

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

OCT 27 1998

IN THE MATTER OF:

DOCKET NUMBER: 95-01723

INSEL: [REDACTED]

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

The Officer Performance Report (OPR) closing 25 February 1994 be removed from her records. In the alternative, the report be amended by upgrading the rating in Section V, Performance Factors, Item 2, Leadership Skills, to Meets Standards, and, deleting the comments by the rater in Section VI concerning leadership problems and all sub-bullets, and the comment referencing nonresponsiveness to current Air Force nurse requirements.

Her corrected record be considered by a Special Selection Board (SSB) for promotion by the CY 1994A Central Major Selection Board, which convened on 22 August 1994.

APPLICANT CONTENDS THAT:

The OPR is invalid because it did not accurately reflect her duty performance during the contested rating period. The denial of her appeal of the contested report by the Evaluation Report Appeal Board (ERAB) was arbitrary. The ERAB found that the opinion letters provided in support of the appeal were no help in assessing her leadership abilities because the rater's judgment was superior. However, she had provided more than just opinion as to what the situation in her squadron was at that time. The statements were based on firsthand knowledge and observation of what transpired during the period of the contested report. These statements attest to her effectiveness as a leader. In addition, the record of the recruiting production also provides evidence that her leadership skills were more than adequate.

A further indication that the ERAB's decision was arbitrary is that they failed to contemplate her entire argument. She had contended that the contested report was based on a minor, isolated incident. The ERAB focused only on the leadership aspect of her argument. The isolated incident refers to a charge that she did not control a renegade noncommissioned officer (NCO) (her NCOIC). Yet, she ensured that the individual received nonjudicial punishment and allowed the chain of command to handle the situation, given the nature of his offenses.

The entire rating period was characterized by what occurred in the last three months of the period; namely, the removal of the NCO and the shift of focus in recruiting strategies. She had no control over either of these issues.

The **ERAB** also failed to consider her argument that Air Force regulations were not followed where she was not given performance counseling. In her original appeal, she documented that her rater had failed to provide the performance feedback required by the governing regulation. When agencies failed to follow their own regulation, an injustice is created.

The contested report is an aberration in her file. The entire story of what occurred between her and her rater **was** not known to the other members of her rating chain. Had the senior raters been aware of the true situation, another OPR may have been prepared.

Finally, the OPR was not based on her performance but was given as retaliation for her desire to file a complaint with the Inspector General (IG) because of the improper handling and mismanaged investigation of her report of problems with her NCOIC. She has provided a detailed description of events that led to her rater's illegal treatment.

The contested OPR had a substantial impact on her opportunity for promotion. In addition to the effect its presence in her record had on the assessment of her record by the selection board in question, it also had an effect on the perceptions of her superiors at the time she was to be considered by the CY 1994A board since she had only recently been assigned to her then-current position and was new to the command. Therefore, her superiors were unable to fairly assess her skills to overcome the damaging OPR.

In support of her appeal, the applicant provided a brief by counsel elaborating on her contentions, a copy of the contested report, copies of documents associated with her appeal under AFI 36-2401, including copies of her Promotion Recommendation Forms (PRFs) considered by the CY 1993A, CY 1994A and CY 1996A major selection boards, several supportive statements, and other documents associated with her duty performance and the issues cited in her contentions. Applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) indicates that the applicant was appointed a second lieutenant, Reserve of the Air Force, on 4 June 1984 and was voluntarily ordered to extended active duty, effective 7 January 1985. She has been progressively promoted to the grade of captain,

effective and with a date of rank of 20 September 1988. During the period 22 June 1992 through 30 March 1994, the applicant performed duties as a 'Chief, Nurse Recruiting Branch.' The following is a resume of her OPR ratings subsequent to her promotion to the grade of captain.

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
7 Oct 1988	Training Report (TR)
1 Jul 1989	Meets Standards (MS)
1 Jul 1990	MS
1 Jul 1991	MS
17 May 1992	MS
17 May 1993	MS
* 25 Feb 1994	Does Not Meet Standards
25 Feb 1995	MS
1 Sep 1995	MS
# 9 Jan 1996	MS

NOTE: * - Contested report. A similar appeal by the applicant was denied by the ERAB on 21 December 1994. In addition, this was the top report on file at the CY 1994A Central Major Selection Board which convened on 22 August 1994.

- Top report on file at the CY 1996 Central Major Selection Board, which convened on 4 March 1996.

Based on her nonselections for promotion to the grade of major, the applicant had an established date of separation of 30 November 1996.

A copy of the Inspector General (IG) investigation is appended at Exhibit C.

AIR FORCE EVALUATION:

The Appeals and SSB Branch, AFPC/DPPPA, reviewed this application and recommended denial. DPPPA indicated that Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. It takes substantial evidence to the contrary to have a report changed or voided. To effectively challenge an OPR, it is necessary to hear from all the evaluators the contested report, not only for support, but also for clarification/explanation. DPPPA noted that the applicant provided no support from her rating chain.

DPPPA is not convinced that the rater failed to assess her performance accurately. She provided no evidence showing impropriety or unjust treatment on the part of her rating chain. She submits a transmission which states she is aware some of her work is overdue. DPPPA finds this is one of the characteristics

mentioned in the referral report. DPPPA noted the details concerning her performance supplied by the applicant but indicated that this information does not strengthen her appeal without support of her rating chain. In DPPPA's opinion, vague duty related evidence and statistics regarding recruiting numbers is not convincing evidence that the report is invalid. In addition, DPPPA does not believe the letters from outside her rating chain are relevant to the applicant's case. The authors of the letters are entitled to their opinion, but DPPPA has no reason to believe that their judgment is superior to that of the evaluators of the contested report. Finally, DPPPA is not convinced by the evidence provided that the OPR may be a reprisal for statements she made during an Article 15 investigation involving her NCOIC (Exhibit D).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel reviewed the advisory opinion and reiterated the applicant's initial contentions. Counsel indicated that the Air Staff's reliance on the fact that the applicant did not submit statements from her rating chain is misplaced. There is no requirement in the regulation/instructions governing office evaluations to submit letters or statements from the rating chain. In fact, when such letters are submitted, denial is recommended based on the fact that the evaluators now cannot change the evaluation, as it was presumed accurate when prepared. Given such arguments, the applicant is in a "no win" situation. Counsel stated that statements from the rating chain would not provide the Board with more information than that already submitted. Counsel stated that the Air Force has not adequately addressed the applicant's allegations concerning the lack of performance feedback and that the evaluation was based on a minor, isolated incident. The Air Force speaks in generalities and has failed to acknowledge that the applicant performed her duties as all others similarly situated. The "duty related evidence and statistics" establish the opposite of her rater's suggestion concerning her duty performance. In fact, the rater continues to be under investigation for his actions dealing with recruiting command. Notwithstanding the Air Force's position, counsel believes the evidence clearly establishes the arbitrary nature of the evaluation. The applicant's response is attached to Counsel's rebuttal 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 probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case. However, in our opinion, these documents do not support a finding that the evaluators, tasked with the responsibility of assessing the applicant's performance, were unable to render unbiased evaluations of her duty performance. We are unpersuaded by the evidence presented that the evaluations were based on factors other than the applicant's duty performance and demonstrated promotion potential during the rating period in question. We believe it should be noted that the same issues raised in this application were investigated by the Inspector General (IG) and it was determined that her complaints concerning reprisal were unsubstantiated. In addition, the IG investigation referenced the applicant having some leadership problems which, we believe, validates the assessment of her rating chain during the period under review. Even though the IG substantiated the applicant did not receive formal (written) performance feedback, the investigation did indicate that the applicant was provided informal (verbal) feedback. Inasmuch as the governing regulation stipulates a rater's failure to conduct a required or requested feedback session will not invalidate the performance report, we do not find the rater's failure to conduct a formal feedback session a sufficient basis to invalidate the report. In view of the foregoing, and 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 issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

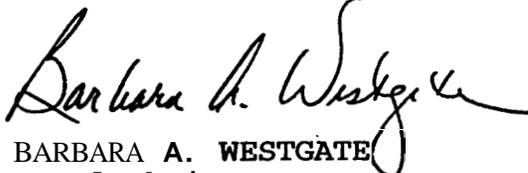
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence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

The following members of the Board considered this application in Executive Session on 15 September 1998, under the provisions of AFI 36-2603:

Mrs. Barbara A. Westgate, Panel Chair
Mr. Allen Beckett, Member
Mr. Henry Romo Jr., Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 9 May 95, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. DOD IG Report of Inquiry, withdrawn.
- Exhibit D. Letter, HQ AFPC/DPPPA, dated 27 Dec 95, w/atc.
- Exhibit E. Letter, SAF/MIBR, dated 16 Jan 96.
- Exhibit F. Letter from counsel, dated 10 Mar 96, w/atc.


BARBARA A. WESTGATE
Panel Chair