

JUL 14 1998

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03570

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

1. Her Senior Airman stripe be restored with restoration of her Basic Allowance for Quarters (BAQ) entitlement.
2. The Enlistment Performance Report (EPR) rendered for the period 17 November 1995 through 20 December 1996 be declared void and removed from her records.

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APPLICANT CONTENDS THAT:

She takes full responsibility for her actions that resulted in the nonjudicial punishment proceedings. However, she believes that the punishment was harsh and unjust. She states that she has been in the Air Force over six years and has an excellent record prior to getting into trouble with her government credit card. She also states that she was under a great deal of stress during the period she charged on her government credit card. Her parents were divorcing and she was experiencing financial problems.

In regard to the leave, she indicates that her leaving earlier than the date scheduled was just a mistake and she did not intend to cheat the leave regulations.

In support of the appeal, applicant submits statements from her former supervisor and a co-worker. The statement from her former supervisor indicates that the applicant's nonjudicial punishment proves that it was "a one mistake Air Force" and reversed the concept of Article 15's as a rehabilitating tool. He believes this one error should not be the determining factor in determining the applicant's military future and that he has never seen such a career ruining method of discipline for a first time offense. He also states that the offense did not hurt the Air Force since collection arrangements were made with American Express prior to the disciplinary action.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant is currently serving in the Regular Air Force in the grade of airman first class.

On 6 December 1996, applicant was notified of her commander's intent to initiate nonjudicial punishment proceedings against her for one specification in violation of Article 86 of the Uniform Code of Military Justice (UCMJ), and two specifications in violation of Article 92 of the UCMJ. The Article 86 offense involved a situation where the applicant left two days earlier than indicated on a leave request. The Article 92 violations involved abusing her government travel charge card. The applicant used the card for other than official purchases and allowed the credit card account to become delinquent. After consulting with counsel, the applicant accepted the Article 15 proceeding. She did not request a personal appearance before the commander and submitted matters in writing for her commander's consideration. On 13 December 1996, the commander found the applicant did commit the alleged offenses and imposed a punishment consisting of a reduction to the grade of Airman First Class, suspended forfeitures of \$140.00 pay per month for two months and a reprimand. She did not appeal the punishment.

Applicant's performance reports rendered since 1992 reflect the following:

PERIOD ENDING	OVERALL EVALUATION
31 Dec 92	4
14 Nov 93	5
16 Nov 94	5
16 Nov 95	5
* 20 Dec 96	3
20 Dec 97	5

\* Contested Report

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AIR FORCE EVALUATION:

The Chief Inquiries/AFBCMR Section, Enlisted Promotion Branch, AFPC/DPPPWB, reviewed this application and indicated that should the Board set the Article 15 aside and restore the applicant's grade to Senior Airman and remove the referral EPR as she requests, she would be eligible for supplemental promotion consideration to Staff Sergeant for the 97E5 cycle provided she is otherwise qualified and recommended by her commander. Even if

is otherwise qualified and recommended by her commander. Even if the applicant's requests are approved, it is extremely doubtful her commander would have recommended her for promotion to Staff Sergeant for the 97E5 cycle based on the reasons she was demoted and received the referral EPR.

A complete copy of the evaluation is attached at Exhibit C.

The Chief, BCMR and SSB Section, Directorate of Personnel Program Management, AFPC/DPPPAB, reviewed this application and indicates that the applicant has provided a memorandum from the rater of the contested report. However, he does not substantiate the report was inaccurate, nor that he made an error when he evaluated the applicant's performance. Applicant does not include any substantial information from the indorser of the report. The statements from outside the rating chain are not germane to this case. While the individuals are entitled to their opinions of the applicant, they have provided no reason to believe they were in a better position to assess the applicant's duty performance during the contested period than those specifically charged with this evaluation. It appears the contested report was accomplished in accordance with Air Force policy in effect at the time it was rendered.

The applicant contends that the report is inconsistent with previous performance. It is not feasible to compare one report covering a certain period of time with another report covering a different period of time.

It is interesting to note that the applicant was both the Leave and American Express card program manager. As such, she was the resident "expert" within the unit responsible for educating others of the applicable rules governing each of the programs. It is apparent the applicant fails to recognize the seriousness of her misconduct. If they were to recommend approval of her request to strike the EPR from her record on the basis that it was the result of "an unfortunate error in judgment", and she subsequently attained supervisory status, would that not make it appropriate for the applicant to excuse such behavior from people under her supervision? The applicant contends she had no criminal intent in mind when she misused the credit card or falsified her leave paperwork, rather she, without forethought, "just did it" because she was under stress. Perhaps if she had confided in her supervisor when she discovered the error in her checkbook, he could have "provided her supervisory recommendations" he later contends he was unable to offer when he was serving as the Acting First Sergeant. Applicant further justifies her action by claiming she intended to pay the balance on the credit card when the bill came in. Are they expected to believe that just because she intended to pay the balance, she did not disobey directives for which she was the "expert" and deliberately misused the credit card?

In conclusion, AFPC/DPPPAB states that a review of the documents provided does not reveal a violation of regulatory provisions or indicate an injustice has occurred. Therefore, they strongly recommend applicant's request for removal of the contested EPR be denied.

A complete copy of their evaluation is attached at Exhibit D.

The Associate Chief, Military Justice Division, Air Force Legal Services Agency, AFLSA/JAJM, also reviewed this application and states that the applicant admits to the conduct which was the basis of the Article 15 nonjudicial punishment proceedings. The applicant believes she was treated unfairly because part of the commander's punishment was a reduction in grade. She also believes her outstanding record was not taken into account when the commander imposed punishment. It may be that the commander, in fact, mitigated the action from a court-martial to an Article 15 based upon the applicant's prior outstanding service. The applicant asked her commander to mitigate her punishment within four months of the action. The applicant indicates the commander informed her that she did not deserve it. Not being privy to the facts and circumstances at the time of the applicant's request, the benefit of the doubt should be given to the commander unless the applicant provides compelling evidence of unfair and impartial treatment. There appears to be no abuse of discretion when the commander imposed punishment. Although the applicant disagrees with her commander's punishment, there is nothing in the applicant's materials that would suggest the commander's actions were anything but fair and impartial. After a review of the available records, they conclude that administrative relief is not appropriate. There are no legal errors requiring corrective action. Therefore, they recommend denial of applicant's request.

A complete copy of their evaluation is attached at Exhibit E.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 9 March 1998, copies of the Air Force evaluations were forwarded to the applicant for review and response within thirty (30) days. As of this date, no response has been received by this office.

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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 probable 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 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 substantial evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

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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.

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The following members of the Board considered this application in Executive Session on 10 June 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair  
 Mr. Gregory H. Petkoff, Member  
 Mr. Michael P. Higgins, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Nov 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPWB, dated 18 Dec 97, w/atchs.
- Exhibit D. Letter, HQ AFPC/DPPPAB, dated 14 Jan 98.
- Exhibit E. Letter, AFLSA/JAJM, dated 17 Feb 98.
- Exhibit F. Letter, SAF/MIBR, dated 9 Mar 98.

  
 MARTHA MAUST  
 Panel Chair