

## INSPECTOR GENERAL

### Legal Review Concerning Allegations of Reprisal and Improper Mental Health

This responds to your request for our review of the subject Inspector General (IG) Report of Investigation (ROI) and subsequent addenda. The investigating officer (IO) analyzed two allegations: one of reprisal by the First Sergeant, Munitions Support Squadron, (MUNSS/CCF), as the responsible management official (RMO) and an improper mental health referral (IMHE) by the Non-Commissioned Officer in Charge (NCOIC), Munitions Support Squadron, Weapons Maintenance, (MUNSS/MMX), as the RMO.

### **FACTUAL BACKGROUND**

Complainant was the Vehicle Control NCO (VCNCO) for the MUNSS.<sup>1</sup> The MUNSS is physically located at Base X, but functionally belongs to the Fighter Wing (FW), Base Y.. Base Z, home of the XX Fighter Wing (XX FW), is the closest full-service U.S. Air Base to Base X. Base Z is located approximately 160 miles from Base X.<sup>2</sup>

On 26 Mar 10, complainant went to the MUNSS headquarters building to retrieve a Pontiac G6 government vehicle. He needed to take the vehicle to the installation vehicle maintenance facility for a vehicle maintenance inspection that was scheduled to be performed by maintenance personnel visiting from Base Z.<sup>3</sup> Complainant learned that the vehicle was not at the MUNSS headquarters building and it was not signed-out<sup>4</sup> in accordance with Operating Instruction (OI) 91-207, *Vehicle Operations Safety for On/Off-Installation Travel*, 1 May 09.<sup>5</sup> Complainant asked the commander's executive, if he had any knowledge of the location of the Pontiac G6 government vehicle.<sup>6</sup> The Unit PRP Monitor, MUNSS, overheard the conversation and told complainant that the First Sergeant had taken the vehicle to Base Z to attend an Airman Leadership School (ALS) graduation.<sup>7</sup>

According to complainant, part of the process to sign-out a government vehicle is to receive a fuel key. The fuel key allows the driver to refuel from government supplies at Base Z and not on the local economy.<sup>8</sup> Complainant reasoned that since the First Sergeant had not signed-out the car, he would not have a fuel key. Therefore, the First Sergeant would have to buy fuel on the

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<sup>1</sup> Sec III, Tab D-5, p. 3

<sup>2</sup> The information regarding complainant's physical assignment and functional command was obtained from the case notes section of the SAF/IGQ ACTS database that is used for managing cases.

<sup>3</sup> Sec III, Tab D-1, p. 15

<sup>4</sup> Sec III, Tab E-10, p. 3; Sec III, Tab D-1, p. 15-16

<sup>5</sup> Sec III, Tab E-11

<sup>6</sup> The commander's executive's first name is not identified in the ROI or witness testimony. Sec III, Tab D-1, p. 16

<sup>7</sup> Sec III, Tab D-1, p. 16-17

<sup>8</sup> Sec III, Tab D-1, p. 2 & p. 14

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local economy, which might not be reimbursed since proper sign-out procedures had not been followed.<sup>9</sup>

The Chief Enlisted Manager, MUNSS, (MUNSS/CEM), heard complainant discussing the process to sign out a government vehicle and retrieve a fuel key. He came from his office into the hallway to talk to complainant.<sup>10</sup> The Chief Enlisted Manager testified, “I, I, basically I asked what was going on. I had to, I had to go down there and I, I basically cut, cut the exec and the Unit PRP Monitor off and, and handled the situation ... later but he was, he was adamant that, that the, the vehicle was not signed out properly through him and as such, he was gonna [sic] make the First [Sergeant] pay, and that's exactly what he said.”<sup>11</sup> When asked by the IO to “characterize the tone of [complainant's] comments,” The Chief said, “They were, I believe they were out of line. He didn't, he, in no way was he respectful.”<sup>12</sup>

The Unit PRP Monitor testified he did not remember any comments directly about the First Sergeant.<sup>13</sup> He recalled that the Chief Enlisted Manager told complainant that the complainant did not need the vehicle and that complainant should coordinate with his vehicle NCO.<sup>14</sup> When complainant insisted that he did need the vehicle, The Unit PRP Monitor testified the Chief Enlisted Manager said to complainant, “What are you stupid, do you not, do you not understand what I'm telling you? This vehicle issue has been resolved, give me the keys,<sup>15</sup> go back and discuss it with your vehicle NCO.”<sup>16</sup> When the First Sergeant returned to Base X from Base Z, the Chief told the First Sergeant<sup>17</sup> that complainant had said the First Sergeant was going to have to pay for gas for illegally taking the vehicle to Base Z.<sup>18</sup>

On 4 Apr 10, the First Sergeant gave complainant a Letter of Reprimand (LOR) which stated, in part, “On or about 26 Mar 10, you made a verbal threat in the presence of the Chief Enlisted Manager to which you stated you were going to charge me, the First Sergeant, your First Sergeant, with vehicle abuse and charge me for gas for taking the Commander's vehicle, a Pontiac G6 off-base,” and “Your comments were not only unfounded but were contemptuous and disrespectful.”<sup>19</sup> Complainant provided a response and explained his concern regarding the violation of MUNSS OI 91-207, dated 1 May 09.<sup>20</sup>

In addition to the LOR the First Sergeant issued complainant on 4 Apr 10, complainant received two unrelated LOR's in May-Jun 2010. On 7 May 10, complainant received an LOR for

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<sup>9</sup> Sec III, Tab D-1, p. 2 & p. 14

<sup>10</sup> Sec III, Tab D-5, p. 2

<sup>11</sup> Sec III, Tab D-5, p. 5

<sup>12</sup> Sec III, Tab D-5, p. 3

<sup>13</sup> Sec III, Tab D-10, p. 3

<sup>14</sup> It is not clear if the Chief Enlisted Manager wanted complainant to coordinate with the MUNSS VNCO or the maintenance personnel from Base Z. Sec III, Tab D-10, p. 4

<sup>15</sup> It is not clear from testimony what “keys” the Chief Enlisted Manager was referring to when he told complainant, “give me the keys.”

<sup>16</sup> Sec III, Tab D-10, p. 4

<sup>17</sup> The Chief Enlisted Manager was not asked, and did not testify regarding the date he had the conversation with the First Sergeant. Sec III, Tab D-5, p. 6

<sup>18</sup> Sec III, Tab D-2, p. 6

<sup>19</sup> Sec III, Tab E-1, p. 1

<sup>20</sup> Sec III, Tab E-1, pp. 3-4

“complete disregard for AFI 36-2618, paragraph 4.1.1, accept and execute all duties, instructions, and responsibilities, and lawful orders in a timely, efficient manner” [sic] from the NCOIC, Munitions Support Squadron, Weapons Maintenance, MUNNS/MMX,<sup>21</sup> and on 30 Jun 10 complainant received an LOR for failure to use technical data from the Maintenance Commander (MUNSS/MX/CC).<sup>22</sup>

In early May 2010, the Maintenance Commander, the NCOIC, Weapons Maintenance, MSgt JH, MUNNS/MMX, and complainant met to discuss complainant’s failures in upgrade training.<sup>23</sup> Prior to the meeting, the NCOIC, Weapons Maintenance and several other people<sup>24</sup> discussed the possibility of complainant being evaluated for a learning disability with SSgt AL.<sup>25</sup> SSgt AL was Base X’s Independent Medical Technician (IDMT), and acted as a liaison for personnel assigned to Base X in the personnel reliability program (PRP) when they needed to schedule medical appointments at Base Z.<sup>26</sup> SSgt AL inquired with mental health personnel at Base Z about the evaluation process. Subsequently, she reported to the NCOIC, Weapons Maintenance that if complainant was interested in being evaluated, she could schedule him for an appointment at Base Z. Complainant would meet with a mental health provider and be evaluated to see if there was any treatment that could be provided for complainant to help him with his testing.<sup>27</sup> SSgt AL also told the NCOIC, Weapons Maintenance that she would encourage complainant to have the mental health evaluation to determine if he had a learning disability.<sup>28</sup>

The Maintenance Commander was the senior ranking member in the May 2010 meeting with the NCOIC, Weapons Maintenance, MSgt JH, and complainant when the mental health evaluation was discussed. The Maintenance Commander had previously met with NCOIC, Weapons Maintenance and sought advice from senior leadership, including the squadron commander, MUNSS/CC. He understood that he did not have the authority to refer complainant for a mental health evaluation, but complainant could be offered the opportunity to go to Base Z to be evaluated.<sup>29</sup> The Maintenance Commander testified he told complainant, “I can't order you to take this test, but if you're willing we'd like to afford you the opportunity to go to Base Z [sic]. I don't know what's all involved, but we'll give you the time off and the ability to go to Base Z [sic] to take whatever tests that they deem necessary.”<sup>30</sup> When questioned by the IO about whether complainant volunteered, the Maintenance Commander testified he told complainant he was not being ordered to go to mental health and he would not get any paperwork if he chose not to go for the evaluation. At that time, complainant indicated he was willing to go to mental health.<sup>31</sup> The Maintenance Commander also explained in testimony “I did not order, coerce. I

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<sup>21</sup> Sec III, Tab E-4, p. 1

<sup>22</sup> Sec III, Tab E-5, p. 1

<sup>23</sup> Sec III, Tab D-4, p. 5; D-3, p. 5; D-1, p. 2

<sup>24</sup> SSgt AL testified she did not recall the names of the other people. Sec III, Tab D-12, p. 2

<sup>25</sup> It appears this conversation took place immediately prior to the meeting with complainant. Therefore, it is likely that the Maintenance Commander and the NCOIC, Weapons Maintenance were the other people that discussed the possibility of complainant being evaluated for a learning disability with SSgt AL. However, the ROI does not identify the “other people” that discussed complainant with SSgt AL.

<sup>26</sup> Sec III, Tab D-12, pp. 2-3 and Sec III, Tab-C, p. 9

<sup>27</sup> Sec III, Tab D-12, p. 2

<sup>28</sup> Sec III, Tab D-12, p. 3

<sup>29</sup> Sec III, Tab D-4, p. 5

<sup>30</sup> Sec III, Tab D-4, p. 6

<sup>31</sup> Sec III, Tab D-4, p. 7

did ask. Like I said, I was part of a conversation with myself, the NCOIC, Weapons Maintenance ... and Complainant and the conversation centered on we want to help you ... to pass. Your record as far as certification is showing that you're not able to...and so I want to do what I can as a Flight Commander to help you to pass.”<sup>32</sup>

Complainant testified that during the early May 2010 meeting with the Maintenance Commander, NCOIC, Weapons Maintenance, and MSgt JH complainant was “highly encouraged” to have a mental health evaluation and he interpreted that to mean he needed to make the appointment and go to the evaluation.<sup>33</sup> Complainant’s perception of the early May 2010 meeting was that it would be advantageous to him and his career if he went for a mental health evaluation. He also felt it would be a disadvantage if he did not have an evaluation.<sup>34</sup> Complainant testified that it was spelled out to him that not going to mental health would slow down, or stop, his training.<sup>35</sup> The Maintenance Commander testified it could be an advantage for complainant if the evaluation indicated he had a problem, because the Maintenance Commander would recommend complainant follow the recommendation based on the results of the evaluation.<sup>36</sup> However, the Maintenance Commander also testified if complainant chose not to have the mental health evaluation, his decision regarding complainant’s training track would remain the same: Complainant’s team chief training would be postponed and resume at a later time.<sup>37</sup>

The NCOIC, Weapons Maintenance and MSgt JH had previously discussed complainant’s inability to focus on one issue and how he often gets off track.<sup>38</sup> The NCOIC, Weapons Maintenance thought it was possible complainant had a learning disability such as ADD or ADHD.<sup>39</sup> During the meeting with complainant, they were discussing potential reasons why complainant had not passed his test. Complainant was asked if he wanted to be evaluated for ADD or ADHD and if he would take a reading comprehension test.<sup>40</sup> Unbeknownst to complainant at the time of the meeting, the reading comprehension test had already been scheduled<sup>41</sup> with SSgt JD, MUNSS Training Manager.<sup>42</sup> According to MSgt JH, everyone in the meeting understood complainant had to voluntarily submit for a mental health evaluation.<sup>43</sup> MSgt JH felt that during the meeting, complainant was in agreement with having the mental health evaluation.<sup>44</sup> Once complainant stated he had “no problem” participating in an evaluation

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<sup>32</sup> Sec III, Tab D-4, pp. 5-6

<sup>33</sup> Sec III, Tab D-1, Allegation 2, p. 8

<sup>34</sup> Sec III, Tab D-1, Allegation 2, p. 9

<sup>35</sup> Sec III, Tab D-1, Allegation 2, p. 9

<sup>36</sup> The IO did not ask the Maintenance Commander any additional questions regarding advantages. There was no follow-up regarding whether a recommendation based on the evaluation could be detrimental to complainant’s continued AF career.

<sup>37</sup> Sec III, Tab D-4, p. 6

<sup>38</sup> Sec III, Tab D-8, pp. 4-5

<sup>39</sup> Sec III, Tab D-3, p. 5

<sup>40</sup> Sec III, Tab D-3, p. 5

<sup>41</sup> Sec III, Tab D-1, Allegation 2, p. 3

<sup>42</sup> Sec III, Tab D-11, pp. 1-2

<sup>43</sup> Sec III, Tab D-8, p. 5

<sup>44</sup> Sec III, Tab D-8, p. 5

to determine if he had a learning disability, he was told to coordinate with SSgt AL to make those arrangements.<sup>45</sup>

Immediately after the meeting, complainant met with SSgt AL to schedule the appointment for the evaluation.<sup>46</sup> Complainant told her, “I guess I have to make an appointment...they want me to go talk to mental health.”<sup>47</sup> She responded by explaining that his leadership could not direct him to go and he had to volunteer for the evaluation.<sup>48</sup> After discussing the situation with SSgt AL, complainant said “Yeah okay maybe it does sound like a good idea, let’s call them.”<sup>49</sup> SSgt AL contacted the mental health clinic and scheduled the evaluation for 13 May 10, a time convenient for complainant.<sup>50</sup> Although SSgt AL was acting in her official capacity when she talked to complainant about the mental health evaluation, she testified she was his friend. As his friend, she told him she thought the mental health evaluation would be in his best interest.<sup>51</sup> At the time the appointment was made, complainant understood the appointment would only be made if he voluntarily wanted to have the mental health evaluation. SSgt AL explained to complainant that he could not be ordered or directed to meet with a mental health provider.

In the complainant’s IG complaint, filed on 13 May 10, he stated that he requested a memorandum from the NCOIC, Weapons Maintenance on 10 May 10. Specifically, complainant asked the NCOIC, Weapons Maintenance to provide him a memorandum documenting the “request” that complainant be evaluated by a mental health provider and tested for possible learning disabilities. Subsequently, a memorandum signed by the Maintenance Commander, was provided to complainant. The memorandum stated, in part, “[h]is volunteering for comprehension and attention deficit testing are not punitive; however, the testing will assist Complainant and his supervision in selecting the proper course of action.”<sup>52</sup> Complainant made it clear in his IG complaint that he did not volunteer, but he was “highly encouraged” to make an appointment with mental health for an evaluation.<sup>53</sup>

On 13 May 2010, complainant went to the Base Z Mental Health Clinic. On the intake paperwork, Complainant circled that he was “encouraged” to come to mental health rather than stating he was there voluntarily. On the back side of the form, he wrote in, “It was suggested/highly encouraged to me to go seek testing at the medical treatment facility for the possibility of ADD or ADHD or any other learning difficulty.”<sup>54</sup> Maj (Doctor) BL, XX MDOS/SGOW psychiatrist, took some time to talk with complainant about why he was at mental health.<sup>55</sup> According to Maj BL, complainant affirmed he had been encouraged to meet with a mental health provider, but acknowledged he had not been ordered to mental health.<sup>56</sup>

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<sup>45</sup> Sec III, Tab D-3, p. 6

<sup>46</sup> Complainant was on PRP status and required to schedule all of his medical appointment through SSgt AL.

<sup>47</sup> Sec III, Tab D-12, p. 3

<sup>48</sup> Sec III, Tab D-12, p. 3

<sup>49</sup> Sec III, Tab D-12, p. 3

<sup>50</sup> Sec III, Tab D-12, p. 3

<sup>51</sup> Sec III, Tab D-12, p. 3

<sup>52</sup> Sec III, Tab E-13

<sup>53</sup> Sec III, Tab B, p. 2

<sup>54</sup> Sec III, Tab E-9, pp. 1-2

<sup>55</sup> Maj BL was the XX MDOS/SGOW psychiatrist that met with complainant.

<sup>56</sup> Sec III, Tab D-6, p. 2

## PROCEDURAL BACKGROUND

On 13 May 10, complainant filed an IG complaint with the XX FW/IG.<sup>57</sup> The complaint included an allegation of reprisal and an improper mental health evaluation (IMHE).<sup>58</sup> Complainant is assigned to MUNSS which functionally belongs to the FW.<sup>59</sup> Therefore, FW/IG is the appropriate IG to address the issues in the complaint and XX FW/IG transferred the case to FW/IG.

On 22 Sep 10, FW/IG appointed Maj CG as the IO for this investigation.<sup>60</sup> In a legal review dated 30 Dec 10, FW/JA found the ROI legally sufficient and concurred with the IO's findings that neither allegation had been substantiated.<sup>61</sup> On 24 Mar 11, the appointing authority, Lt Col DC, IG, concurred with the findings of the ROI.<sup>62</sup> On 3 May 11, the MAJCOM/JA determined the ROI was legally sufficient and concurred with the IO's findings that neither allegation was substantiated.<sup>63</sup>

On or about 5 Jul 11,<sup>64</sup> SAF/IGQ reviewed the case and identified both administrative and substantive issues the IO needed to address in the ROI.<sup>65</sup> The substantive issues included re-analyzing the complaint to determine if a protected communication (PC) occurred, analyzing the reprisal allegation based on the language used in the LOR, dated 4 Apr 10, and adding an additional allegation against the mental health provider.<sup>66</sup> SAF/IGQ uploaded the memorandum in the ACTS database and notified the MAJCOM/IG there were issues that needed to be addressed in the attachment that was uploaded. The MAJCOM/IG then notified FW/IG that SAF/IGQ identified issues the IO needed to address. FW/IG notified the IO and provided the SAF/IGQ memorandum to the IO for action.<sup>67</sup> In response to the 5 Jul 11 SAF/IGQ review, the

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<sup>57</sup> Sec III, Tab B

<sup>58</sup> The complainant received a total of three LOR's after his PC. However, he did not allege the 7 May 10 LOR from the NCOIC, Weapons Maintenance or the 30 Jun 10 LOR from the Maintenance Commander were UPA's. Based on the evidence in the ROI the NCOIC, Weapons Maintenance and the Maintenance Commander did not have knowledge of the PC. Because complainant did not allege these LOR's were issued in reprisal, the LOR's were not analyzed for reprisal or abuse of authority.

<sup>59</sup> The information regarding complainant's physical assignment and functional command was obtained from the case notes section of the SAF/IGQ ACTS database that is used for managing cases.

<sup>60</sup> Sec III, Tab A

<sup>61</sup> On 9 Feb 11, FW/IG wrote a legal review coordination memo and explained the FW/JA legal review was completed on 30 Dec 10, but was not released to FW/IG until all the witness testimony had been transcribed and reviewed by FW/JA. The witness testimony was reviewed by FW/JA and the decision was made the witness testimony did not impact the legal review prepared on 30 Dec 10. The legal review dated 30 Dec 10 was released to FW/IG on 8 Feb 11. Sec I, Tab B

<sup>62</sup> Sec II, Tab D

<sup>63</sup> Sec I, Tab B

<sup>64</sup> This date was obtained from the case notes section of the ACTS database that is used for managing cases. The date 5 Jul 11 will be used throughout this legal review as the date for the SAF/IGQ memorandum that identified issues in the ROI.

<sup>65</sup> Sec II, Tab E

<sup>66</sup> Sec II, Tab E

<sup>67</sup> This information was obtained from the case notes section of the ACTS database that is used for managing cases.

IO wrote an addendum<sup>68</sup> to the ROI.<sup>69</sup> The IO addendum, dated 22 Aug 11, acknowledged the IO initially misinterpreted the definition of a PC and clarified that complainant's conversation with the Chief Enlisted Manager was a PC. The IO addendum, dated 22 Aug 11, did not change the not substantiated findings of the ROI.<sup>70</sup> On 20 Sep 11, FW/JA reviewed the ROI with the addendum and again noted the ROI was legally sufficient.<sup>71</sup> On 7 Oct 11, the MAJCOM/IG noted when they received a hard-copy of the ROI they would forward it to the MAJCOM/JA for a legal review. On 31 Oct 11, the MAJCOM/IG transferred the case to SAF/IGQ.<sup>72</sup> On 4 Nov 11, the case was forwarded to DoD IG with a cover letter dated 2 Nov 11. The cover letter explained that SAF/IGQ concurred with the IO's finding of not substantiated regarding Allegation 1, reprisal, but did not concur with the IO's finding of not substantiated regarding Allegation 2, IMHE.<sup>73</sup> On or about 18 Jan 12, DoD IG requested an addendum regarding SAF/IGQ's opinion on this case. On or about 18 Jan 12, SAF/IGQ prepared an addendum, signed by a member of the directorate, that overturned the **not substantiated** finding for Allegation 2, IMHE, and changed it to **substantiated**.<sup>74</sup> The 18 Jan 12, SAF/IGQ addendum, did not address Allegation 1, reprisal.

On 27 Jul 12, DoD IG contacted SAF/IGQ regarding this case. DoD IG communicated it was unable to approve the case with the ROI and addenda as written. The concerns were the IO's bias in the initial ROI and that the threat of the Unfavorable Information File (UIF) in the LOR, dated 4 Apr 10, was not addressed as an Unfavorable Personnel Action (UPA).<sup>75</sup> SAF/IGQ reviewed the case and determined another addendum from SAF/IGQ could address DoD IG's concerns.<sup>76</sup>

The SAF/IGQ Director retired in September 2012 and the incoming director was briefed on the status of the addendum. The most recent addendum, dated 4 Dec 12, signed by the current SAF/IGQ Director, addressed several issues. First, SAF/IGQ concurred the ROI addendum, dated 22 Aug 11, correctly determined the communication complainant had with the Chief Enlisted Manager was a PC. Second, SAF/IGQ determined the IO's conclusion that the LOR was not a UPA, was based on erroneous information.<sup>77</sup> Therefore, the acid test for reprisal, as defined by AFI 90-301, *Inspector General Complaints Resolution*, dated 6 Jun 12, for Allegation 1 resulted in a finding by SAF/IGQ of **substantiated**. Because the IO found Allegation 1 not

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<sup>68</sup> The ROI addendum completed by the IO is undated. However the ACTS database used for managing cases indicated the addendum was received by FW/IG on 22 Aug 11. The 22 Aug 11 date will be used as the date for the ROI addendum throughout this legal review.

<sup>69</sup> Sec II, Tab E

<sup>70</sup> Sec II, Tab E

<sup>71</sup> Sec I, Tab B

<sup>72</sup> This information was obtained from the case notes section of the ACTS database that is used for managing case. A USAFE legal review for the ROI addendum is not included in the case file and there is no additional information regarding a USAFE legal review for the ROI addendum.

<sup>73</sup> Sec II, Tab E

<sup>74</sup> The 18 Jan 12 date used for the SAF/IGQ addendum was obtained from the case notes section of the SAF/IGQ ACTS database that is used for managing cases. The 18 Jan 12 date will be used throughout this legal review as the date of the initial SAF/IGQ addendum. Sec II, Tab E

<sup>75</sup> The LOR, dated 4 Apr 10, was the basis for the reprisal in Allegation 1.

<sup>76</sup> The information regarding DoD IG's issues with this case and SAF/IGQ's plans to address the issues was obtained from the case notes section of the ACTS database that is used for managing cases.

<sup>77</sup> Sec III, Tab E-2

substantiated, he should have conducted an acid test for abuse of authority, as defined by AFI 90-301, for Allegation 1. However, that error was rendered moot by SAF/IGQ's finding that the allegation was substantiated. Regarding Allegation 2, SAF/IGQ identified Lt Col TC, MUNSS/CC as an RMO. As a result, SAF/IGQ interviewed Lt Col TC<sup>78</sup> on 28 Nov 12 and re-interviewed the Maintenance Commander<sup>79</sup> on 6 Nov 12. SAF/IGQ also reconsidered the analysis in the 18 Jan 12 SAF/IGQ addendum and found, consistent with the IO's original finding, that Allegation 2 was **not substantiated**.<sup>80</sup> Finally, the 4 Dec 12, SAF/IGQ addendum concurred there was IO bias in the investigation, but concluded that complainant's allegations were appropriately addressed regardless of the IO's bias conducting the ROI."<sup>81</sup>

Since the SAF/IGQ addendum overturned the IO's finding for Allegation 1 and its own prior finding for Allegation 2, we analyzed Allegations 1 and 2 to determine if SAF/IGQ's findings in the 4 Dec 12 addendum were legally sufficient. We have reviewed the ROI with the addendum, dated 22 Aug 11. We also reviewed the initial FW/JA legal review dated 30 Dec 10, the MAJCOM/JA legal review dated 3 May 11, and the FW/JA legal review of the addendum to the ROI, dated 20 Sep 11.<sup>82</sup> We reviewed the SAF/IGQ addendum completed 18 Jan 12 and the SAF/IGQ addendum dated 4 Dec 12. We concur with the SAF/IGQ addendum, dated 4 Dec 12, that Allegation 1 is **substantiated** and Allegation 2 is **not substantiated**.

When reviewed together, the ROI, IO addendum dated 22 Aug 11, SAF/IGQ addendum dated 18 Jan 12, SAF/IGQ addendum dated 4 Dec 12, and underlying investigation comply with the requirements of AFI 90-301. We concur with SAF/IGQ's findings in the 4 Dec 12 addendum that a preponderance of the evidence does not support the IO and appointing authority's finding regarding Allegation 1, but it does support the IO and appointing authority's finding regarding Allegation 2. We concur with SAF/IGQ's findings that Allegation 1 is **substantiated** and Allegation 2 is **not substantiated**

## STANDARDS

The standard for substantiating allegations investigated by the IG is preponderance of the evidence. The preponderance standard means the IO is satisfied that the greater weight of the credible evidence supports his findings and conclusions. The weight of the evidence supporting a conclusion is not to be determined by the sheer number of witnesses or the volume of evidentiary matter presented, but rather by the evidence which best accords with reason and probability.<sup>83</sup>

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<sup>78</sup> Sec III, Tab D-13

<sup>79</sup> Sec III, Tab D-4a

<sup>80</sup> In Sep 12, the incoming Director, SAF/IGQ changed the way SAF/IGQ completed and forwarded addenda to DoD IG. Currently, all addenda are signed by the Director, SAF/IGQ to ensure consistency.

<sup>81</sup> Sec II, Tab-E

<sup>82</sup> Sec I, Tab-B

<sup>83</sup> AFI 90-301, 15 May 08, para 2.48; Attachment 1



Allegation 1: Complainant alleged that on or about 4 Apr 10, the First Sergeant reprised against him, in violation of Title 10, United States Code, Section 1034, by administering a Letter of Reprimand to him based on a protected communication he conveyed to the Chief Enlisted Manager, on or about 1 Apr 10.<sup>84</sup> **Substantiated.**

### *Standards for Reprisal Allegation*

Military members who make protected disclosures are sheltered from reprisal by statute (10 U.S.C. §1034) and regulation (DoDD 7050.06, *Military Whistleblower Protection*, 23 Jul 2007, and AFI 90-301). Attachment 21 of AFI 90-301 sets out an "acid test" for determining whether reprisal occurred. The four parts of the acid test are:

- (1) Did complainant make or prepare a communication protected by statute, DoD Directive, or AFI 90-301?
- (2) Was an unfavorable personnel action taken or threatened; or was a favorable action withheld or threatened to be withheld following the PC?
- (3) Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the PC?
- (4) Does the preponderance of the evidence establish that the personnel action would have been taken, withheld, or threatened if the PC had not been made?

A PC is defined as a communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation ... when such communication is made to ... any person or organization in the chain-of-command; or any other person designated pursuant to regulations or other established administrative procedures to receive such communications.<sup>85</sup>

A personnel action is defined as:

Any action taken on a member of the armed forces that affects or has a potential to affect (for example a threat) that military member's current position or career. Such actions include (but are not limited to) a promotion, a demotion, a disciplinary or other corrective action, a transfer or reassignment, a performance or evaluation, a decision on pay, benefits, awards, or training, referral for mental health evaluation under DoDD 6490.1, *Mental Health Evaluations of Members of the Armed Forces*, and/or any other significant change in duties or responsibilities inconsistent with the military member's rank.<sup>86</sup>

An RMO is defined as (1) official(s) who influenced or recommended to the deciding official that he/she take, withhold, or threaten a management action, (2) official(s) who

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<sup>84</sup> The allegation is written exactly as written in the ROI. Sec II, Tab C, p. 1

<sup>85</sup> DoDD 7050.06, Enclosure 2, paragraph E2.9.2

<sup>86</sup> AFI 90-301, 15 May 08, Attachment 1

decided to take, withhold, or threaten the management/personnel action or (3) any other official(s) who approved, reviewed, or indorsed the management/personnel action.<sup>87</sup>

If the answer to any of the first three questions is no, reprisal cannot be substantiated. If questions 1 through 3 of the “acid test” are answered in the affirmative and question 4 is answered in the negative—in other words, a preponderance of the evidence supports the conclusion that but for the PC, the RMO would not have taken the unfavorable personnel action – then a case of reprisal exists and the IO should substantiate the allegation in question.<sup>88</sup>

AFI 90-301, Attachment 21 also provides five criteria that *must* be analyzed under question 4. These include: **reasons** for the action, **reasonableness** of the action, **consistency** of the action with past practice, **motive** of the person who took the action, and the **procedural correctness** of the action.<sup>89</sup>

### **Abuse of Authority**

If an IO determines no reprisal occurred, he must then analyze the allegation under the “abuse of authority” standard.<sup>90</sup> Abuse of authority is an “arbitrary and capricious exercise of power that adversely affects any person or results in personal gain or advantage to the abuser.”<sup>91</sup> AFI 90-301, Attachment 22 sets forth a separate “acid test” to help determine whether there was an abuse of authority. To determine if an abuse of authority has occurred, the following questions must be answered: (1) Did the RMO’s actions either adversely affect any person or result in personal gain or advantage to the RMO,<sup>92</sup> and (2) did the RMO act within the authority granted under applicable regulation, law, or policy, and (3) was the action arbitrary and capricious? Attachment 22 lists four criteria to use in determining if the RMO’s action was arbitrary and capricious: (1) What were the **reasons** for the RMO’s action; (2) what was the **reasonableness** of the action; (3) were the actions taken by the RMO **consistent** with past practices, and (4) what was the **motive** for the RMO’s action?

### **Analysis of Allegation 1**

- (1) Did complainant make or prepare a communication protected by statute, DoD Directive, or AFI 90-301? Yes.

Under AFI 90-301, Attachment 1, a PC includes communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation...when such communication is made to...any person or organization in the chain-of-command; or any other person designated pursuant to regulations or other established administrative procedures to receive such communications.<sup>93</sup>

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<sup>87</sup> AFI 90-301, 15 May 08, Attachment 1

<sup>88</sup> AFI 90-301, 15 May 08, Attachment 21

<sup>89</sup> AFI 90-301, 15 May 08, Attachment 21

<sup>90</sup> AFI 90-301, 15 May 08, paragraph 5.6.2.4

<sup>91</sup> AFI 90-301, 15 May 08, Attachment 22

<sup>92</sup> If both these questions are answered in the negative, then it is not necessary to consider question 2. AFI 90-301, 15 May 08, Attachment 22

<sup>93</sup> AFI 90-301, Attachment 1

On or about 26 Mar 10, complainant was trying to locate a government vehicle. According to complainant, the vehicle could not be located and had not been signed out in accordance with MUNSS policy.<sup>94</sup> During complainant's search for the vehicle, he was informed that the First Sergeant had taken the vehicle off-base.<sup>95</sup> As the VCNCO for MUNSS, complainant was aware of the procedures for properly signing out a government vehicle for off-base use and knew the vehicle had not been properly signed out. Complainant conveyed to the Chief Enlisted Manager that the First Sergeant, the squadron first sergeant, did not follow correct procedures for off-base use of a government vehicle assigned to MUNSS.<sup>96</sup> As the Chief Enlisted Manager for MUNSS, the Chief is in complainant's supervisory chain. This communication was a violation of regulation made to a person in complainant's supervisory chain and is a PC.

- (2) Was a UPA taken or threatened; or was a favorable action withheld or threatened to be withheld following the PC? **Yes.**

The IO only identified the 4 Apr 10 LOR as a potential UPA. The IO concluded a UPA was not taken because an LOR was not considered a UPA unless filed in the service member's military personnel file.<sup>97</sup> The previous SAF/IGQ director provided policy guidance via email. The date the guidance was sent to FW/IG is unknown, but FW/IG forwarded the guidance to the IO on 8 Nov 10. The email states, in part, "DoD does not consider LORs as UPAs--unless the LOR is ultimately filed in the service member's official military personnel file."<sup>98</sup> Based on this guidance, the IO determined the LOR was not a UPA. However, SAF/IGQ, in an addendum dated 4 Dec 12, determined the IO relied on erroneous information and the LOR was a UPA.<sup>99</sup> Under AFI 90-301, Attachment 1, a personnel action is defined as any action taken on a military member that affects or has the potential to affect that military member's position or career. An LOR has the potential to affect complainant's career because an LOR could be considered by the rater when preparing the complainant's enlisted performance report (EPR). The LOR could result in downgraded EPR ratings which could adversely affect the complainant's future promotion potential. SAF/IGQ relied on the definition in AFI 90-301, Attachment 1, to determine the LOR is a personnel action because an LOR has the potential to affect a military member's career.<sup>100</sup> We agree the LOR is a UPA.

Next, it must be determined if the First Sergeant is an RMO. Pursuant to AFI 90-301, Attachment 1, an RMO is an official who decided to take, withhold, or threaten the management/personnel action. Since the First Sergeant issued an LOR to complainant, he is an RMO.

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<sup>94</sup> Sec III, Tab D-1, pp. 15-16

<sup>95</sup> Sec III, Tab D-1, pp. 15-16

<sup>96</sup> Sec III, Tab D-1, p. 19

<sup>97</sup> Sec II, Tab C, p. 4

<sup>98</sup> Sec III, Tab E-2

<sup>99</sup> Sec II, Tab E, p. 4

<sup>100</sup> Sec II, Tab E, p. 4

Finally, it must be determined if the UPA followed the PC addressed in question 1 above. Complainant made the PC on or about 26 Mar 10. The LOR was issued to complainant on 4 Apr 10. This is clearly after the PC on 26 Mar 10.

- (3) Did the official responsible for taking, withholding, or threatening the personnel action know about the PC? **Yes.**

Upon the First Sergeant's return from Base Z, the Chief Enlisted Manager briefed the First Sergeant about the accusation made by complainant against the First Sergeant concerning the vehicle procedures violation for the off-base use of the commander's vehicle.<sup>101</sup>

- (4) Does the preponderance of the evidence establish that the personnel action would have been taken, withheld, or threatened if the PC had not been made? **No.**

The ROI did not address question four of the acid test for reprisal because the IO determined the LOR, dated 4 Apr 10, was not a UPA. The SAF/IGQ addendum, dated 4 Dec 12, correctly determined the LOR was a UPA and the LOR was issued because of the PC.

1. *Reasons the RMO took, withheld, or threatened the action:*

Although the First Sergeant testified he issued complainant the LOR for disrespect toward a non-commissioned officer, the language in the LOR indicated the LOR was issued strictly because of the PC.<sup>102</sup> The opening paragraph of the LOR starts with "you made a verbal threat in the presence of the Chief Enlisted Manager to which you stated you were going to charge me, the First Sergeant, your First Sergeant with vehicle abuse and charge me for gas for taking the Commander's vehicle."<sup>103</sup> Based on the language in the LOR, it appears the reason the First Sergeant issued complainant the LOR was because of his PC to the Chief Enlisted Manager. The PC conveyed that a unit policy had not been followed regarding the First Sergeant taking a government vehicle (GOV) to Base Z. During the conversation, complainant indicated the First Sergeant would not be reimbursed for fuel because he did not follow the proper procedures for acquiring the GOV. The language in the LOR mirrors that of the PC and indicates the LOR was issued because of the PC.

2. *Reasonableness of the action taken:*

Although the First Sergeant had a responsibility to maintain good order and discipline, he was not allowed to reprise against personnel under the pretext of good order and discipline. Paragraph 1 of the LOR indicates the LOR was given because of the content of the conversation complainant had with the Chief Enlisted Manager.<sup>104</sup> It is not unlawful or against DoD or AF guidance to communicate a violation of the regulation to a member of a military member's chain-of-command. As such, it was not reasonable to issue the LOR in response to an otherwise lawful and appropriate action.

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<sup>101</sup> Sec III, Tab D-5, p. 6

<sup>102</sup> Sec III, Tab D-2, p. 6

<sup>103</sup> Sec III, Tab E-1

<sup>104</sup> Sec III, Tab E-1

3. *Consistency of the actions of the RMOs with past practices:*

The First Sergeant testified he never gave anyone other than complainant an LOR for disrespectful comments made regarding him.<sup>105</sup> The ROI does not contain information regarding how many times the First Sergeant knew about someone making disrespectful comments about him or making complaints about him and what, if any, action he took regarding those comments. The ROI also does not contain information regarding administrative paperwork the First Sergeant had issued for any reason. As a result, it is not possible to determine if his action was consistent with past practices.

4. *Motive of the RMO for taking the personnel action:*

The ROI does not specifically address the First Sergeant's motive for issuing the LOR to complainant. However, the First Sergeant testified that any administrative paperwork had the potential to impact an EPR and he knew when he issued the LOR it could impact complainant's EPR.<sup>106</sup> On its face, the LOR appeared to have been issued out of anger because it was focused on the comments made to the Chief Enlisted Manager and not on the disrespectful way the comments were made. The LOR was issued for "[a] verbal threat in the presence of the Chief Enlisted Manager to which you stated you were going to charge me...with vehicle abuse and charge me for taking the Commander's vehicle, a Pontiac G6 off base."<sup>107</sup>

5. *Procedural Correctness of the action:*

The LOR complied with the procedural requirements found in AFI 36-2907, *Unfavorable Information File Program*, 17 Jun 2005. The LOR stated what the member did, that improvement was expected, and that further misconduct might result in more severe action. Complainant acknowledged the LOR and was given three duty-days in which to provide comments or documents to be considered and become part of the record. Complainant did submit documents and was informed on 12 Apr 10 of the final decision which was that the LOR would stand as written, but a UIF was not established.<sup>108</sup>

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<sup>105</sup> Sec III, Tab D-2, p. 7

<sup>106</sup> Sec III, Tab D-2, p. 7

<sup>107</sup> Sec III, Tab E-1

<sup>108</sup> Sec III, Tab E-1

## **Conclusion:**

The IO concluded the LOR was not a UPA; therefore, the First Sergeant did not reprise against complainant. As a result, the IO found the reprisal allegation not substantiated and the appointing authority approved the finding. The SAF/IGQ addendum, dated 4 Dec 12, determined the IO relied on erroneous information and that the LOR was a UPA. After completing a thorough analysis, SAF/IGQ determined the allegation was substantiated. The preponderance of the evidence supports the SAF/IGQ addendum's findings and conclusion that the LOR was a UPA and the First Sergeant issued the LOR to complainant in reprisal for a PC.

Since SAF/IGQ substantiated the reprisal allegation for the 4 Apr 10 LOR, there is no need to analyze the facts surrounding the 4 Apr 10 LOR for abuse of authority.

Allegation 2: Complainant alleged that on or about 8 May 10, the NCOIC, Weapons Maintenance, MUNSS/MMX, improperly referred him to undergo a mental health evaluation in violation of DoDI 6490.4 para 4.1, which states, "A commanding officer shall refer a service member for mental health evaluation in accordance with DoD Directive 6490.1." The NCOIC, Weapons Maintenance is alleged to have directed complainant to report to the Independent Duty Medical Technician (IDMT) in order to arrange testing for Attention Hyperactivity Disorder (ADD/ADHD), or any other mental or learning disability.<sup>109</sup> **Not substantiated.**

### ***Standards for Improper Mental Health Evaluation Referral***

DoDD 6490.1, *DoDI 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces*, dated 28 Aug 97, and AFI 44-109, *Mental Health, Confidentiality and Military Law*, dated 20 Sep 10, state that only a service member's commander may refer the member for a mental health evaluation. This responsibility is non-delegable. Commanders must follow the procedures outlined in DoDD 6490.1 and DoDI 6490.4 when referring a member for a mental health evaluation. Most notably, the regulations require the commander to notify the member of certain rights, in writing, at least two duty-days before the evaluation is scheduled to take place, unless the situation is an emergency. DoDI 6490.4, E2.1.11, defines a self-referral (or voluntary referral) as the "process of seeking information about or obtaining an appointment for a mental health evaluation or treatment initiated by a Service member independently for him or herself." AFI 44-109, para. 4.1, provides that while commanders and supervisors may encourage an Airman to voluntarily seek mental health care, they may not coerce the member into voluntarily seeking a mental health evaluation.

### **Analysis of Allegation 2**

The IO found complainant voluntarily sought an evaluation by mental health at Base Z.<sup>110</sup> SAF/IGQ's addendum, dated 18 Jan 12, concluded complainant would not have gone for an evaluation without the persuasion of his supervision and substantiated the allegation. The SAF/IGQ addendum, dated 4 Dec 12, correctly evaluated the complainant's decision to be

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<sup>109</sup> The allegation is written exactly as written in the ROI. Sec II, Tab C, p. 6

<sup>110</sup> Sec II, Tab C, p. 11

evaluated by a mental health provider and found Lt Col TC, the Maintenance Commander, and the NCOIC, Weapons Maintenance reasonably believed complainant agreed to voluntarily go to mental health for an evaluation.<sup>111</sup> The SAF/IGQ addendum, dated 4 Dec 12, also found the Maintenance Commander and the NCOIC, Weapons Maintenance acted within the spirit of AFI 44-109 when they encouraged complainant to undergo an evaluation with mental health for possible learning disabilities. If there had been any doubt in the complainant's mind, on at least two occasions after the May 2010 meeting with the Maintenance Commander, the NCOIC, Weapons Maintenance, and MSgt JH, complainant was told he could not be ordered to participate in the evaluation—it had to be voluntary. After each conversation, complainant elected to proceed with the next step in the evaluation process.

The Maintenance Commander understood he could not force complainant, either by ordering him or by coercing him, to go to mental health. However, the Maintenance Commander wanted complainant to be aware of all available resources and offered him the opportunity to meet with a mental health provider to determine if there was an underlying issue that prevented him from passing the test. Providing information to complainant and giving him the opportunity to act on that information does not make it a directive. This was an opportunity to use available resources, not a directive to have a mental health evaluation.

It is also important to look at the context in which complainant was asked if he wanted to be tested and evaluated. The purpose of the meeting was to discuss complainant's repeated test failure and to develop a plan for how complainant could pass his next upgrade training test. The testimony, read in its entirety, indicated everyone at the meeting wanted to find a way to help complainant pass the test and everyone understood complainant could not be ordered, or coerced, to go to mental health for an evaluation. There is no indication that anyone intentionally tried to unduly influence complainant to have a mental health evaluation to determine if he had a problem that was preventing him from passing the test. Complainant's leadership made him aware of available resources and left it up to him to decide if he wanted to take advantage of those resources.

The LOR issued by the NCOIC, Weapons Maintenance on 7 May 10 was issued around the same time complainant met with his leadership and was encouraged to have a mental health evaluation to determine if he had a learning disability.<sup>112</sup> The ROI did not provide sufficient evidence to determine if the LOR was issued before or after the meeting. However, the LOR was issued because complainant failed to follow the procedure for tool accountability. In his LOR response dated 12 May 10, complainant acknowledged he did not follow proper procedure. The events that led to this LOR were unrelated to complainant's inability to pass his upgrade training test. The complaint<sup>113</sup> did not allege the LOR influenced complainant's decision to have a mental health evaluation and the LOR response did not address the mental health evaluation.<sup>114</sup> As such, it is unlikely the LOR influenced complainant's decision regarding whether or not to have a mental health evaluation. In addition, complainant's testimony did not identify a connection between the 7 May 10 LOR and complainant's decision to have a mental health evaluation.

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<sup>111</sup> Sec II, Tab E, p. 10

<sup>112</sup> Sec III, Tab E-4, pp. 1-2

<sup>113</sup> Sec II, Tab B

<sup>114</sup> Sec III, Tab E-4, p. 3

In this case, complainant's leadership initiated the discussion regarding the possibility of a mental health evaluation for learning disabilities. However, the decision to schedule the mental health appointment, keep the mental health appointment, and talk with the mental health provider were all steps made and completed by the complainant. When complainant met with SSgt AL, he was advised the evaluation had to be voluntary and he agreed to schedule the appointment. He arrived at mental health and was again reminded by the mental health provider that he could not be ordered to participate in a mental health evaluation--it had to be voluntary. Complainant chose to continue with the appointment and was evaluated by the mental health provider. Based on the preponderance of evidence, complainant agreed to go to mental health after talking with his leadership regarding his options to successfully complete upgrade training and he independently completed the mental health evaluation.

In the early May 2010 meeting with leadership, complainant was encouraged, not ordered or coerced, to go to mental health. Complainant's supervisory chain was providing him with information regarding available resources to assist him and encouraging him to use those resources to prepare for his upgrade training test. The information was not provided to coerce or in any way insinuate to complaint that he had to have a mental health evaluation.

### **Conclusion:**

The IO concluded that complainant was not improperly referred for a mental health evaluation. On 18 Jan 12, SAF/IGQ completed an addendum overturning the IO and finding Allegation 2, IMHE, substantiated. On 27 Jul 12, DoD IG returned the case to SAF/IGQ for additional work. SAF/IGQ conducted additional interviews regarding Allegation 2, IMHE. After completing a thorough analysis of the initial investigation and additional interviews conducted by SAF/IGQ during November and December 2012, SAF/IGQ, in an addendum dated 4 Dec 12, agreed with the IO that Allegation 2, IMHE is not substantiated. The preponderance of the evidence supports the findings and conclusion in the SAF/IGQ addendum, dated 4 Dec 12.

### **ERRORS AND ANOMALIES**

The ROI did not include Lt Col TC as an RMO with regards to the IMHE. As the commander, Lt Col TC was the only person authorized to refer complainant for a mental health evaluation. The SAF/IGQ addendum, dated 4 Dec 12, correctly identified Lt Col TC as an RMO. If an allegation against Lt Col TC had been framed for the IMHE, the legal analysis would be virtually identical to the legal analysis for the allegation against the NCOIC, Weapons Maintainer regarding complainant voluntarily going to mental health. In addition, Lt Col TC did not attend the early May 2010 meeting and does not recall personally discussing the mental health evaluation with complainant.<sup>115</sup> An allegation framed against Lt Col TC would be **Not substantiated**.

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<sup>115</sup> Sec III, Tab D-13, p. 5



Allegation 1, reprisal, as drafted in the ROI states the PC was conveyed to the Chief Enlisted Manager on or about 1 Apr 10.<sup>116</sup> The PC was made to the Chief Enlisted Manager on 26 Mar 10.<sup>117</sup> The slight difference in the date the PC was actually made does not affect the legal sufficiency of the report.

On 7 May 10, complainant received an LOR from the NCOIC, Weapons Maintenance<sup>118</sup> and on 30 Jun 10 complainant received an LOR from the Maintenance Commander.<sup>119</sup> The LOR's were issued after the PC, they are UPA's. However, complainant did not allege the LOR's issued by the NCOIC, Weapons Maintenance and the Maintenance Commander were UPA's and the ROI and subsequent addenda did not identify them as UPA's. There is no evidence in the ROI to indicate either the NCOIC, Weapons Maintenance or the Maintenance Commander had knowledge of the PC; therefore, failure to identify and complete the acid test for the LOR's does not affect the legal sufficiency of the ROI.

The SAF/IGQ addendum completed on 18 Jan 12 has several errors in it.<sup>120</sup> These include a reference to the findings of 90 MW/IG, but 90 MW/IG was not involved in this case. Additionally, the last sentence refers to AETC/IGQ who was also not a part of this case.

The transcripts are replete with errors. Some are clearly typographical errors. For example, Base Z is variously spelled Avian, Aviana, and Albiano. Other errors render individual sentences completely incomprehensible; fortunately errors of that magnitude are not nearly as common as the obvious typographical errors. The original report and transcripts were not paginated.<sup>121</sup> However, these problems are not so severe they affect the legal sufficiency of the report.

## CONCLUSION

The two framed allegations have been addressed; each of those allegations alleges a violation of law; the ROI, IO addendum dated 22 Aug 11, and the SAF/IGQ addendum dated 4 Dec 12, reasonably applied the preponderance of the evidence standard in arriving at the findings; the conclusions in the ROI, IO addendum dated 22 Aug 11, and the SAF/IGQ addendum dated 4 Dec 12 are supported by and consistent with the findings; and the investigation complies with all applicable legal and administrative requirements. The preponderance of the evidence supports

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<sup>116</sup> Sec II, Tab C, p. 1

<sup>117</sup> Sec III, Tab D-1, p. 15

<sup>118</sup> Sec III, Tab E-4, p. 1

<sup>119</sup> Sec III, Tab E-5, p. 1

<sup>120</sup> Sec II, Tab-E

<sup>121</sup> In order to complete the legal review, page numbers were hand written on the original documents.

the finding that the First Sergeant did reprise against complainant when he issued him a LOR on 4 Apr 10. The preponderance of the evidence also supports the finding that complainant was not improperly referred for a mental health evaluation. We concur with the SAF/IGQ addendum, dated 4 Dec 12, that Allegation 1 is **SUBSTANTIATED** and Allegation 2 is **NOT SUBSTANTIATED**. The ROI, IO addendum dated 22 Aug 11, and SAF/IGQ addendum, dated 4 Dec 12 are legally sufficient and the case may be closed in accordance with AFI 90-301.

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