

MEMORANDUM FOR RECORD

January 13, 2021

SUBJECT: Captain Curt Cizek (the Complainant), United States Air Force, Chaplain, 20th Fighter Wing, Shaw Air Force Base, SC. Request for reconsideration, DCATS 20150107-029317-CASE-02.

1. References:

- a. 10 U.S.C. 1034, Protected Communications, Prohibition of Retaliatory Personnel Actions (Military Whistleblower Protection Act) as of November 3, 2020
- b. DoDD 7050.06, "Military Whistleblower Program," dated April 17, 2015
- c. Report of Investigation (ROI) for Allegations of Reprisal – Captain Curt J. Cizek, (ACTS FRNO 2014-22818/DCATS #20150107-029317)
- d. Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints, dated April 18, 2017.
- e. CIGIE Quality Standards for Investigations, dated November 15, 2011.

2. Scope: The scope of this case review included a review of Ref (c), a sworn and record interview with the Complainant, and a review of documentary evidence that the Complainant termed "new and compelling."
3. Standards: According to Ref(d) Chapter 3 and Ref(e): "The Council of the Inspectors General on Integrity and Efficiency (CIGIE) "Quality Standards for Investigations," dated November 2011, establishes the professional standards and principles for investigators of the Federal Offices of Inspectors General. CIGIE standards require that investigators conduct investigations in a timely, efficient, thorough, and objective manner" (p. 3-1).
4. Background: This case originated at Joint Base San Antonio – Lackland (JBSA-Lackland), Texas, in the November / December 2012 timeframe where the Complainant was assigned as a Chaplain, Basic Military Training (BMT) Squadron, 502nd Air Base Wing. In April 2013, while assigned to BMT, the Complainant reported what he reasonably believed was an ethics/integrity violation to multiple members of his chain of command involving the reading of trainee end-of-course surveys in violation of the Air Force "Little Blue Book," on core values dated January 1, 1997.

On May 31, 2013, the Complainant was removed from his BMT position, reassigned to the Installation Chaplain's office and on June 21, 2013, issued a letter of counseling (LOC) regarding his removal from BMT. From June 2013 to Jan 2014, the Complainant was deployed in support of on-going combat operations. While deployed in theater, the Complainant filed an IG complaint alleging that he was removed from his BMT position, received a LOC and received a weak OPR (Aug 2013), for reporting ethics/integrity violations to members of his chain of command. Later, the Air Force Education and Training Command IG determined that the Complainant's removal from his BMT position and LOC were not personnel actions and that his August 2013 OPR was issued before he made protected communications¹. However, ACTS FRNO 2014-22818 ROI did annotate that that the Complainant's "LOC is considered a UPA [unfavorable personnel action] because it was placed in the PIF [personnel information file] and the contents of a PIF are to be considered by raters when preparing performance evaluations IAW [in accordance with] AFI 36-2404, Officer and Enlisted Evaluation Systems." On March 26, 2014, the Complainant received a second LOC for "failure to properly utilize [the] chain of command" and later on June 18, 2014, he received his officer performance report for June 16, 2013, through May 27, 2014, and his promotion recommendation which the Complainant stated was unfavorable and in reprisal for his protected communications.

¹ ACTS case notes documented the following: "that due to ongoing issues in BMT reading the end of course surveys was appropriate. No violation was noted."

The Complainant was separated from the Air Force on after his assignment at Shaw AFB after not being selected for promotion. WRI conducted an oversight review of this ROI and approved its findings as not substantiated on August 2, 2016.

5. **BLUF:** It is the opinion of the undersigned that the CIGIE standard of “due professional care” was not met in this ROI for the reasons outlined in paragraph 7 below.
6. **Recommendation:** WRI management conduct a formal roundtable discussion with OGC to determine whether to reopen the case based on this review.
7. **Report of Investigation Observations:**

Thoroughness:

- a. **Investigative plan:** The investigative plan (IP) does not establish case-specific priorities and objectives developed to ensure that individual case tasks are performed efficiently and effectively (Ref(d) p.3-2). Additionally, Ref(d), 3-2, states that “In reprisal investigations, the investigative plan should be focused on the elements of reprisal.” However, the IP appears to be more focused on investigating the Complainant, rather than his allegations of reprisal.
- b. **Report of Investigation (ROI):** a) The ROI does not capture all of the Complainant’s protected communications, especially those made to his chain of command while he was assigned to BMT before his removal from position; b) the IO mentions that the 737th Training Group (TRG) investigated the Complainant for misconduct, but does not include the 737th TRG ROI as evidence; c) the ROI erroneously lists the date of the Complainant IG complaint as December 10, 2014. The Complainant’s AF 102 is dated December 11, 2014; d) the IO only interviewed the Complainant and 4 of the identified Subjects; only 1 of the Complainant’s 12 AF 102 witnesses (block 7) was interviewed as part of the investigation. Based on the lack of witness interviews, even though the IO briefly provided his reasoning for not interviewing 11 of the 12 witnesses, there exists an inference or perception for a lack of objectivity and thoroughness, given the Complainant’s assertions of reported wrongdoing going back to April 2013.
- c. **Subject Interviews:** A major ROI observation in the subject interviews was with the IO not asking open ended questions, not asking follow up questions on important points and on occasion led the witnesses. Below are some examples extracted from the witness’ testimony:

1. (b) (6), (b) (7)(C) testimony:

IO: Did you ever talk to (b)(6), (b)(7)(C) about Capt Cizek in those first few days of your assuming that role?

S: No. (b)(6), (b)(7)(C)

IO: Okay. Do you know what year that was or approximate month?

S: The end of 2013. Probably in August maybe.

IO: You said he was preparing to deploy at that point?

S: Yes.

IO: Did, all right, so you indicate (b)(6), (b)(7)(C) concerning that, at that point in time, is that correct?

S: Yes. I believe so.

2. (b)(6), (b)(7)(C) Testimony:

IO: Okay. What was your relationship with Capt Curt Cizek?

S: When I arrived at Lackland (b)(6), (b)(7)(C) Chaplain Cizek was one of the CGOs on staff at Lackland. He was deployed at the time when I arrived.

IO: And that position (b)(6), (b)(7)(C) is that correct? And again who informed you of this?

S: This was (b)(6), (b)(7)(C)

IO: (b)(6), (b)(7)(C) So all of this that you referred to so far came to you from (b)(6), (b)(7)(C)

S: Yes. It did.

IO: So (b)(6), (b)(7)(C) his request for extension was based solely on that need as opposed to anything that you had heard about Capt Cizek?

S: Oh, of course.

IO: So that was the first time that you had learned that he had filed an Inspector General complaint?

S: I believe it is sir.

IO: An IG complaint.

S: Yes.

8. **Other observations:** The BMT EOCS matter contributed significantly to the Complainant's removal from his BMT position and the issuance of his LOC. There is evidence in the ACTS database confirming that BMT leadership was reading the EOCS based upon sexual assaults and maltreatment occurring in BMT. Furthermore, ACTS documentation shows that the 802nd ABW Judge Advocates office deemed the reading of the EOCS appropriate, which was not known to the Complainant or communicated to him or his fellow chaplains. This finding should not negate the fact that the Complainant made a protected communications to members of his chain of command and later to IGs on the same matter.

The issuance of and handling of the Complainant's LOCs were problematic and affected his last position at JBSA-Lackland, his OPR, his PRF, and his career. For example, the Complainant's first LOC was issued to him as a "desk drawer" LOC to be destroyed upon the permanent change of station (PCS) of either the issuer or the Complainant. However, AFIs dictated that the LOC be placed into the Complainant's PIF. Furthermore, when the issuer PCS'd, they did not remove the LOC as written from the Complainant's PIF, but rather passed the LOC to the Complainant's new chain of command. Additionally, the second LOC issued to also ended up in the Complainant's PIF, due to (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C). In fact, (b)(6), (b)(7)(C) testified that it was not his intent to have the memorandum for record (MFR) placed into the Complainant's PIF. However, notwithstanding the placement of the LOCs into the Complainant's PIF as unintentional acts, the content of the second LOC (MFR) is concerning. The second LOC issued to the Complainant for a "failure to properly utilize [the] chain of command" could be considered a "chilling effect" document. For example, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) testified that they both had problems with the Complainant communicating directly with a four star general (open door policy) and the Installation Command Chaplain (open door policy) about issues they felt should have been addressed through them first. However, the evidence shows that in many instances the Complainant used the chain of command and that (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) simply did not approve of the Complainant taking issues which they could not or would not handle to the next higher level. Lastly, whether or not (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) felt that the Complainant communications to an IG were considered going outside the chain of command is unknown as this question was not addressed by the IO in the ROI.

9. Point of contact for this memorandum for record is the undersigned at (b) (6), (b) (7)(C), or by e-mail at (b) (6), (b) (7)(C) [@dodig.mil](mailto:(b) (6), (b) (7)(C)@dodig.mil).

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