2014
(Withdrawn).
Exhibit D. Memorandum, AFLOA/JAJM, dated 13 February 2015.
Exhibit E. Memorandum, AFPC/DPSIM, dated 1 April 2015.
Exhibit F. Memorandum, AFPC/DPSOE, dated 12 May 2015.
Exhibit G. Letter, SAF/MRBR, dated 18 May 2015.
Exhibit H. Letter, Applicant, dated 17 June 2015, w/atchs.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-03970

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Letter of Reprimand (LOR) be removed from his records.

APPLICANT CONTENDS THAT:

An Inspector General (IG) Report of Investigation (ROI) substantiated allegations against him. On 13 January 2014, he received a LOR from the Air Force Vice Commander (AF/CV).

In a letter to the AF/CV dated 3 February 2014, he disputed the allegations. He submitted a request for disclosure of the IG ROI on 5 June, 15 July, 14 August, 15 August and 23 September 2014 in order to provide a substantive response to the allegations. He was denied disclosure of the IG ROI. As such, he was denied due process and deprived of the right to review the allegations against him. He was relegated to only submitting jurisdictional arguments in his defense.

In August 2014, the Air Force Judge Advocate General (JAG) issued a legal opinion concerning the AF/CV's jurisdiction over a Title 32 State Active Duty (SAD) general officer.

AF/JAA declined to release any disclosure of the IG ROI and stated the AF/CV's decision to issue a LOR is final and no factual submission would be considered.

In support of his request, the applicant provides a memorandum dated 1 October 2014, copies of a LOR dated 13 January 2014, rebuttals to the LOR dated 3 February, 15 July and 15 August 2014, memorandum to AF/JAA dated 5 June 2014, Memorandum for Record (MFR) dated 16 August 2014, e-mail communique, Secretary of the Air Force (SECAF) and Air Force Chief of Staff (CSAF) letter dated 20 November 2012 and other various documents associated with his request.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a major general (0-8) in the Air National Guard (ANG) assigned to the Inactive Status List Reserve Section (ISLRS).

According to the SAF/IG ROI dated May 2013, an investigation was conducted in response to complaints filed against the applicant and two other senior officers. The ROI substantiated the following allegations against the applicant:

Allegation 10: The applicant from January 2010 to February 2012 was derelict in the performance of his duties as the Commander, Michigan ANG (MIANG) by failing to appropriately address issues impacting good order and discipline of the Wing, in violation of Section 32.1092 of the Michigan Code of Military Justice, violating or failing to obey lawful order, rule or regulation and dereliction in performance of duties. He failed to take any meaningful action to investigate multiple allegations of recruiter misconduct or to ensure the safety of MIANG personnel. Correspondingly, he failed in his duty to follow-up on underlying causes in Equal Employment Opportunity (EEO) complaints. He had duties impacting the IG complaints resolution process as detailed in AFI 90-301, Inspector General Complaints Resolution, one of which is not to investigate complaints of reprisal. His direct involvement in a reprisal complaint was in violation of his duty. Furthermore, his actions throughout the period directly fostered a culture wherein complaint information was purposefully mishandled with the intent to negotiate with subjects and complainants to "make complaints go away" which undermined the good order and discipline of the unit, circumvented legitimate Air Force processes and undermined confidence in leadership.

Allegation 11: The applicant from May 2009 through January 2010 committed waste, as defined in AFI 90-301 by using Air Force funds for special training days not necessary to meet mission requirements. The applicant was placed on special training orders for 220 workdays without a valid requirement for the purpose of qualifying for active duty retirement benefits. Lacking a sufficient requirement, placing the applicant on extended orders was a needless and extravagant expenditure of Air Force resources.

On 13 January 2014, the AF/CV issued the applicant a LOR. The LOR is for the substantiated allegations in the SAF/IG ROI.

The SECAF and CSAF letter, Expectations of Conduct, dated 20 November 2012, addressed to all Air Force general officers and civilian senior executives states the Chief of the NGB asked the SECAF to delegate to the VCSAF the authority to discipline ANG senior officers with substantiated adverse findings. The letter states, "Expect to see the VCSAF involved in the disposition of those cases from now on."

AF/JAG's legal opinion dated 5 August 2014, Authority to Impose Administrative Action Against State Adjutants General and Other ANG Officers, concluded, pursuant to the authority delegated by the SECAF, it is permissible for the AF/CV to impose administrative disciplinary actions against an ANG general officer, if a federal nexus exists between the officer's ANGUS membership and a violation of law or federal military standards. SAF/GC and NGB/JA reviewed and concurred with this opinion. According to the legal opinion, when an ANG member is in Title 32 status, the duty is a mixture of federal and State service; training and other regulatory standards are set by SECAF and funding is provided by the federal government. The ANG member in Title 32 status reports to the governor, but may also perform specified federal missions. DOD directives and Air Force instructions recognize the statutory authority of the SECAF to regulate ANG activities in general, to inspect ANG units and personnel, and to investigate allegations of misconduct by ANG personnel. Therefore, service in the ANG is subject to the general regulatory and investigative authority of the SECAF and SAF/IG. Regardless of an officer's duty status at the time of any violation of federal law or federal military regulation, all officers of the ANG, with rare exception, are federally recognized in some grade. Accordingly, membership in the ANGUS as a Reserve of the Air Force officer is maintained at all times, even if an ANG officer is not serving in a Title 10 or 32 duty status. The SECAF and SAF/IG's authority to investigate allegations and take action on substantiated allegations of misconduct by ANG officers also stems from a combination of statutory and regulatory sources of authority. Pursuant to 10 U.S.C. §§ 8013(b) and 8013(g)(3), SECAF is "responsible for, and has the necessary authority necessary to conduct all affairs of the Department of the Air Force" and may "prescribe regulations" necessary to carry out that responsibility. That broad authority necessarily includes the power to prescribe regulations governing IG investigations of allegations of misconduct and when appropriate, take action on substantiated allegations of misconduct. The Army, likewise, utilizes this statutory authority to give the Secretary of the Army, and in turn Vice Chief of Staff of the Army, the authority to take administrative actions against Army National Guard officers for substantiated misconduct.

AIR FORCE EVALUATION:

AF/JAA recommends denial. The applicant appears to be under the mistaken belief that he is entitled to a copy of the entire ROI and all exhibits attached to the ROI. The vast majority of the report did not pertain to the applicant and he is not entitled to that information. At all times and in connection with all proceedings affecting the applicant, he has been provided with all relevant information pertaining to his misconduct.

The applicant, along with two other senior officers, was the subject of an investigation conducted by SAF/IGS. The investigation included 11 specific allegations; however, only two pertained to the applicant. Both allegations were substantiated and referred to the AF/CV for appropriate command action. After reviewing the ROI, the AF/CV issued the applicant a LOR. The applicant was provided with an "official use only" copy of all relevant portions of the ROI to enable him to respond to the LOR. Because the majority of the ROI did not pertain to the applicant and was not relevant to his pending command action, he did not receive a copy of those portions of the ROI.

On 3 February 2014, the applicant submitted a response to the LOR challenging the authority of the AF/CV to take administrative action against an ANG officer serving under Title 32. The AF/CV requested AF/JAA provide a written legal opinion addressing the issue raised by the applicant. AF/JAA provided a legal opinion dated 5 August 2014, stating the AF/CV, exercising the SECAF's command authority (which had been formally delegated to him), through the AF/CC, had lawful authority to take adverse action against an officer serving in a Title 32 status for IG substantiated misconduct. SAF/GC, DOD/GC and NGB/JA concurred with the 5 August 2014 AF/JAA published opinion.

The applicant did not provide an additional response to the LOR and did not provide any evidence supporting his contentions that the substantiated allegations were incorrect. On 5 August 2014, after considering the applicant's response, the AF/CV determined the LOR remained appropriate and finalized the LOR.

In the fall of 2014, the applicant applied for retirement. Based on the two substantiated allegations set forth in the ROI, the Director of the ANG initiated a formal Officer Grade Determination (OGD) to determine the highest grade the applicant served satisfactorily as required by 10 U.S.C. § 1370 for the purpose of establishing his retired grade. NGB GOMO requested AF/JAA provide all relevant portions of the ROI as part of the OGD package. Once again, the applicant was provided with an "official use only" copy of all relevant portions of the ROI with all relevant exhibits to enable him to respond to the OGD package.

A complete copy of the AF/JAA evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a letter dated 17 August 2015, the applicant, thru counsel, disagrees that the AF/CV and AF/CC maintained authority to take adverse action against an officer in a Title 32 status for IG substantiated misconduct. He also disagrees that he is not entitled to the additional information in the ROI and maintains

that he was denied relevant discovery for purposes of responding to the LOR.

The Rule of Law has several identifiers relevant to this present matter: (1) The State is bound by law and does not act arbitrarily; (2) The law can be readily determined and is stable; (3) Individuals have meaningful access to an effective and impartial legal system; and (4) Individuals rely on the existence of institutions and the content of law.

In order to maintain a clear nexus between misconduct and federal military standards, any administrative action taken must clearly state that, regardless of the duty status of the officer at the time of the misconduct, the nature of the offense leads to question the qualifications of that officer as a member of the ANGUS and as a Reserve of the Air Force. However, the AF/CV's LOR to the applicant contains no such determination or any comparable conclusion or representation. The very basis of the AF/JAA opinion is that the AF/CV's "long arm jurisdiction" extends only to the extent that AF/CV questions the applicant's qualifications. However, the AF/CV fails to establish this threshold based on his failure to question the qualifications for membership in the ANG. The LOR should be rescinded on these grounds alone.

AF/JAA cites no relevant authority to reach its determination that the AF/CV may take administrative adverse action against a Title 32 or state status general officer. The affairs of the Department of the Air Force are separate and distinct from the affairs of the State of Michigan. It is this critical distinction that AF/JAA misses in its entirety.

Air Force Doctrine Document 1 defines Administrative Control (ADCON) as the direction or exercise of authority over subordinate or other organizations. It expressly provides that ADCON, which includes discipline, is left to State authority. Accordingly, National Guard commanders and supervisors have the inherent authority to issue administrative admonitions and reprimands for ANG personnel in a Title 32 or SAD status. However, AF/JAA treats AF/CV as a commander with delegated federal authority from the SECAF over a State status or a Title 32 ANG general officer.

The fact that SAF/IGS has authority to investigate alleged misconduct by the Adjutant General (TAG) does not automatically mean that the active duty officer has authority to take disciplinary action against a TAG for substantiated misconduct disclosed during the course of that investigation. Pursuant to Article 2 of the UCMJ, federal authority to exercise discipline over National Guard personnel attaches only when they are in a federal status. Per 10 U.S.C. § 802, all incidents of substantiated misconduct against ANG personnel acting other than in a federal (Title 10) status are referred back to State National Guard authorities for appropriate corrective action by

their respective commanders or supervisors. TAGs by virtue of their position are rarely in a Title 10 status and thus generally fall under the disciplinary authority of the State, rather than federal authorities. Note that the lack of federal authority to take disciplinary action has no impact on the authority of the Air Force to investigate allegations of TAG misconduct.

AF/JAA's legal opinion ignores the U.S. Supreme Court's holding in Parker v Levy, 417 U.S. 733,94S.Ct2547 (1974). The U.S. Supreme Court affirmatively defines administrative disciplinary action as within the UCMJ. Surprisingly, AF/JAA recognizes SECAF's lack of jurisdiction as to Title 32 and SAD officers not being subject to the UCMJ but ignores the fact that administrative discipline is a command function.

AF/JAA's opinion would allow AF/CV to extend disciplinary action well beyond a general officer to include airmen with federal recognition and who hold membership in the ANG. However, Air Force policy and federal law prohibit such a radical extension. The AF/JAA opinion reaches absurdity by eliminating the State command structure. The opinion serves nothing more than to bootstrap a policy that lacked legal authority prior to its implementation.

The AF/CV relies on a 20 November 2012 memorandum to all Air Force general officers and civilian senior executives, titled Expectation of Conduct. This memorandum states in relevant part "Because we are a Total Force, we need to make sure standards are uniformly enforced and disciplinary actions are consistent with Air Force values. Therefore, instead of conducting disciplinary action at the State level, the Chief of the NGB asked the SECAF to delegate to the AF/CV the authority to discipline ANG senior officers with substantiated findings." However, 10 U.S.C. § 314(a) provides, there shall be a TAG in each state. He shall perform the duties prescribed by the laws of that jurisdiction. The applicant is a State actor and an instrument of the TAG and the Governor. As such, he exercises State authority over federal matters. Therefore, the standard in the SECAF memorandum does not apply to general officers who are in a Title 32 status. The policy memorandum would, however, apply to a general officer who is in a Title 10 status.

The only way the Chief, NGB could request authority from the SECAF to allow the AF/CV to discipline Title 32 ANG officers is to request a delegation of authority from the States' governors and not unilaterally assume he maintained such authority. The absence of the State Governor's delegated authority creates a fatal flaw in the AF/CV's authority and jurisdiction over a Title 32 general officer.

The ANG is in the service of the United States only when it is in a Title 10 status. It is only then that an ANG officer is within the potential jurisdiction of the AF/CV. The ANG is not

in the service of the United States when it is in a Title 32 or SAD status and therefore remains under the exclusive jurisdiction of the governor.

AFI 90-301 defines the scope and application of the IG Complaints Resolution process: "ANG personnel not in federal status are subject to their respective State military code or applicable administrative actions as appropriate." Hence, the governor is the commander who may appropriately determine administrative action of an alleged substantiated IG complaint for a Title 32 officer.

In this case, AF/CV and AF/JAA characterize their action as administrative discipline against the applicant. This runs afoul of 10 U.S.C. § 10113 and 32 U.S.C. § 314(a); these federal laws address status, not membership in the ANG.

DODD 5105.83, National Guard Joint Force Headquarters – State (NG JFJQs-State), fully embraces a governor's command and control authority over their National Guard. Enclosure 3 provides: Each NG JFHQ-State is organized to conduct operations in SAD, Title 32 or 10 status. When in Title 10 status, the NG JFHQs-State shall be under federal command and control. Enclosure 5, paragraph 2 states each NG JFJQ-State shall report to the governor through the state TAG. DODD 5105.83 also defines Title 32 as the status of members performing training or other duty pursuant to authorities in Title 32. The performance of such duty is paid for with federal funds but the members of the ANG remain under the command and control of state authorities. For this reason it should be referred to as a federally funded state status.

Should the AF/CV elect to usurp a governor's command authority by administering adverse action, he treads on ground which is in direct contradiction to the U.S. Constitution, U.S.C., Congressional intent, DOD directives, Air Force instructions and well established legal precedence and usurps the authority of the governor.

The applicant's complete submission, with attachments, is at Exhibit F.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After carefully reviewing the evidence of record and the applicant's

complete submission, we are not persuaded that corrective action is warranted. The applicant argues that he was denied due process because he did not receive the entire ROI with exhibits; however, he has not provided substantial evidence which, in our opinion, successfully refutes the assessment of the case by the Air Force Office of Primary Responsibility (OPR). The applicant was provided with the portions of the ROI pertaining to his own misconduct and we find no proper reason he should be entitled to information in the ROI pertaining to the alleged misconduct of other senior officers. Therefore, we find no evidence he was deprived of his rights to review the evidence against him. Although the applicant challenges the AF/CV's authority to take adverse actions against a Title 32 general officer and cites several statutes, guidance and case law he believes supports his request, we are not persuaded by the evidence before us that the AF/CV abused his delegated authority or that the applicant's rights were violated during the processing of the LOR and find no basis to disturb the existing record. As stated, in the AF/JAG opinion dated 5 August 2014, the SECAF's authority, based in statute, to regulate ANG activities is documented in DOD directives and Air Force instructions and it is our opinion that it was permissible based on the delegated authority of the SECAF for the AF/CV to issue the applicant an LOR for the substantiated allegations of misconduct contained in the ROI. Moreover, the applicant has not provided any evidence that any of the allegations noted in the LOR make him the victim of an error or injustice. As such, we agree with the opinion and recommendation of the Air Force OPR and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden of proof of either an error or an injustice. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-03970 in Executive Session on 1 October 2015 under the provisions of AFI 36-2603:

, Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 25 September 2014, w/atchs.
Exhibit B. Report of Investigation, SAF/IG (withdrawn).
Exhibit C. Legal Opinion, AF/JAG, dated 5 August 2014.
Exhibit D. Memorandum, AF/JAA, dated 14 July 2015.
Exhibit E. Letter, SAF/MRBR, dated 10 August 2015.
Exhibit F. Letter, Counsel, dated 17 August 2015.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-04345

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His referral Officer Performance Reports (OPRs) for the periods ending 31 January and 8 December 2013 be rewritten or removed from his records based on being the victim of reprisal pursuant to DODD 7050.06, Military Whistleblower Protection, dated 23 July 2007, and 10 U.S.C. § 1034.

APPLICANT CONTENDS THAT:

He was the victim of reprisal. On 4 October 2012, he submitted a Congressional complaint regarding mistreatment by his commander. As a result of his complaint, he received a Letter of Reprimand (LOR).

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is in the Air Force Reserve currently serving in the grade of captain (O-3).

According to the AF Form 707, Officer Performance Report (Lt thru Col), for the period ending 31 January 2013, the applicant received a "Does Not Meet Standards" referral OPR. The reasons for the referral report include he was counseled on decision making and financial irresponsibility and he did not meet minimum acceptable standards.

According to the AF Form 707 for the period ending 8 December 2013, the applicant received a "Does Not Meet Standards" referral OPR. The reasons for the referral report include that he had not demonstrated the ability to make sound financial decisions and was counseled for delinquent Government Travel Card (GTC).

In a letter dated 11 December 2014, SAF/MRBR informed the applicant his Inspector General (IG) complaint of reprisal case

was open and provided the applicant an opportunity to request his case be administratively closed until such time as his case is resolved through the appropriate IG authority (Exhibit B).

According to the SAF/IG Report of Investigation (ROI), undated, the applicant filed an IG complaint on 27 September 2012 and an investigation was conducted from 19 December 2013 to 23 April 2014. The investigation determined the following five allegations were not substantiated as reprisal in violation of 10 U.S.C. § 1034:

Allegation 1: On or about 27 September 2012, the applicant's commander removed him from his position as Sustainment Flight Commander in reprisal.

Allegation 2: On or about 27 October 2012, his commander issued him a LOR in reprisal for having made a protected communication.

Allegation 3: On or about 28 November 2012, his commander issued him a LOR in reprisal for having made a protected communication.

Allegation 4: On or about 28 November 2012, his commander recommended he be issued a LOR in reprisal for having made a protected communication.

Allegation 5: On or about 30 September 2012, his commander did not support him going on Military Personnel Appropriations (MPA) orders at the Force Support Squadron (FSS) in reprisal for having made a protected communication.

In a letter dated 22 December 2014, HQ AFRC/IGD notified the applicant that in accordance with AFI 90-301, Inspector General Complaints Resolution, an investigation into his allegations of reprisal was conducted and the IG determined the aforementioned five allegations were not substantiated as reprisal in violation of 10 U.S.C. § 1034.

In an e-mail dated 29 December 2014, the applicant requested his case be administratively closed pending the DOD IG review of his reprisal case.

In a memorandum dated 7 January 2015, the applicant requested his case be re-opened and stated he was not satisfied with the outcome of his IG reprisal case (Exhibit D).

AIR FORCE EVALUATION:

ARPC/DPTS recommends denial. The applicant's IG complaint of reprisal was not substantiated. The applicant's requests that his 31 January and 8 December 2013 OPRs be re-written or void appears to be unfounded. To grant relief would be contrary to

the AFRC/IGD whose final findings on all five allegations of reprisal were not substantiated.

A complete copy of the ARPC/DPTS evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

He understands that his IG reprisal and Congressional complaints were found to be unsubstantiated. However, he does not agree and requests that his performance reports be removed. He was treated unfairly during these reporting periods and was faced with unemployment because of the false allegations. This led to tremendous emotional and financial hardships and the working conditions were hostile at times. Additionally his Change of Reporting Official (CRO) report was completed after he out-processed. He left his forwarding address, telephone number and e-mail but the report was sent to his previous address which did not allow him the opportunity to respond.

The applicant's complete submission, with attachments, is at Exhibit H.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant requests the contested OPRs be rewritten or removed from his records based on being the victim of reprisal per 10 U.S.C. § 1034. We also note the applicant disagrees with the findings of the AFRC/IGD who determined the five allegations of reprisal were not substantiated as reprisal in violation of 10 U.S.C. § 1034 and that he was not afforded an opportunity to provide a response to the CRO report for the period ending 8 December 2013. However, having carefully reviewed the complete case, we are not persuaded the applicant has provided sufficient evidence to refute the findings of his IG complaint or that the contested reports are not a true and accurate assessment of his performance and demonstrated potential during the specified periods of time. Therefore, we agree with the opinion and recommendation of the Air Force office of primary responsibility that the applicant has not sustained his burden of proof and adopt the rationale expressed as the basis for our conclusion the applicant has not been the victim of an error of injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-04345 in Executive Session on 8 December 2015 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 21 January 2014, w/atchs.
Exhibit B. Letter, SAF/MRBR, dated 11 December 2014.
Exhibit C. Report of Investigation, SAF/IG, undated (withdrawn).
Exhibit D. Letter, Applicant, dated 7 January 2015. w/atch.
Exhibit E. Memorandum, ARPC/DPTS, dated 2 October 2015.
Exhibit F. Letter, SAF/MRBR, dated 14 October 2015.
Exhibit G. Letter, Applicant, dated 13 November 2015, 2/atchs.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-04373

COUNSEL: NONE

HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

1. His record be corrected to remove any reference to failing Undergraduate Navigator Training (UNT) to graduate from Undergraduate Pilot Training (UPT).

2. He be credited with two years of service, with pay and benefits for 1978 and 1979.

STATEMENT OF FACTS:

A similar appeal was considered and denied by the Board on 27 Jun 80, under BC-1978-03434. For an accounting of the facts and circumstances surrounding the applicant's separation, and, the rationale of the earlier decision by the Board, see the Record of Proceedings at Exhibit D.

The applicant contends that he did not attend UNT and any reference to failing UNT should be corrected to reflect that he graduated from UPT.

He attended UPT, at Williams AFB, and complained to the Air Force Inspector General (SAF/IG) of verbal abuse and reprisal.

He should be credited with two years of pay and benefits for his service from 1978 to 1979.

The applicant's complete submission is at Exhibit E.

FINDINGS AND CONCLUSIONS OF THE BOARD:

Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a careful review of the applicant's contentions, documentation submitted in support of the request, and the available evidence of record, we are not convinced the applicant has provided sufficient evidence for us to conclude that he is the victim of an error or injustice. We also note the applicant did not file the application within three years after the alleged error or injustice was discovered, or should have been discovered, as required by Title 10, United States Code, Section 1552 and Air

Force Instruction 36-2603. While the applicant claims a date of discovery of less than three years prior to receipt of the application, we believe a reasonable date of discovery was more than three years prior to receipt of the application. Therefore, because we do not find it would be in the interest of justice to recommend granting relief, and the applicant has offered no plausible reason for the delay in filing the application, we cannot conclude it would be in the interest of justice to excuse the failure to timely file the application. Accordingly, we find the application untimely.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered AFBCMR Docket Number BC-2014-04373 in Executive Session on 16 Feb 16 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit D. Record of Proceedings, dated 17 Sep 80.
Exhibit E. DD Form 149, dated 24 Oct 14.
Exhibit F. Pertinent Excerpts from Personnel Records.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-04431

XXXXXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. Coordination Information comments annotated by the commander who reprised against him be removed from his Reserve Officer Development Plan (R-ODP) dated 3 May 2012.

2. The Letter of Counseling (LOC) dated 3 May 2012, be removed from his records. (The applicant withdrew this request and will pursue administrative remedies)

3. His Officer Performance Report (OPR) for the period 3 December 2010 thru 2 December 2011, be altered to remove the rater's "feedback" comment and the last lines in blocks IV and V. (The applicant withdrew this request and will pursue administrative remedies)

APPLICANT CONTENDS THAT:

His commander issued him an LOC and wrote less than positive comments on his R-ODP and downgraded his OPR's bottom line endorsement while inserting a veiled derogatory statement in the performance feedback block.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

According to information extracted from the Automated Records Management System (ARMS), the applicant is currently serving in the Air Force Reserve in the grade of lieutenant colonel (O-5).

In a letter digitally signed on 22 August 2014, the Whistleblower Reprisal Investigations Directorate, Department of Defense (DoD) Inspector General (IG,) completed an oversight review of the applicant's reprisal allegations in accordance with Title 10, United States Code, Section 1034 (10 USC, § 1034), Protected communications; prohibition of retaliatory personnel actions, as implemented by DoD Directive 7050.06,

Military Whistleblower Protection. The investigation addressed and substantiated the following allegations of reprisal.

Allegation 1: The Mission Support Group, (MSG) commander reprised against the applicant for making a protected communication to his chain of command by relieving him of command of the Force Support Squadron, in violation of 10 USC, § 1034, as implemented by AFI 90-301, Inspector General Complaints Resolution.

FINDING: Substantiated.

Allegation 2: The MSG commander reprised against the applicant for making a protected communication to his chain of command by making less positive comments in his R-ODP, in violation of 10 USC, § 1034, as implemented by AFI 90-301.

FINDING: Substantiated.

Allegation 3: The MSG commander reprised against the applicant for making a protected communication to his chain of command by issuing him an LOC dated 3 May 2012, in violation of 10 USC, § 1034, as implemented by AFI 90-301.

FINDING: Substantiated

In a letter dated 24 June 2015, SAF/MRBR advised the applicant that AFI 36-2603, Air Force Board for Correction of Military Records, requires that if an applicant has not exhausted all available effective administrative remedies, the application will be denied by the Board on that basis. The applicant failed to exhaust other administrative avenues of relief prior to requesting relief from the Board which is the highest administrative level of appeal in the Air Force. SAF/MRBR invited the applicant to administratively close his case until such time that he is able to avail himself of the administrative avenues described in the ARPC/DPTS advisory opinion. In an email dated 9 July 2015, the applicant withdrew his requests to remove the LOC dated 3 May 2012, from his records and to alter the OPR for the period ending 2 December 2011.

AIR FORCE EVALUATION:

ARPC/DPTS recommends denial of the applicant’s request to remove the LOC from his records. ARPC only has oversight and control of records located in the Automated Records Management System (ARMS), and there is no evidence of an LOC in ARMS. Therefore, he should seek administrative remedy with the issuing unit.

DPTS also recommends denial of the applicant's request to remove the rater's feedback comment and the last bullets in sections IV and V of his 2 Dec 11 OPR since no error or injustice could be identified therein. DPTS recommends the applicant submit his

requests to correct his evaluation to the Evaluation Report Appeals Board (ERAB).

Notwithstanding the above, DPTS recommends approval of the applicant's request to remove the comments from the applicant's R-ODP dated 3 May 2012, based on the IG report substantiating that he was reprised against for making a protected communication to his chain of command.

A complete copy of the DPTS evaluation, with attachments, is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In an email dated 9 July 2015, the applicant withdrew his requests to remove the LOC dated 3 May 2012 and to alter the OPR for the period ending 2 December 2011 and stated he would purse administrative remedies.

The applicant's complete response is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice with respect to the applicant's request to remove the comments annotated by his commander on the R-ODP. The applicant alleges that he has been a victim of reprisal for making a Protected Communication (PC) and has not been afforded full protection under the Whistleblower Protection Act (Title 10 U.S.C. § 1034). Based on this, he is requesting corrective actions as noted in his appeal to the Board. Having carefully reviewed this application, we agree with the recommendation of the Air Force office of primary responsibility and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. We also note the applicant initially requested the LOC dated 3 May 2012, be removed from his records. However, based on the SAF/MRBR letter dated 24 June 2015 inviting the applicant to administratively close his case until such time he was able to avail himself of the administrative avenues, the applicant withdrew his request. However, based on the substantiated reprisal against the applicant for making a PC resulting in the LOC, we find it extremely likely that his unit would remove the contested LOC. In the unlikely event the unit declines to remove the LOC, the applicant could reapply to the AFBCMR. While the OPR states there is no evidence of an LOC in ARMS and the applicant has not

exhausted administrative avenues of relief prior to submitting his application to the Board, in the interest of administrative economy and fairness to the applicant, we also recommend removal of any references to an LOC dated 3 May 2012. Accordingly, we recommend the applicant's records be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that:

The Reserve Officer Development Plan, Coordination Information comments dated 3 May 2012, be amended to read "Coordinator comments removed by direction of the AFBCMR."

The Letter of Counseling issued to him dated 3 May 2012, and any and all documents and references pertaining thereto be declared void and removed from his records.

The following members of the Board considered AFBCMR Docket Number BC-2014-04431 in Executive Session on 4 August 2015, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

All members voted to correct the record as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 30 October 2014, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, ARPC/DPTS, dated 17 April 2015, w/atchs.
Exhibit D. Letters, SAF/MRBR, dated 24 June 2015 and 30 June 2015.
Exhibit E. Email, Applicant, dated 9 July 2015.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2014-04446

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His Distinguished Service Medal (DSM), awarded on 31 Jul 13, be added to his DD Form 214, Certificate of Release or Discharge from Active Duty, and any biography or record of service maintained by the Air Force. (Administratively corrected)

2. His Letter of Counseling (LOC) from the Commander, US Central Command (USCENTCOM/CC), dated 28 Mar 11, be declared void and removed from his record, to include those records maintained by the General Officer Groups at AF/DPG and AF/REG.

3. His Letter of Reprimand (LOR) from the Commander, Air Force Reserve Command (AFRC/CC), be declared void and removed from his record, to include those records maintained by the General Officer Groups at AF/DPG and AF/REG.

4. The results of any command action, previously reported by AF/RE and/or SAF/IG to the Department of Defense Inspector General (DOD/IG), be corrected to show no command action was taken as the result of any investigation conducted in regard to events that arose while the applicant was serving as the Chief, United States Military Training Mission (USMTM) to the Kingdom of Saudi Arabia (KSA).

5. His dates of service in his official military record be corrected to reflect he served on active duty through 30 Jun 12, and retired effective 1 Jul 12.

APPLICANT CONTENDS THAT:

In a 32-page brief of counsel the applicant asserts he was unjustly treated based upon both legal error and manifest injustice and makes the following contentions:

1. The CENTCOM Investigating Officer (IO) who completed the commander directed investigation (CDI) met with the Ambassador of KSA prior to starting the investigation. Prior to conducting the investigation, the IO met with the Ambassador to the KSA, who disclosed an ongoing dispute between the applicant and the Ambassador, and made it clear he wanted the applicant reassigned. Because this information was unrelated to the allegations, the Ambassador's desires should have been communicated directly to CENTCOM for treatment for what they were—a political request for reassignment. The IO accepted the Ambassador's input, and improperly factored the Ambassador's desire into this report. He started his investigation with a specific objective—the applicant needed to be reassigned. The IO never told the applicant about his meeting with the Ambassador, denying the applicant the basic due process of notice and the opportunity to respond. The IO did not record or summarize this meeting in his report. Further, the IO referred to a "widening gulf" between the applicant and his staff under the heading "Other Issues" in his report. The applicant was never notified this issue was under investigation and given to opportunity to respond. Here, the IO used the Ambassador's ex parte input to justify his recommendations.

2. The CENTCOM CDI by the assigned IO misrepresented or failed to discover a majority of the relevant facts; critical available witnesses were not interviewed; rumors and conjecture were taken as fact; and, the IO failed to ask the basic "who, what, where, why, and when" questions that would have established an accurate record. The IO was detailed to investigate six allegations. The CDI failed to substantiate any of them. In addition to starting out by considering information not within the scope of his investigation, the IO attempted to justify his one adverse finding based upon incomplete, unverified, and wholly inaccurate evidence. Instead he found a violation of the most general provisions of the Joint Ethics Regulation (JER). Concerns with the CDI include:

a. Utilizing the CDI rather than the IG. The IO was not a trained investigator. He violated virtually every cardinal rule for conducting a fair, impartial and complete investigation. He failed to interview critical, available witnesses; lectured and lead witnesses; reached conclusions prior to completing his investigation; and, accepted rumor and hearsay as fact. Air Force policy requires SAF/IGS to investigate allegations against general officers. Although combatant commands, like CENTCOM, are not bound by Service policy, this case vividly illustrates the wisdom of using trained Service resources to conduct senior personnel investigations.

b. Problems with the CDI: The IO did not find sufficient facts to substantiate any of the six allegations as made. Concerning Allegation 2 (Improper Contracting), in which the applicant was accused of improperly influencing contacting procedures to ensure a personal friend of his wife ("Mrs. C") receive a contract to fill the position of Family Readiness Coordinator (FRC), the allegation was not substantiated. However, the IO still somehow found "special treatment" and the creation of an "appearance of a violation" of ethical standards.

c. Hiring the FRC. The circumstances surrounding the vacancy of the FRC position are relevant to the IO's finding of favoritism. There is no evidence the applicant orchestrated the vacancy, the applicants, or the length of the vacancy in the FRC position to accommodate "Mrs. C." The IO accepted as true the accounts of witnesses who had no direct involvement in the events he was investigating. His failure to gather and report all the available and relevant facts and testimony bearing on his "findings" is troubling.

d. Moving the FRC to the Special Staff. The IO reported that prior to Mrs. C's arrival, the FRC fell under the USMTM/J1 and the applicant moved the FRC position to the Special Staff to have Mrs. C report directly to him, concluding that "this contributed greatly to the perception of favoritism." However, the statement is absolutely untrue. The IO relied solely on the testimony of an individual who apparently never understood for whom the FRC worked. Before the arrival of Mrs. C, the former FRC was a member of the Special Staff, and the applicant made no changes in that regard. Specious facts cannot support a finding of favoritism.

e. Use of a Government Owned Vehicle (GOV). The IO found that "despite being advised that Ms. C, as a contractor, could not be provided with a government car for her use as FRC, the applicant directed it nonetheless." This is again, absolutely untrue. None of the witnesses testified that they personally told the applicant of this situation. In direct contradiction to the finding, the Deputy J4 stated the former Chief of Staff directed Ms. C be issued a GOV. The applicant denied knowing Ms. C had been issued a vehicle, and testified that if anyone had told him it was not authorized, he would have put an end to it. To find favoritism, there must be a knowing and conscious act.

f. FRC access to the applicant. The IO asserts Mrs. C had a degree of access to the applicant "out of proportion to what her relative role should have been in the organization." There is no evidence she had any greater access to the applicant than did the previous FRC. Furthermore, Mrs. C stated she intentionally limited her contact with the applicant because she had been informed her contact was creating a perception of favoritism. The IO also indicates Ms. C used her access to avoid the normal staffing process. There are only two examples presented to illustrate her "favored" role. In one instance, she had no control over an unanticipated (and inappropriate) gift for the FRC, and in the other she inappropriately attempted to use a government printer to reproduce a cookbook for fund raising which had been used for that same purpose the year before, apparently falling into the trap of "doing it like it's always been done." Further, the IO asserted Mrs. C "wore the general's rank," and that none of her shortcomings led to any kind of discipline. Whether she wore the general's rank is largely a matter of perception and it is clear that certain members of staff did not like her aggressive approach. In fact, she was simply a go-getter and someone who pressed issues and did not readily accept "no" for an answer.

g. Staff Reaction to Mrs. C. The IO reported "because of Mrs. C's access and influence with (the applicant), members of the staff were afraid to criticize the FRC lest they become targets for (the applicant)." Throughout this period, the applicant's own perception was the staff was not supporting the "Return of Dependents" initiative and, consequently, supporting Mr. C's effort. It is probable the applicant's support for the FRC, which he viewed as a priority, was mistaken for support for Mr. C personally.

h. The FRC going away plaque. The IO asserted the plaque given to Mrs. C at the end of her contract during the "all hands" meeting in Feb 11 was an act of overt favoritism by the applicant. However, the applicant had directed his Executive Officer to "draft something" appropriate to recognize Mr. C's work. He did not have any idea a plaque had been purchased to present to her until it was handed to him during the "all hands." When the applicant found out his Command Master Chief (CMC) paid for the plaque out of his own pocket and had not been reimbursed, the applicant promptly reimbursed the Chief. This was most certainly not an act of favoritism. It is done routinely in all organizations, and the plaque came as a complete surprise to the applicant.

i. The Importance of the FRC. The IO found "However well intended" the applicant's emphasis on the "Return of Dependents" initiative, it "was misplaced and clearly had a negative impact on the applicant's effectiveness as Chief as well as a negative impact on his senior staff." This statement expresses recognition of the reluctance of the USMTM staff to support his command program. It is also an assumption of the role of the Chief, USMTM, by the IO, who is substituting his judgment for that of the lawfully appointed Chief. Further, it flies in the face of the direction of the CENTCOM Commander. The IO's assertion that this was somehow detrimental to the effectiveness of the USMTM is completely unsupported. The USMTM had just undergone an IG Inspection in Feb 11 immediately prior to the CDI and the IG found "the staff has superbly executed its training and advising mission to the Saudi Ministry of Defense Forces."

Based upon the above, the IO recommended the applicant receive an LOC in regard to Allegation #2, and he be reassigned from this position as Chief, USMTM.

3. There was insufficient evidence for the punishment.

a. The Letter of Counseling: The CENTCOM IO attempted to justify his one adverse finding based upon incomplete, unverified, and wholly inaccurate evidence, which was inadequate to support the stated reasons for the LOC. The IO tortured the evidence to attempt to find some wrongdoing. He repeatedly summarized the evidence unfairly, ignored contradictory and favorable evidence and when all else failed, substituted his judgment for the applicants. The woeful ROI was the sole basis of the LOC.

It is axiomatic that actual favoritism requires some element of knowledge or intent on the part of the actor. If the actor does not know of the act or does not intend an act to occur, the actor lacks the intent necessary to find favoritism. There is simply no evidence the applicant knew of the issuance of the GOV. The first time he became aware of the existence of a plaque was at an "all hands" meeting at which the plague was thrust upon him to present. There is no JER prohibition on giving items of small intrinsic value to contractors, so long as appropriated funds are not used. There is no evidence Mrs. C was given any greater access to the applicant than any other special staff member or her predecessor. The assertion the applicant was unwilling to consider any criticism of Mrs. C for her performance and that that created an oppressive atmosphere is devoid of any factual predicate. The applicant's disappointment and reaction to what he perceived to be staff resistance may well have been translated and misperceived as support for Mrs. C personally.

Lacking knowledge that a GOV had been issued to Mrs. C and lacking knowledge that a plaque had been procured for her, until it was thrust upon him at an all-hands meeting, the allegation the applicant showed actual favoritism cannot be sustained. Similarly, a reasonable person, with knowledge of all the relevant facts rather than the rumors and myths surrounding Mrs. C, could not conclude the applicant created the appearance of favoritism. The incidents cited to support the creation of an appearance of favoritism crumble under examination. The facts, devoid of rumor, innuendo, and speculation, do not reasonably support the assertion that the applicant committed acts constituted as a violation of the JER. The proper remedy is to delete all references to the LOC from all Air Force records.

b. The Letter of Reprimand: The SAF/IG relied almost exclusively on the IO's flawed CDI in substantiating the complaints of reprisal against the applicant. Unfortunately, in applying the "Acid Test" for determining reprisal, the SAF/IG never examined the quality of accuracy of the CDI, nor appreciated or acknowledged the role "politics" played in the IO's comments and recommendations, causing the SAF/IGS to unwittingly reach its own erroneous conclusions.

Concerning the Acid Test, the Deputy Chief did testify during the CDI and it was conceded his reassignment was an unfavorable personnel action. However, all four parts of the Acid Test must be met to substantiate reprisal. In applying the Acid Test, the IO concluded that a preponderance of the evidence showed "(the applicant) knew that the Deputy Chief testified…and guessed that the testimony was not in (the applicant's) favor…" These findings, particularly the IO's curious, ephemeral word "guessed' raise four questions:

1. What did the applicant know? Fortunately for the applicant, the IO never disclosed any testimony directly attributed to the Deputy Chief, only "the staff,' "some elements of the staff," etc. Beyond knowing he had been interviewed, the applicant knew nothing of the substance of the Deputy Chief's testimony.

2. Why would he "guess" the Deputy Chief's testimony was unfavorable? At worst, the applicant might have concluded the Deputy Chief was a part of the staff that held one or more of the perceptions to which the IO alluded. The IO gave the applicant no indication that any of these "perceptions" he had uncovered during his investigation were about violations of the law, regulations, or policy. Rather, the IO treated them as if they were misperceptions that were unfortunate consequences of the applicant not taking the time to educate his staff. There is no reason the applicant would have "guessed" the Deputy Chief's testimony was adverse in nature.

3. Why would the applicant care, at all, about the Deputy Chief's testimony? Every signal the IO sent to the applicant was that there was no real problems; only perceptions, which were largely unavoidable in small organizations. There was no reason for him to be concerned about the results of the investigation and certainly nothing so serious as to warrant reassigning the Deputy Chief.

4. Why was the Deputy Chief reassigned? Clearly, the Deputy Chief sided with the Ambassador on the issue of intelligence collection; believed the applicant unduly restrained the Division Chiefs; and, believed the applicant was not supporting the Ambassador. The Deputy Chief's testimony validated the applicant's belief the Deputy Chief did not agree with the applicant's position and worked behind the applicant's back to support the Embassy. That was the applicant's motivation for reassigning the Deputy Chief.

Further, the SAF/IG IO's analysis of some of the characteristics listed in part 4 of the Acid Test are troubling:

1. Reasons. There is no analysis in this subpart. The IO simple set out the CDI IO's reasons for the Deputy Chief's reassignment.

2. Reasonableness. This subpart begins with comments the applicant made during his interview which generally praise the Deputy Chief, before he came to realize the extent of the Deputy Chief's disloyalty. The IO followed with a quote from the Deputy Chief indicating he never received any "negative feedback." This testimony directly contradicts testimony given the IO by a Lieutenant Commander (LCDR). The IO ignored the LCDR's testimony even though it corroborates the applicant's accounts of his problems with the Deputy Chief. The fact the SAF/IG IO attempted to use these comments to find the applicant acted unreasonably is graphic evidence of the extent to which the CDI IO report confused the issues and the SAF/IG IO's reasoning. In addition, the SAF/IG IO's analysis concluded by indicating it was not reasonable to replace an experienced O-6 with a newly arrived GS-13. No mention was made that the applicant was going to take on many of these responsibilities himself.

3. Consistency. The IO found that placing a GS-13 was not consistent with the past practices of USMTM of having a GS-15 or O-6 as Chief of Staff. However, the reorganization was consistent with the summer of 2010 reorganization, and again, the fact that the applicant was going to take on additional responsibilities was not mentioned.

4. Motive. The applicant know nothing of the CDI comments at the time he reassigned the Deputy Chief, and those comments could not have influenced or motivated his action. What motivated the applicant is what he did know

—he had a Deputy who he no longer trusted. Knowledge of The Deputy Chief's disloyalty came from observations unrelated to and independent of the CDI. The IO found the applicant was motivated to reprise against the Deputy Chief because the Deputy Chief said so. That is not analysis.

5. Procedural Correctness. The SAF/IG IO's confusion and lack of understanding of the "Acid Test" is further illustrated in his closing comments: "The applicant's true motive was reprisal against (the Deputy Chief) for testifying in a CENTCOM CDI that resulted in the (the applicant) receiving a letter of counseling and being reassigned earlier than scheduled from the USMTM Chief job." That the CDI resulted in an LOC is not relevant to the applicant's motive for reassigning the Deputy Chief. The reassignment action preceded the LOC and the applicant's reassignment by over a week. The receipt of the LOC and reassignment were not known to the applicant and could not have influenced his motive.

Consistent with the CDI IO's advice to the applicant, the applicant reassigned his Deputy Chief/Chief of Staff back to the position he had originally been assigned within USMTM, prior to being advised of the results of the CDI and at a time when he had no knowledge of the Deputy Chief's testimony in the investigation. When the Deputy Chief claimed his reassignment was reprisal for his testimony during the CDI, the IG relied upon the flawed CDI to substantiate reprisal. However, the only three witnesses interviewed during the CDI had filed complaints against the applicant and had personal motives to shade their testimony. No effort was made to independently establish the validity of their characterization of events. The CENTOM CDI OI did the Ambassador's bidding and crafted his ROI to provide the Ambassador top cover. The SAF/IGS completely overlooked the inappropriateness of the Ambassador's ex-parte communication. The facts do not rationally support the findings in the LOR.

The LOC and LOR are an affront to the honor and reputation of an officer who honestly and faithfully served his country for over 33 years.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant was an AF Reserve General Officer serving on Title 10 active duty orders during the matter under review.

On 1 Mar 09, the applicant was initially assigned as the Chief, USMTM, KSA. According to the documentation submitted by the applicant, USMTM operates under the direction of the Ambassador to the KSA.

On 28 Feb 11, the Commander, United States Central Command (USCENTOM/CC) appointed an Army Maj Gen to serve as the IO on a CDI to investigate numerous anonymous complaints made against the applicant. The IO summarized the complaints as follows:

a. Allegation 1 (Support Functions): USMTM maintains insufficient personnel support functions, resulting in the delay or denial of key personnel services.

b. Allegation 2 (Improper Contracting): The applicant improperly influenced contacting procedures to ensure a personal friend of his wife received a contract to fill the position of Family Readiness Coordinator (FRC).

c. Allegation 3 (Hostile Work Environment): The applicant created a hostile work environment such that numerous civilian employees were either removed from their positions or felt forced to resign.

d. Allegation 4 (Qualify of Life): The applicant ignores quality of life complaints, specifically, complaints relating to alleged harassment by Security Forces personnel of Eskan Village residents as they pass through the gate.

e. Allegation 5 (Spurious TDY): The applicant engages in excessive and spurious TDY travel.

f. Allegation 6 (Cohen Group Meeting): The applicant improperly met with, and provided information to, the Cohen

group: a defense contractor.

On 21 Mar 11, the CDI IO completed his report of investigation (ROI) and submitted the ROI to the USCENTOM/CC. The IO determined the preponderance of the evidence substantiated Allegation 2 (Improper Contracting), but did not substantiate the five remaining allegations. The JER requires that employees "act impartially and not give preferential treatment to any private organization or individuals." In reference to the substantiated allegation (#2), the ROI states: "The preponderance of the evidence indicates (the applicant) provided special treatment and favoritism to Mrs. C, a contractor and family friend, to such an extent that it amounted to a violation of the Joint Ethics Regulation (JER)." Moreover, the evidence also supports the finding that the applicant's actions created the appearance of violating ethical standards. The investigation included the following concerning the one substantiated allegation:

1. When USMTM advertised for the job of Family Readiness Coordinator (FRC) in Oct 09, they received a list of several qualified applicants. Mrs. C did not make the list as she did not meet the educational or experience qualifications. The applicant did not find any of the applicants acceptable.

2. In Jan 10, the applicant directed a short-term contract to fill the FRC until the position could be permanently filled. The applicant noted "we have a qualified wife of a Vinell Arabia (a contractor) person who wants (and applied for) the FRC job." This was apparently a reference to Mrs. C., who has been described by all witnesses as a close personal friend to the applicant's wife, as well as the applicant. In fact, Ms. C was at the time traveling with the applicant's wife as a vacation companion.

3. The contract was only advertised locally, and Mrs. C was the only bidder. While the contract was technically correct, it is clear those involved felt this was, essentially, a sham to get Mrs. C the position. The Staff Judge Advocate (SJA), Chief of Staff and Deputy Chief of Staff all advised strongly against the contract.

4. In the Spring of 2010, the FRC position was re-advertised and again a list of qualified applicants was generated. It appears none of the qualified candidates were interested. At the direction of the applicant, Mrs. C's contract was extended. Then, at the end of the extension contract, the applicant directed Mrs. C's contract be extended yet again. However, the applicant acceded to his staff's concern that continually extending her contract would create the appearance of an improper personal services contract. Her contract was allowed to lapse, and the position was advertised for a third time.

5. When a qualified applicant was finally located and selected, that individual could not arrive until Apr 11. Therefore, a new contract for the FRC position was bid, Mrs. C was the only bidder, and she again was given the contract. When this contract neared its conclusion, the applicant again directed Ms. C be extended in the position. Again, based upon the advice of his staff, the applicant allowed the contract to expire, but "it was clear he did not wish to do so." Since, then, the applicant has advocated in favor of hiring Mrs. C for a GS job in the front office.

6. Upon the arrival of Mrs. C, the applicant moved her position from under the USMTM/J1 onto his Special Staff, reporting directly to him.

7. Despite being advised Mrs. C, as a contractor, could not be provided with a GOV for her use as FRC, the applicant directed it nonetheless. This despite the fact that during this period there were not enough motor vehicles to meet the needs of the service members at Eskan Village.

8. Mrs. C has a degree of access to, and tolerance by, the applicant which was out of all proportion to what her role was in the organization. It is clear she used this access to avoid the normal staff process and to bypass limits the legal office and other staff members might have placed on her conduct. For one example, she agreed to allow a private organization to donate a computer. In fact, there was the perception she had indirectly solicited the donation. Such a donation is improper. On another occasion, Mrs. C attempted to use government resources (printers, copiers, personnel, etc.) to print a cookbook to be sold for fundraising purposes. Moreover, it appears Mrs. C would use her favored status with the applicant to direct members of the staff to assist her with her tasks—in essence "wear the rank" of the General.

9. Mr. C's access and influence with the applicant created the impression she enjoyed a special status and

members of the USMTM organization should defer to her in their own interests. There was fear of retaliation if Mrs. C was not supported. The applicant was described as becoming visibly angry at those who criticized her.

10. The applicant sought to have her presented with an award to commemorate her service. The XO sought guidance for the appropriateness of such an award, and the SJA issued an opinion by 13 Feb 11 that contractors were only eligible for "honorary awards of little intrinsic value such as certificates." The Command Master Chief recalls specifically telling the applicant "you cannot do that because she is a contractor." Nonetheless, the applicant directed she be given some kind of an award. Then, the applicant presented a plaque to Ms. C at a USMTM-wide function (the same type typically given to departing military members).

In summary, the IO determined the preponderance of the evidence supported the finding that the applicant's conduct in regard to allegation 2 was improper. In addition, the IO stated in his report it was clear the applicant faced significant challenges in continuing as Chief, USMTM. He had alienated himself from his senior staff. His excessive focus on his "Return of Dependents" initiative and the Family Readiness Group betrayed a lack of appropriate emphasis on the USMTM mission.

Other issues which warrant discussion arose during the investigation: The relationship between the applicant and the Ambassador and the Defense Attaché had become estranged and dysfunctional. The Ambassador in no way endorsed extending the applicant's tenure as Chief, USMTM. The applicant's relationship with his senior staff was estranged as well. The widening gulf between the applicant and his senior staff threatened to significantly reduce USMTM's effectiveness. The applicant seemed almost willfully ignorant of the state of his staff in general and of issues related to Mrs. C in particular. Along with stating he did not know Mrs. C had been issued a GOV, he professed ignorance that enlisted staff members had been ordered to pick up his wife's bags from the airport when she recently visited on a tourist visa. He stated he was unaware Mrs. C was not entitled to an award (despite the CSM's recollection to the contrary) and he did not know the CSM had purchased the plaque given to her at the CSM's own expense. He praised Mrs. C's performance unreservedly and seemed completely unaware of the deep dissatisfaction and discord she provoked among his staff.

The IO's recommendation stated that while he did not believe the applicant's conduct was sufficient to warrant non-judicial punishment, he did recommended the applicant receive an LOC addressing his conduct related to Allegation 2, and be reassigned at the earliest practical time (Exhibit C).

On 28 Mar 11, the applicant received a LOC from the Commander, United States Central Command (USCENTOM/CC). The reason for taking this action was an investigation disclosed that between Feb 10 and Feb 11, the applicant inappropriately provided special treatment and favoritism to a family friend (Mr. C) who the applicant hired as a contractor, in violation of the JER. Specifically, the applicant provided her a GOV without authorization in her contract to do so, and awarded her a $75.00 farewell plaque at a public function, which his Command Sergeant Major paid for from his own pocket, despite the fact he know contractors were not authorized to receive such awards. Taken as a whole, the applicant's conduct created an unacceptable appearance of favoritism towards Mrs. C. In addition, the applicant provided the contractor a degree of access to him out of proportion relative to her position in the organization, and pushed to extend her contract, even though his staff advised against it. His consistent unwillingness to consider any criticism of the contractor or her performance created an atmosphere so oppressive that members of his staff believed they would face both anger and retribution for voicing their opinions.

On 27 May 11, the applicant requested approval from the Air Force Chief of Staff to retire from active duty in the grade of Maj Gen, effective 11 Jun 11 or the earliest possible date.

On 15 Jul 11, the applicant was issued an Honorable discharge certificate, with a narrative reason for separation of "completion of required active service."

In Dec 11, the Inspector General of the Air Force (SAF/IG) completed their investigation into three separate allegations of reprisal filed against the applicant by members of his staff, and published their Report of Investigation (ROI) (Exhibit D). AFI 90-301, Inspector General Complaints Resolution, provides an "Acid Test" for IOs to utilize in analyzing whether or not reprisal has occurred. The questions/characteristics for the Acid Test are listed below, along with a brief

summary of the SAF/IG IOs analysis of these questions with respect to the first of the three allegations, that of the USMTM Deputy Chief.

Allegation #1: The applicant removed a subordinate Colonel from his position as the Deputy Chief, USMTM, Saudi Arabia, in reprisal for making a protected communications.

Acid Test Q1. Did the military member make or prepare a communication protected by statute, DoD Directive, or AFI 90-301? Yes. The Deputy Chief, USMTM, testified as a witness in the CENTCOM CDI looking into allegations of wrongdoing by the applicant. This was a protected communication.

Acid Test Q2. Was an unfavorable personnel action taken or threatened; or was a favorable action withheld or threatened to be withheld following the protected communication? Yes. The applicant removed the Deputy Chief from his position, returning him to the position of Division Chief, Marine Forces Division. Removing the Deputy Chief and reassigning him to be a subordinate division chief was an unfavorable personnel action.

Acid Test Q3. Did the official responsible for taking, withholding, or threatening the personnel action know about the protected communications? Yes. The applicant knew about the Deputy Chief's protected communications. The applicant stated "I knew (the IO) talked to my Command Sergeant Major and I knew he talked to the (Deputy Chief)…" The applicant knew that at or close in time to the testimony, which took place on or about 10 Mar 11. The removal decision was made by the applicant on 26 Mar 11.

Acid Test Q4. Does the preponderance of the evidence establish that the personnel action would have been taken, withheld, or threatened if the protected communication had not been made? No. This question is analyzed in five sub-parts:

a. Reasons the responsible management official (RMO) took, withheld, or threatened action. The applicant explained the reassignment a "reorganization," however, he also stated "it became clear the Deputy Chief has become a "de facto chief of mission, and I just couldn't tolerate that." In addition, the CENTOM CDI OI had told the applicant his "first-tier" staff had a perception issue with him (the applicant).

b. Reasonableness of the action taken, withheld, or threatened considering the complainant's performance and conduct. The applicant made no comments about the Deputy Chief's duty performance that could have been the least bit derogatory. In the interview with the IO the applicant commented that "things are moving along pretty smoothly, from my perception" since the Deputy Chief assumed his duties. The IO found the action by the applicant to remove the Colonel from the Deputy Chief job and replace him with a newly arrived GS-13 who was unfamiliar with the mission and staff to be unreasonable.

c. Consistency of the actions of the RMOs with past practice. When the applicant first took over as USMTM Chief, the Deputy Chief position was filled by a full Colonel, and the Chief of Staff position was filled by a GS-15. When the GS-15 left USMTM because of "friction between he and the applicant," the Deputy Chief had to take on both duties. The applicant's decision to have the new GS-13 act a both the O-6 Deputy Chief and GS-15 Chief of Staff was not consistent with past practices.

d. Motive of the RMO for deciding, taking or withholding the personnel action. After considering the various reasons the applicant gave for removing the Deputy Chief in light of the facts and circumstances surrounding the removal, the SAF/IG IO concluded the applicant's true motive was reprisal against the Deputy Chief for his testimony in the CENTOM CDI. The applicant would not have taken the unfavorable personnel action had the Deputy Chief not made a protected communication.

e. Procedural correctness of the action. There was nothing procedurally incorrect about the removal of the Deputy Chief.

The SAF/IG's final conclusions concerning the three allegations of reprisal were:

a. Allegation #1: The applicant removed a subordinate Colonel from his position as the Deputy Chief, USMTM, Saudi Arabia, in reprisal for making a protected communication. The Colonel had testified as a witness in the CENTCOM CDI which looked into allegations of wrongdoing by the applicant. The SAF/IG IO concluded the applicant would not have taken the unfavorable personnel action against the Colonel had the Colonel not made the protected communication of testifying in the CENTCOM CDI, and the applicant's true motive was reprisal. This allegation was substantiated.

b. Allegation #2. The applicant purposefully diminished the fitness report of a Lieutenant Commander in reprisal for making a protected communication. The Lieutenant Commander had testified as a witness in the CENTCOM CDI which looked into allegations of wrongdoing by the applicant. The applicant marked down the Lieutenant Commander in Military Bearing/Character and Average ratings on his FITREP. The applicant subsequently increased the ratings on the FITREP to higher scores, but the SAF/IG IO found the applicant had threatened an unfavorable personnel action when he signed the original FITREP, and found the applicant had purposely diminished the FITREP ratings as reprisal for making a protected communications. This allegation was substantiated.

c. Allegation #3. The applicant purposefully diminished the performance report of a Major in reprisal for making a protected communications. The Major had testified as a witness in the CENTCOM CDI which looked into allegations of wrongdoing by the applicant. The applicant allegedly weakened the verbiage from the draft of the Major's officer performance report (OPR). The SAF/IG OI found no unfavorable personnel action had taken place because the Major's OPR did not contain any comments that reflected poorly on the Major's duty performance during the rating period. This allegation was not substantiated.

(The Acid Test analysis presented above only applies to Allegation #1. Similar reviews can be found for Allegations #2 and #3, at Exhibit D, pages 15-24 and 24 to 27, respectively.)

On 27 Apr 12, the applicant received an undated LOR from the AFRC/CC. The reason for this action was the investigation conducted in response to a complaint filed with the Department of Defense Inspector General (DoD/IG), and forwarded to the AF/IG for action revealed that he reprised against two of his subordinates after they made protected communications pursuant to 10 USC § 1034.

On 11 Jan 13, the Secretary of the Air Force determined the applicant served satisfactorily in the grade of Maj Gen, and recommended he be retired in that grade.

Under Special Order AA-0339, dated 12 Feb 13, the applicant was retired under Title 10 USC in the grade of Maj Gen, effective 1 Aug 11, and was credited with 23 years and 1 month of active service for retirement.

On 23 Sep 15, AFPC/DPSIDR directed the applicant's DD Form 214 be corrected to reflect award of the DSM.

The remaining relevant facts pertaining to this application are contained in the memoranda prepared by the Air Force offices of primary responsibility (OPRs), which are attached at Exhibits E, F, and G.

AIR FORCE EVALUATION:

AFPC/DPSID does not make a recommendation. A review of the applicant's official military personnel record indicates he was awarded the DSM, but it was not properly reflected on his DD Form 214. DPSID directed his DD Form 214 be updated to add the DSM. No further action is required by the AFBCMR.

A complete copy of the AFPC/DPSID evaluation is at Exhibit E.

ARPC/DPTT recommends denial of the applicant's request to change his DD Form 214 to reflect he served through 30 Jun 12, with an effective retirement date of 1 Jul 12, indicating there is no evidence of an error or an injustice. The applicant requested and was approved for a retirement date of 1 Aug 11 in accordance with Title 10 USC § 8911. ARPC cannot comment on any alleged errors or injustice regarding the applicant legal status which might warrant a

change of the applicant's retirement date or additional active service.

A complete copy of the ARPC/DPTT evaluation is at Exhibit F.

SAF/MRBL recommends denial of the applicant's request to remove the LOC and LOR and to remove all references to this investigation into his service in Saudi Arabia from his record, indicating there is no evidence of an error or an injustice.

1. Whether utilizing a CENTCOM CDI rather than an IG investigation was in error or injustice. There is no error or injustice by utilizing a CDI rather than a service Inspector General (IG) office to gather relevant information to make an informed command decision. CDIs are usually less formal than other, formal service investigations and are often used for less serious or less technically complicated investigations. As the applicant's attorney points out in the application, the alleged offenses were relatively minor, and as such, a faster, more efficient, less disruptive CDI is a reasonable and appropriate command option. The applicant was not unjustly prejudiced by command's choice to use a CDI as the investigative vehicle. There are no procedural errors in the report that would warrant relief nor are there any errors that offend fundamental fairness such as to warrant relief.

2. Whether the Investigating Officer (IO), by having a meeting with the Ambassador to the KSA prior to conducting the CDI, should have considered himself conflicted and removed himself from the investigation. There is no error or injustice by a CDI IO meeting with the country Ambassador before interviewing witnesses or otherwise proceeding with his investigation. Indeed, it is common that an IO would have an introductory visit with a subject's commander or other high ranking official whose operations or staff might be affected. In addition, IOs are not required to be devoid of knowledge of the situation or of individual preferences or beliefs regarding affected persons. The IO did not substantiate five of the six allegations suggesting he was not involved in a conspiracy or intentional, underhanded political effort to undermine the applicant as the applicant's attorney suggests. The applicant has provided insufficient evidence, beyond mere speculation, to find the IO was compromised by what could be characterized as a routine pre-investigation courtesy call.

3. Sufficiency of evidence. The question presented is whether command's action was rationally based on the evidence or whether it was arbitrary or capricious or intentionally dishonest. For both the LOC and the LOR, the evidence rationally supports the command's position. The facts indicate the IO did indeed evaluate the case properly and even discussed the factors under question four of the acid test for reprisal. SAF/MRBL found nothing in the file to indicate the IO's findings or command actions were arbitrary or capricious. From a legal standpoint, the investigation and findings appear proper. Both AF/JAA and DoD/IG reviewed the SAF/IG ROI and concurred with the findings and conclusions. They do not see sufficient evidence to conclude command acted without an adequate factual underpinning or acted arbitrarily or capriciously. There is adequate evidence to support command's findings and actions.

SAF/MRBL would caution the Board regarding substituting their own judgment for the command's. Additionally, SAF/MRBL does not recommend eliminating all reference to the CDI, since the protected communication was made to the CDI IO. Even if the Board considers the CDI flawed, the communication to the IO is still a protected communication and can still properly underpin an allegation of reprisal.

A complete copy of the SAF/MRBL evaluation is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In further support of his request, the applicant, through counsel, took exception to the AFPC/DPTT and SAF/MRBL advisories, arguing:

1. Concerning the AFPC/DPRR advisory: After AFPC/DPTT stated the retirement was executed properly in compliance with the Secretary of the Air Force guidance, and that they cannot comment on any alleged error or injustice which would warrant a change, they then recommended denying the applicant's claim. Without examining or commenting on the facts and circumstances (outside the retirement processing), AFPC/DPTT should not have made a

recommendation.

2. Concerning the SAF/MRBL advisory: SAF/MRBL failed to reconcile the "so-called" facts in the CENTOM CDI with the "facts" he presented in his initial presentation, which he refers to as "overwhelming evidence." While agreeing with SAF/MRBL that CENTCOM/CC's use of a CDI rather than an IG investigation was not an error or injustice, the injustice was in the appointment of an incompetent, untrained investigator. Further, after agreeing with SAF/MRBL that it was not extraordinary for the IO to meet with the Ambassador, he reiterates his initial contention that rather than conducting a fair investigation, the IO chose to "integrate the Ambassador's desires into his findings and recommendations," resulting in a biased report addressing matters beyond the scope of the IO's tasked investigation. Finally, while SAF/MRBL suggests the standard to be applied is whether the command acted "arbitrarily and capriciously," in accordance with AFI 36-2603, Air Force Board of Correction of Military Records, the requirement for relief by the AFBCMR is whether an applicant has submitted "sufficient evidence of probable material error or injustice." The first-hand statements of the witnesses gathered, not by the IO, but by the applicant, show the CDI has the "facts" wrong, and command, and later the IG, were misled into taking actions making findings based upon demonstrably inaccurate facts.

The applicant's complete response is at Exhibit I.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission, to include his rebuttal response to the advisory opinion, in judging the merits of the case; however, we agree with the opinions and recommendations of SAF/MRBL and ARPC/DPTT and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. First, while the applicant contends the CENTCOM CDI OI addressed matters beyond the scope of his tasked investigation, the Board disagrees and notes the IO's appointment letter, dated 28 Feb 11, states "The scope of your investigation shall be as broad as you deem necessary. You may investigate any matter…" Further, the applicant contends both of the investigations which substantiated wrongdoing on his part were flawed and failed to uncover the truth, however, the Board found the conclusions and recommendations proffered by the IOs sufficiently supported by the information presented in the individual ROIs. Although not without minor error, the Board believes the CENTOM directed CDI was fair and reasonable, even giving the applicant the benefit of the doubt on several investigated allegations, and that the applicant reprised against his subordinates, as the SAF/IG investigation substantiated. The subsequent command actions taken by the applicant's leadership in response to these investigations were well within their scopes of authority and levels of responsibility, and should remain a permanent part of the applicant's official record. Further, the Board concurs with SAF/MRBL that the CENTCOM CDI IO was right to meet with the Ambassador prior to initiating his investigation, and during his investigation uncovered ample evidence of wrongdoing to arrive at his final conclusions independent of any initial in-brief with the Ambassador. Nothing in the documentation submitted by the applicant led the Board to believe the applicant's final date of separation should change from its current date, which he himself requested and which was properly approved. Ultimately, the Board sees insufficient evidence of error or injustice to negate the collective opinions of the CENTCOM CDI IO, the CENTCOM/CC, the SAF/IG IO, the SAF/IG, the DoD/IG, and the AF/RE, or to replace them with the alternative perspective offered by the applicant. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2014-04446 in Executive Session on 19 Jan 16 under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2014-04446 was considered:

Exhibit A. DD Form 149, dated 23 Oct 14, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Command Directed Inquiry, CENTCOM/J4, dated 21 Mar 11.
Exhibit D. Report of Investigation, SAF/IG, Dec 11
Exhibit E. Memorandum, AFPC/DPSID, dated 23 Sep 15.
Exhibit F. Memorandum, ARPC/DPTT, dated 18 Nov 15.
Exhibit G. Memorandum, SAF/MRBL, dated 7 Aug 15
Exhibit H. Letter, SAF/MRBR, dated 1 Dec 15.
Exhibit I. Letter, Applicant, dated 23 Dec 15.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2015-01148

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Active Duty Service Commitment (ADSC) be corrected from six years to three years.

APPLICANT CONTENDS THAT:

The AF Forms 63, Active Duty Service Commitment (ADSC) Acknowledgement Statement, he signed for his training were for 36 month ADSCs. Additionally, AFI 36-2107, Active Duty Service Commitments, Table 1.1, Rule 16, dated 25 Nov 09, effective at the time of his training, lists a three year ADSC for Advanced flying Training: Unmanned Aerial System.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

During the matter in question the applicant was serving in the Regular Air Force in the grade of second lieutenant (01).

On 31 Aug 10, the applicant signed AF Form 1034, Extended Active Duty Agreement (Officer Training School) United States Air Force Reserve, acknowledging that after commissioning he would be assigned in Air Force Specialty (AFSC/Utilization Field) 92T1, Combat Systems Officer, and that he understood he would incur a six (6) year ADSC upon award of his aeronautical rating.

On 21 Jul 11, the applicant signed AF Form 63 acknowledging and agreeing that he would incur an ADSC of six years after completion of Unmanned Aircraft Systems (UAS) Lead-In training, and UAS Specific training.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force office of primary responsibility (OPR), which is attached at Exhibit C.

AIR FORCE EVALUATION:

AFPC/DPSIPV recommends denial indicating there is no evidence of an error or an injustice. In 2008, the Air Force Chief of Staff announced the proper development and integration of Unmanned Aircraft System (UAS). Specifically, the Chief stressed the need to rapidly bolster the equipment, training, and operational capability of the UAS with highly trained officers. The ADSC requirement for the UAS undergraduate course was published in an 8106 message, mandating anyone entering the program to accept or decline the six year ADSC. The ADSC listed in AFI 36-2107, Active Duty Service Comments (ADSC), dated 22 Apr 05, Table 1.1, Rule 16, indicates a 3-year ADSC is incurred for initial qualification. The applicant completed UAS Instrument Qualification Training (UP3AA) on 21 Sep 11; UAS Fundamental Course (UP4AA) on 18 Jan 13; and Initial Qualification and Requalification Training (MQ1IQR), 1 May

12. He was provided and agreed to an AF Form 63 which specifically indicated the six year requirement vice three years for the training according to Air Force policy at the time he entered the UAS training program. The fact that he received and signed the correct commitment he should be held to it and remain on active duty according to the program he applied for.

A complete copy of the AFPC/DPSIPV evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 6 Jul 15, for review and comment within 30 days (Exhibit D). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility (OPR) and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2015-01148 in Executive Session on 7 Oct 15, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2015-01148 was considered:

Exhibit A. DD Form 149, dated 18 Mar 15, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFPC/DPSIPV, dated 20 May 15, w/atchs.
Exhibit D. Letter, SAF/MRBR, dated 6 Jul 15.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2015-01688

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. He be awarded 10 retirement points per month for each month between 1 Apr 14 through 28 Feb 15, 110 points.

2. The redacted Officer Performance Report (OPR) rendered for the period of 4 Aug 09 through 3 Aug 10 be removed from this records and replaced with an AF Form 77, Letter of Evaluations (LOE). (Administratively Corrected)

APPLICANT CONTENDS THAT:

As part of his appeal of BC-2012-03153, he request retirement points be awarded at the rate of 10 points per month between 1 Apr 14 to a proposed reinstatement date. In the previous decision, dated 11 Mar 15, the Board declined to award these point on the basis that he had yet been reinstated and to take such action would be premature. He was invited to make a new application for retirement points after he was reinstated.

He was reinstated into the Air Force Reserves and assigned to a unit in March 2015 so the issue of retirement points for the requested period is ripe for a decision.

The original AFBCMR decision awarded him 199 IDT points annually for the period of 4 Aug 10 through 3 Aug 13. He was also previously awarded 79 points for the period of 4 Aug 13 through 31 Mar 14, or roughly 10 points per month.

He is now requesting, in line with previous decisions, to be awarded retirement points at the same rate from the period of time between 1 Apr 14 through 28 Feb 15, or 110 points total.

This request is made to make him whole since his reinstatement was delayed and he was unable to perform inactive duty for training, annual training, or additional training days during that period.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Air Force Reserve in the grade of Lieutenant Colonel (O-5).

On 29 Sep 14, the AFBCMR directed the pertinent military records of the applicant be corrected to show among other things:

a. His record reflect the award of an additional 36 non-paid Inactive Duty Training (IDT) points for retention/retirement year 4 Aug 08 through 3 Aug 09.

b. His record reflect the award of 119 paid IDT points for retention/retirement year 4 Aug 10 to 3 Aug 11, for a satisfactory year of service.

c. His record reflect the award of 119 paid IDT points for retention/retirement year 4 Aug 11 to 3 Aug 12, for a satisfactory year of service.

d. His record reflect the award of 119 paid IDT points for retention/retirement year 4 Aug 12 to 3 Aug 13, for a satisfactory year of service.

e. He be reassigned to an Air Force Reserve Category E participation program position within 120 days of this directive.

On 21 Jan 15, the AFBCMR directed the pertinent military records of the applicant be corrected to show that he was awarded 79 additional paid IDT points for retention/retirement year ending 4 Aug 14, for a satisfactory year of service.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force office of primary responsibility (OPR), which is attached at Exhibit C.

AIR FORCE EVALUATION:

ARPC/DPTS recommends denial indicating there is no evidence of an error or an injustice.

They opine the applicant had sufficient time to complete 35 participation points to achieve a year of satisfactory service for his current anniversary ending 3 Aug 15. That said, he already achieved a year of satisfactory service for anniversary years ending 3 Aug 14 which includes the period of 1 Apr 14 through 3 Aug 14.

A complete copy of the ARPC/DPTS evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant refutes the OPR opinion and argues that while ARPC/DPTS believes he had sufficient time to complete 35 participation points to achieve a year of satisfactory service, they would be wrong. Simply put, while on paper, he was reinstated, effective 1 Apr 14, the fact is he did not begin to in-process until he was contacted to do so on 10 Feb 15. He notes the 24 Apr 14, Point Credit Summary from HQ ARPC/DPTS accurately shows his first participation points awarded were on 7 Mar 15. This was after he made a request in January 2015, through his Senator's office. He also notes that his Reserve Order is dated 26 Nov 15, yet has an effective date of 1 Apr 14. The fact of the matter is since he was not processed into his unit until March 2015, he had no opportunity to earn participation points from April 2014 to March 2015. Further, he has not been fully restored into his new unit due to the length of time it takes for his security clearance to be updated. Because of this, he is ineligible to participate in some unit activities.

A complete copy of the applicant's rebuttal is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a thorough review of the evidence of record and the applicant's complete submission, to include his rebuttal response, we believe the applicant is the victim of an injustice. While we note the comments of ARPC/DPTT indicating relief should be denied because the applicant was able to accrue sufficient points to make the period in question a satisfactory year of service for retirement purposes; however, in view of the fact the applicant was unable to perform this period of service

due to substantiated reprisal, we believe it appropriate to correct the applicant's records to reflect he was awarded points he would have earned had he not been subjected to the reprisal and discharged. Furthermore, we believe it appropriate to correct the record to reflect the points awarded be paid so as to be consistent with the relief fashioned during the previous consideration of the applicant's case where this Board granted paid constructive reserve service. Therefore, we recommend the applicant's records be corrected as indicated below.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that he was awarded 10 paid Inactive Duty Training (IDT) points for retention/retirement for each month; starting 1 April 2014 through 28 February 2015, for satisfactory service, totaling 110 points.

The following members of the Board considered AFBCMR Docket Number BC-2015-01688 in Executive Session on 2 Feb 16 under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 2 Apr 15, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, ARPC/DPTS, dated 1 May.
Exhibit D. Letter, SAF/MRBR, dated 7 Jul 15.
Exhibit E. Letter, Applicant, dated 23 Jun 15.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2015-01690

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her General (Under Honorable Conditions) discharge be upgraded.

APPLICANT CONTENDS THAT:

She has a Veteran Affairs Disability (VAD) rating of 80% and is unemployable (70% PTSD and 10% per knee).

She was sexually assaulted by her Commanding Officer. The Office of Special Investigation (OSI) has a copy of the investigation. She claims traumatic amnesia; when she was discharged, she could not remember what was wrong. She only knew something was wrong; which, resulted in her acting out.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 15 Dec 94, the applicant entered the Regular Air Force.

On 22 Mar 96, the applicant received a memo for Record (MFR) as she failed to attend an appointment on 21 Mar 96 to go to the clinic and have some blood work done.

On 1 Apr 96, the applicant received a Letter of Counseling (LOC) for misuse of the American Express Government Travel Card, financial obligations, and failure to maintain satisfactory progress in the weight management program.

On 11 Apr 96, the applicant received a Letter of Reprimand (LOR) for failure to go to an appointment in direct violation of Article 86 of the Uniform Code of Military Justice (UCMJ).

On 16 Apr 96, the applicant accepted an Article 15, Nonjudicial Punishment, for wrongful use of her American Express Government Charge Card; she incurred a financial obligation in the amount of $540.00 for other than Official government business, in violation of Articles 92 and 134 of the UCMJ. She received a suspended

reduction to the grade of airman basic (E-1).

On 30 May 96, the applicant received an LOC for failing to satisfactorily progress in the weight management program.

On 31 May 96, the applicant received an MFR for bouncing two checks. After an investigation the applicant's supervisor identified five more bounced checks.

On 3 Jun 96, the applicant received another MFR for over spending on her Government American Express Card.

On 11 Jun 96, applicant accepted an Article 15, Nonjudicial Punishment, for wrongfully using her American Express Government Travel Charge/Automated Teller Machine Card to incur financial obligations in the amount of $450.00 for other than official government business in violation of Article 92 of the UCMJ. She was restricted to base for 30 days and given 15 days extra duty. On the same day, the applicant's commander vacated a previously suspended reduction for failing to maintain sufficient funds in her checking account. She was reduced to the grade of Airman Basic, with a new date of rank of 16 Apr 96.

On 24 Jun 96, the applicant was notified by her squadron commander that he was recommending her for discharge based on irresponsibility in the management of her personal finances.

On 27 Jun 96, applicant consulted legal counsel and submitted a statement for consideration.

On 2 Jul 96, the Acting Staff Judge Advocate reviewed the case and found no errors or irregularities prejudicial to the substantive rights of the respondent. They also recommend the applicant be discharged with a General service characterization, without probation and rehabilitation.

On 2 Jul 96, the discharge authority approved the applicant for discharge with a General (Under Honorable Conditions) service characterization; probation and rehabilitation was disapproved. Finally, he directed no action will be executed until applicant is found medically qualified for separation.

On 3 Jul 96, the applicant was furnished a General (Under Honorable Conditions) discharge, and was credited with 1 year, 6 months, and 19 days of active service.

A request for post-service information was forwarded to the applicant on 1 May 15 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit C).

AIR FORCE EVALUATION:

AFOSI provides no recommendation, but indicates in a memorandum for record that from 14 Mar 11 to 14 Mar 13, they investigated the allegation of "Rape before 1 Oct 07". The applicant was the VICTIM and her Commander was the SUBJECT of the investigation. The disposition of the investigation stated that "No Action Taken – Prosecution Declined (Lack of Evidence)."

A complete copy of the AFOSI memorandum is at Exhibit D.

BCMR Medical Consultant recommends denial indicating there is no evidence of an error or an injustice. The applicant alleges she was the victim of a sexual assault. The case was investigated by the OSI, but no prosecution took place; presumably due to insufficient "(Evidence)." The Medical Consultant is aware victims of sexual assault during military service commonly experience acute or repressed feelings of anxiety, fear of reprisal, anger, or depression, and may not report the incident due to embarrassment, fear of being ostracized, or being blamed for the incident. However, when a sufficient clinical history of symptoms and a causal event have been finally disclosed during a mental health evaluation, diagnostic criteria for PTSD are commonly met and treatment appropriately initiated. While such an event renders a service member vulnerable for experiencing a decline in mood or performance at a given time [during or after military service], the Medical Consultant could not establish a nexus between the applicant's financial irresponsibility and an underlying mood disorder such as PTSD. While excessive or impulsive spending has been associated with Bipolar Disorder, they could not establish a mitigating or extenuating linkage between the applicant's premediated misuse of her AMEX card, misfiling of per diem payments, or delayed bill-paying over a relative extended period and disturbance of mood.

This advisor does not downplay the seriousness of the problem of Military Sexual Trauma and its long-term effects on the lives of its victims. However, while the applicant has apparently supplied sufficient evidence to the Department of Veterans Affairs to grant her service-connection and compensation for the diagnosis of PTSD, this reviewer opines the medical evidence has not been sufficient to establish that an error or injustice occurred in the applicant's discharge action.

A complete copy of the Medical Consultant evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluation and the BCMR Medical Consultant advisories were forwarded to the applicant on 2 Feb 16 for review and comment within 30 days (Exhibit F). As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge processing. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority. The applicant has provided no evidence which would lead us to believe the characterization of the service was contrary to the provisions of the governing regulation, unduly harsh, or disproportionate to the offenses committed. With respect to the allegations of sexual assault, the Board had very little evidence to consider at this time. We relied heavily on the OSI review, especially considering it was conducted over a two-year period, which determined insufficient evidence was available for any action to be taken. As this was no cursory inquiry, we have no reason to believe the applicant’s case was not provided due-diligence. Additionally, we note OSI officials have been provided the applicant’s information and have a process in place to reach out to her to determine if her case should be reviewed again. In the interest of justice, we considered upgrading the discharge based on clemency; however, in the absence of corroborating evidence related to the applicant’s post-service activities, there is no way for us to determine if the applicant’s accomplishments since leaving the service are sufficiently meritorious to overcome the misconduct for which he was discharged. For example, corroborating evidence might consist of letters from character references or sponsors, copies of awards, letters of appreciation, and the background check for police records that the applicant is responsible to obtain and provide for the Board; however, the applicant has not submitted any such documentation to support his application. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2015-01690 in Executive Session on 1 Mar 16 and 7 Mar 16 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 17 Apr 15, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, SAF/MRBR, dated 1 May 15.
Exhibit D. Memorandum, AFOSI/Det 421, dated 8 Jan 16
Exhibit E. Memorandum, SAF/MRBC, dated 29 Jan 16
Exhibit F. Letter, SAF/MRBR, dated 2 Feb 16.

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2015-02854

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Letters of Counseling (LOC) dated 20 January 2012 and 2 July 2012 be declared void removed from his records.

His removal from primary duties on 3 July 2012 and 19 July 2012 be declared void and removed from his records.

His Letters of Reprimand (LOR) dated 2 August 2012 and 18 September 2012 be declared void and removed from his records.

He receive reinstatement of his 12 September 2012 forfeited re-enlistment bonus.

His Unfavorable Information File (UIF), effective 1 October 2012, be declared void and removed from his records.

His AF Form 910, Enlisted Performance report (EPR) (AB thru TSgt), rendered for the period 30 September 2011 thru 14 November 2012, be declared void and removed from his records.

His records be corrected to reflect that he was released from active duty and retired in the grade of master sergeant (E-7), rather than honorably discharged in the grade of technical sergeant (E-6).

He be awarded all back pay and entitlements as an E-7.

He be awarded, as the Board sees fit, all decorations that were withheld as an act of reprisal.

His records be reviewed for additional acts of reprisal and/or injustices.

APPLICANT CONTENDS THAT:

He was targeted by the Force Shaping Board as a result of a referral EPR and UIF. He would not have been a target if acts of reprisal had not been taken or he was an E-7. The Responsible Management Official(s) (RMOs) initiated unlawful, legally unsupportable, retaliatory and unfavorable personnel actions against him and thereby they should be rescinded and become void.

His referral EPR was submitted and became a matter of record after its fourth attempt at finalization. The entire process was an additional act of malpractice and misconduct by the RMO(s). The report is so blatantly fraudulent and the RMO(s) are in direct violation of the AFI. He was never provided feedback on is rebuttal nor was he provided initial feedback after the referral report.

He made protected communication under the provisions of Title 10 United States Code (U.S.C.), Section 1034, Protected communications; prohibition of retaliatory personnel actions, the Department of Defense Directive (DoDD) 7050.06, Military Whistleblower Protection, and the Air Force Instruction (AFI) 90-301, Inspector General Complaints

Resolution, regarding the RMO(s) intentional deception of knowingly and willfully violating law, regulation, and policy, as well as, committing acts of fraud, waste, and abuse. In addition, the RMO(s) made threats to cause serious bodily injury or threats to kill.

His protected communications were made directly to the RMO(s) or they had direct knowledge of it. The RMO(s) then took and threatened retaliatory unfavorable personnel actions against him and restricted his communication. The preponderance of the evidence establishes that these actions are both unlawful and legally unsupportable and they would not have been taken if he had not made the protected communication. The injustices have been under investigation since 19 June 2012 and an Inspector General (IG) complaint filed on 15 October 2012 for allegations of reprisal and restriction.

His book titled, "Absence of Integrity" details each of the intentional reprisal actions that negatively impacted his career. It is a critical examination of the acts of reprisal and restriction that occurred as a result of identifying and elevating the misconduct in the Air Force Recruiting School and complaints mishandling that have occurred from 2012 to the present.

His case rests on the simple undeniable fact that not a single adverse action would have been taken against him if his protected communication that identified the dereliction, fraud, waste, and abuse of the subjects had been not been provided. The IG decisions to commit fraud by refusing to comply with the complaint resolution process, to delay the investigative process, to misidentify information, and to dismiss the allegations are fundamentally flawed and are in direct violation of several legally binding documents.

His primary goal has always been to supply the AFBCMR with the final finding from the IG investigations. However, the process has completely fallen prey to the same irresponsible officials and has been mishandled. There is no end in sight. Therefore, he requests the board to correct the injustices in his record.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant's military personnel records indicate he enlisted in the Regular Air Force on 8 September 1999.

On 19 June 2012, the applicant filed a complaint with the Air Education and Training Command Office of the Inspector General (AETC/IG), which was forwarded to the 37th Training Wing Inspector General's office. Specifically, his complaint included the following:

a) Between 9 January 2009 and May 2012, an Instructor Supervisor made a false official statement in violation of Article 107, Uniform Code of Military Justice (UCMJ), by inaccurately accounting for teaching and Multiple Instructor Requirement (MIR) hours on an official record.

b) Between 9 January 2009 and May 2012, an Instructor Supervisor was derelict in the performance of his duties, in violation of Article 92, UCMJ, by failing to recognize and/or expose the falsification of official teaching and MIR hours records.

c) On or about 15 May 2010 and or about 11 June 2012, an Instructor Supervisor took reprisal action against the applicant, in violation of AFI 90-301, when he threatened to take and took an unfavorable personnel action against the applicant for making a protected communication, i.e. talking to the commander and making an IG complaint about allegedly false records and disparate workload.

d) On 4 June 2012, the Chief Enlisted Manager made a false official statement, in violation of Article 107, UCMJ, when stating unawareness of the applicant's allegations of falsified records and that the applicant never addressed any such concerns to the staff, when the applicant had done so on at least five times.

On 6 July 2012, the 37th Training Group Commander directed a Commander Directed Investigation (CDI) to investigate the applicant's allegations.

On 27 July 2012, the Investigating Officer (IO) concluded the applicant's allegations of false official statement, dereliction of duty, and reprisal to be unsubstantiated.
On 1 August 2012, the CDI was found to be legally sufficient.

On 3 August 2012, the IO provided his findings and made three recommendations to bring a level of oversight to ensure the accuracy of what is being logged into the Student Transcript Administration and Records System Faculty Database (STARS-FD) system, in order to dispel any misconceptions.

On 17 August 2012, the Air Education and Training Command (AETC) Commander provided the applicant with the written resolution to his complaint.

On 24 October 2014, the applicant informed the 37th Training Group Commander that she had been inaccurately informed and deceitfully influenced by individuals that are attempting to cover their actions. He addressed the CDI findings.

On 29 September 2014, the applicant was furnished an honorable discharge, with a narrative reason for separation of "Force Shaping-Voluntary Separation Pay (VSP)," along with a separation code of MCN" and Reentry Code of "3K" (reserved for used by HQ AFPC or AFBCMR when no other reenlistment eligibility code applies). He was credited with 15 years, and 22 days of active service.

On 5 August 2015, the applicant was notified that according to the Secretary of the Air Force, Office of The Inspector General, Complaints Resolution Directorate (SAF/IGQ), the Air Education and Training Command (AETC) had recently completed its investigation and his case was with the Secretary of the Air Force, Office of The Inspector General (SAF/IG) for oversight. Upon completion of SAF/IGQ's review they will send the case to the Department of Defense, Office of The Inspector General Whistleblower Reprisal Investigations (DoDIG/WRI) for review and coordination. It cannot be predicted on how long DoDIG/WRI will take in finalizing its review. Therefore, he must wait until the IG avenue of relief has been exhausted prior to requesting relief from the AFBCMR.

On 15 October 2015, the applicant ask for the Board not to administratively deny his request since the IG failed to properly conduct and conclude its investigation in a timely and appropriate manner. Furthermore, he refutes the IG is an avenue of administrative relief and his evidence identifies intentional mishandling by the IG.

THE BOARD CONCLUDES THAT:

1. The applicant has not exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. In this respect, we note this Board is the highest administrative level of appeal within the Air Force. As such, an applicant must first exhaust all available avenues of administrative relief provided by existing law or regulations prior to seeking relief before this Board, as required by the governing Air Force Instruction. We note the applicant has availed himself to the Inspector General (IG) process and his case is currently under active investigation. We find that it is prudent to await the final decision and disposition of his case prior to the Board's adjudication of his case. We believe to render fair and equitable consideration of the applicant's requests, his investigation must be concluded and the report provided for us to review. In view of this, we find this application is not ripe for adjudication at this level as there exists a subordinate level of appeal that has not first been depleted. Therefore, in view of the above, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that all available avenues of administrative relief have not been exhausted; and the application will only be reconsidered upon submission of documentary evidence indicating that said avenues of administrative relief have been exhausted.

The following members of the Board considered AFBCMR Docket Number BC-2015-02854 in Executive Session on 12 November 2015 under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 3 July 2015, w/atchs.
Exhibit B. Applicant's Master Personnel Records.