

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-02061

COUNSEL: None

HEARING DESIRED: No

MAR 5 1999

APPLICANT REQUESTS THAT:

The Enlisted Performance Report (EPR) rendered for the period 27 Apr 95 through 13 Nov 95 be declared void and removed from his records.

APPLICANT CONTENDS THAT:

The contested report was generated as a result of disciplinary action taken against him which has since been determined to be unjust, unwarranted, and unfounded and has been set aside at Headquarters ACC level.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant's Total Active Federal Military Service Date (TAFMSD) is 8 Jul 76. He is currently serving in the Regular Air Force (RegAF) in the grade of master sergeant, effective, and with a date of rank (DOR) of 1 Feb 93.

Applicant's EPR profile since 1991 follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
11 Jul 91	5
11 Dec 91	5
9 Aug 92	5
9 Aug 93	5
26 Apr 94	5
26 Apr 95	5
* 13 Nov 95	3

28 Jan 97	5
28 Jan 98	5
31 Jul 98	5

* Contested EPR.

On 13 Nov 95, the applicant was served an Article 15, Uniform Code of Military Justice (UCMJ), for violating Articles 92 and 134 for on or about 11 Oct 95, violating a lawful general regulation by wrongfully concealing or conspiring to conceal a disqualifying factor for military service of a United States Air Force recruit, and, for on or about 11 Oct 95, wrongfully soliciting C---- G----, a United States Air Force recruit, to fraudulently conceal facts pertaining to his prior rejection for military service on United States Air Force enlistment documents. Applicant waived his right to a court-martial and accepted the Article 15 proceeding.

On 8 Dec 95, the Area Defense Counsel (ADC), Wright-Patterson AFB, Ohio, requested the commander look at the incident again and deem the Article 15 action to be inappropriate for the alleged incident and terminate the proceedings. The ADC indicated that AFI 51-202 states that nonjudicial punishment should be used as a last resort and that other administrative actions should be considered prior to administering an Article 15. The ADC further stated that the applicant never had any other kind of discipline in his entire 18-year career and to give him an Article 15 for something he had no control over was not fair and was without merit.

After both a written and personal presentation, on 5 Jan 96, the commander imposed nonjudicial punishment upon the applicant consisting of a reprimand. Applicant appealed the Article 15 action on 12 Jan 96; however, the appellate authority denied his request. The Article 15 was filed in applicant's Unfavorable Information File (UIF). As a result of these proceedings, the applicant was also relieved from recruiting service and received a Letter of Reprimand (LOR) on 23 Feb 96 for allegedly disobeying a direct order by contacting and visiting recruiting offices.

On 22 Apr 96, the applicant requested a set aside action of the nonjudicial punishment; however, his request was not acted upon by his commander.

On 6 Sep 96, the ADC, [REDACTED] requested the Article 15 imposed on the applicant be set aside. The ADC indicated that once the commander evaluated all the circumstances surrounding the allegations, she would find that applicant did not commit the offenses of Articles 92 and 134. Thus, nonjudicial punishment was a clear injustice.

On 1 Oct 96, the successor in command to the imposing officer, in the best interest of the Air Force, set aside the nonjudicial punishment action imposed on the applicant. The commander

reviewed the Article 15, supporting documentation and the applicant's presentation, before reaching the conclusion that the applicant did not commit the offenses alleged. The unusual circumstances which the commander believed overcame the four-month rule beyond which set asides may normally occur happened as a result of the non-response by the applicant's former commander. Applicant was assigned to the successor commander's squadron and she acted on his request. On 2 Oct 96, the Staff Judge Advocate received the Record of Supplementary Action Under Article 15 and it was found legally sufficient.

The applicant filed two similar appeals under AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. On 10 Feb 97, the Evaluations Reports Appeal Board (ERAB) removed a statement from Section V (Rater's Comments): "MSgt W---- failed to ensure that a disqualified applicant divulged all disqualifying factors during enlistment processing resulting in his removal as a flight supervisor and his release from recruiting duty" but denied his request to void the report in its entirety. On 2 Jun 98, the ERAB denied his second request.

AIR FORCE EVALUATION:

The Chief, Inquiries/AFBCMR Section, AFPC/DPPPWB, reviewed this application and indicated that the first cycle the contested EPR was used in the promotion process was 97E8 (promotions effective Apr 97 - Mar 98). If the contested report is removed, he would be entitled to supplemental promotion consideration to the grade of senior master sergeant beginning with the 97E8 cycle provided he is recommended by his commander and is otherwise eligible.

A complete copy of the Air Force evaluation is attached at Exhibit B.

The Acting Chief, BCMR & SSB Section, AFPC/DPPPAB, also reviewed this application and indicated that Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record and to effectively challenge an EPR, it is necessary to hear from all the members of the rating chain—not only for support but for clarification/explanation. The applicant has failed to provide any information/support from the rating chain on the contested EPR. In the absence of information from evaluators, official substantiation of error or injustice from the Inspector General (IG) or Social Actions is appropriate, but not provided in this case. In this instance, the applicant contends another rater should have written his evaluation report because she directly supervised him for 216 days prior to his permanent change of station (PCS) move. However, DPPPAB has nothing official, such as an AF Form 2096, to substantiate his contention. He included several memorandums and character references from outside the rating chain of the contested report; however, while these individuals are entitled to their opinions

of the applicant and his duty performance, DPPPAB does not believe they were in a better position to render an evaluation of the applicant's duty performance during the specific reporting period than those specifically charged with that responsibility. It appears that the report was accomplished in direct accordance with applicable regulations.

In regard to applicant's contentions that his rating chain placed undue emphasis on an isolated incident, it is the evaluator's responsibility to consider incidents, their significance, and the frequency they occur when assessing performance and potential. Only the rater knows how much an incident influenced the EPR; therefore, the opinions of the individuals outside the rating chain are not relevant.

While the applicant contends the contested EPR is inconsistent with previous and subsequent performance, it is not feasible to compare one report covering a certain period of time with another report covering a different period of time. This does not allow for changes in the ratee's performance and does not follow the intent of the governing regulation, AFI 36-2403. The EPR was designed to provide a rating for a specific period of time based on the performance noted during that period.

Regarding applicant's contentions that the EPR is inconsistent with the awards he received during the reporting period and that the rater failed to gather input from the individual to whom he directly reported during the contested reporting period, Air Force policy charges a rater to examine the results of the ratee's work and get meaningful information from the ratee and as many sources as possible in order to render an accurate assessment of the individual. It is not up to the ratee to determine which accomplishments will appear on an EPR or whether or not it is an accurate assessment of his performance. Rather, it is the rater's responsibility to determine the achievements that will be reflected on the evaluation report. The applicant fails to realize or understand that, by virtue of human nature, an individual's self-assessment of performance is often somewhat "glorified" compared to an evaluator's perspective because it is based on perceptions of self. His report is not inaccurate or unfair simply because he believes it is.

While the applicant contends that a personality conflict existed between him and the members of his rating chain, in worker-supervisor relationships, some disagreements are likely to occur since a worker must abide by a supervisor's policies and decisions. Personnel who do not perform at expected standards or require close supervision may believe that an evaluator is personally biased; however, the conflict generated by this personal attention is usually professional rather than personal.

The applicant contends that the contested report was rendered as a direct result of an Article 15. DPPPAB concurs with Headquarters AFPC/DPPPAAE's 2 Jun 98 decision memorandum. The

report was rendered based on a change of reporting official (CRO) action, not his receipt of an Article 15. The ERAB removed a statement in Section V which referred to the Article 15 and the applicant's documentation does not prove the remainder of the information on the EPR is inaccurate or related to the Article 15 action. Based on the evidence provided, DPPAB recommends denial of the application.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the Air Force evaluations and provided a six-page response and a statement requesting his EPR closing 31 Jul 98 be added to his original package (see 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 probable error or injustice warranting removal of the contested report. Our decision hinged on the statement provided by the applicant's commander, dated 3 Mar 98. Based on the content of the statement, we are persuaded that the contested report was written based solely on the Article 15 punishment. In this respect, the commander stated that he was concerned about the accuracy and appropriateness of the substandard performance report written during the period in question. The commander also pointed out that the close-out of the Article 15 and the contested report occurred on the same date; that all previous and subsequent EPRs were rated an overall 5; and, the commander offering the Article 15, two months previous not only approved applicant's selection as Senior Noncommissioned Officer (SNCO) of the quarter and SNCO of the year, but was the board president. In view of this statement and in recognition of applicant's previous and subsequent superior performance, we believe that sufficient doubt exists as to the accuracy of the report. In addition, some question exists about whether the comments pertaining to the Article 15 were removed from the contested report by the ERAB as stated in their 2 Jun 89 decision. Therefore, to eliminate any doubt and possible injustice to the applicant, the Board recommends that the EPR in question be declared void and removed from his records.
4. In view of the removal of the EPRs, we also recommend that applicant's corrected record be provided supplemental promotion

consideration to the grade of senior master sergeant for all appropriate cycles beginning with cycle 97E8.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the EPR, AF Form 911, rendered for the period 27 Apr 95 through 13 Nov 95 be declared void and removed from his records.

It is further recommended that he be provided supplemental consideration for promotion to the grade of senior master sergeant for all appropriate cycles commencing with cycle 97E8.

If AFPC 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 on the individual's qualification for the promotion.

If supplemental promotion consideration results in the selection for promotion to the higher grade, immediately after such promotion the records shall be corrected to show that he was promoted to the higher grade effective and with a date of rank as established by the supplemental promotion and that he is entitled to all pay, allowances, and benefits of such grade as of that date.

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

Ms. Martha Maust, Panel Chair
Ms. Patricia D. Vestal, Member
Mr. Frederick A. Beaman, 111, Member
Mrs. Joyce Earley, Examiner (without vote)

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

- Exhibit A. DD Form 149, dated 20 Jul 98, w/atchs.
- Exhibit B. Letter, AFPC/DPPPWB, dated 7 Aug 98.
- Exhibit C. Letter, AFPC/DPPPAB, dated 31 Aug 98.
- Exhibit D. Letter, AFBCMR, dated 14 Sep 98.
- Exhibit E. Letter fr appl, dated 30 Sep 98, w/atchs.


MARTHA MAUST
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary
AFBCMR 98-02061

MAR 5 1999

MEMORANDUM FOR THE CHIEF OF STAFF

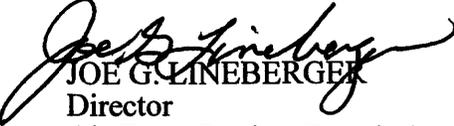
Having received and considered the recommendation of the Air Force Board for Correction of Military Records **and** under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that the Enlisted Performance Report, AF Form 911, rendered for the period 27 April 1995 through 13 November 1995 be, and hereby is, declared void and removed from his records.

It is **further** directed that he be provided supplemental consideration for promotion to the grade of senior master sergeant for all appropriate cycles commencing with cycle 97E8.

If AFPC 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 on the individual's qualification for the promotion.

If supplemental promotion consideration results in the selection for promotion to the higher grade, immediately after such promotion the records shall be corrected to show that he **was** promoted to the higher grade effective and with a date of rank as established by the supplemental promotion and that he is entitled to all pay, allowances, and benefits of such grade as of that date.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency