

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

AUG 25 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-02317

COUNSEL: None

HEARING DESIRED: No

---

APPLICANT REQUESTS THAT:

1. His general, under honorable conditions, discharge be voided and he be reinstated in the Air Force.
2. The Enlisted Performance Report (EPR) rendered for the period 16 Jul 96 through 2 Dec 96 be declared void and removed from his records.
3. If the above is denied, he requested, on 25 Jun 98, that his reenlistment eligibility (RE) code of "2B" (separated with a general or under other than honorable conditions (UOTHC) discharge (not eligible for enlistment again in the Air Force)) be changed so that he can serve on active duty in the Armed Forces (see Exhibit H).

---

APPLICANT CONTENDS THAT:

There was a vendetta against him by his first sergeant and a questionable and possibly illegal EPR based on the rater's signature. The supervisor who wrote the report in question should not have written it. The supervisor who wrote the EPR did not sign the performance feedback. He did not receive adequate legal advice from his appointed military defense counsel because the advice was rendered over the telephone and not in person.

In support of his appeal, the applicant provided a four-page statement, a copy of his discharge package, letters of appreciation, and other documentation relating to his appeal.

Applicant's complete submission is attached at Exhibit A.

---

STATEMENT OF FACTS:

Applicant's Total Active Federal Military Service Date (TAFMSD) was 8 Feb 95.

The applicant had two Enlisted Performance Reports (EPRs) in his records. His ratings were "4" and "2" (Referral report), respectively.

On 13 Sep 96, the applicant received a Letter of Counseling (LOC) for failure to report to his supervisor to discuss a returned check.

On 25 Sep 96, the applicant received a Letter of Reprimand (LOR)/Unfavorable Information File (UIF), for failure to report to the Unit Training Manager at 8 a.m. on 23 Sep 96 in uniform to start remedial training on his Career Development Course (CDC). He did not report until 9:05 a.m. in civilian attire.

On 27 Sep 96, the applicant received a LOR for failure to report for a self-made physical therapy appointment. He not only failed to show but did not let anyone in his chain of command know of his situation.

On 1 Oct 96, the applicant received a LOR/UIF for failure to report to chemical warfare training at 8 a.m. on 27 Sep 96.

On 12 Dec 96, the applicant received a LOR for having a get together of friends on 8 Dec 96 in his dormitory room. A Control Roster was also established in the administrative disciplinary process.

On 18 Dec 96, the applicant received a LOR for being late for work, the third time in eight days.

On 13 Jan 97, the applicant received a LOR for the following:

a. On 6 Jan 97, he was directed to perform bay orderly duties. However, the dormitory was not in inspection order.

b. On 27 Dec 96, he reported to work approximately 30 minutes late.

On 15 Jan 97, the applicant was notified by his commander that involuntarily discharge action had been initiated against him for minor disciplinary infractions. He was advised that discharge action was being recommended because: Between 21 Aug 96 and 6 Jan 97, he failed to report for duty eight times, was cited once for having guests in his room after 1 a.m., and was derelict in his duties on one occasion while performing Bay Orderly. He was advised he had a right to legal counsel and the right to submit statements in his own behalf. Applicant consulted legal counsel and submitted statements in his own behalf to include letters of appreciation. The case was reviewed by the base legal office and found legally sufficient to support separation. On 28 Jan 97, the discharge authority directed the applicant be given a general discharge without probation and rehabilitation.

On 1 Feb 97, the applicant was discharged under the provisions of AFI 36-3208 (Misconduct) with a general, under honorable conditions discharge in the grade of airman first class. He was credited with 1 year, 11 months, and 24 days of active service.

---

AIR FORCE EVALUATION:

The Military Personnel Management Specialist, AFPC/DPPRP, reviewed this application and indicated that this case has been reviewed for separation processing and there are no errors or irregularities causing an injustice to the applicant. The discharge complied with directives in effect at the time of his discharge. The records indicate his military service was reviewed and appropriate action was taken. DPPRP recommends denial of applicant's request to void his discharge. He did not identify any specific errors in the discharge processing nor provide facts which warrant his reinstatement in the Air Force. He was afforded due process as required by law and regulation.

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

The Chief, BCMR & SSB Section, AFPC/DPPPAB, reviewed this application and indicated that the contested report was written in direct accordance with Air Force policy in effect at the time it was rendered. No evidence has been provided suggesting it is inaccurate or the result of an injustice. In fact, the applicant provides a great deal of evidence that the report is an accurate reflection of his performance during the contested rating period. DPPPAB further states that, Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record and it takes substantial evidence to the contrary to have a report changed or voided. To effectively challenge an EPR, it is important to hear from all the evaluators on the contested report—not only for support but for clarification/explanation. The applicant has provided no information relating to the contested report from the evaluators. In the absence of information from the evaluators, official substantiation of error or injustice is appropriate, but not provided in this case. DPPPAB strongly recommends denial of applicant's request to void the contested EPR.

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

The Staff Judge Advocate, AFPC/JA, also reviewed this application and indicated that the misconduct met the legal standards necessary to satisfy both the referral EPR and the basis for the administrative separation with a general discharge. The applicant does not allege any procedural error in the processing

of his discharge or EPR. Applicant's challenge relies entirely upon an allegation that his first sergeant had a vendetta against him. However, he provides no proof that such a vendetta existed. Thus, he has failed to meet his burden of proving an error or injustice. Notwithstanding, even if he had proven the existence of a vendetta, the misbehavior evidenced in the allegations supports the actions taken. There is no injustice in discharging an airman for the offenses alleged, even if the offenses were discovered because of a personal dislike between the member and one of his supervisors. If the offenses occurred (and they obviously did), the end result was justified.

JA further states that the same holds true for the challenged EPR. The ratings and referral were clearly justified by the misconduct and it is irrelevant how the misconduct was discovered. The applicant also raises a second issue with regard to the EPR: an allegation that the supervisor who wrote the EPR should not have written it. In JA's view, he is in error. The documents he provided indicate that Senior Airman N--- was applicant's rater. JA does not know why a different person signed the notification for follow-up performance feedback but that action does not, in any way, impeach the validity of the EPR. The only relevant issues are (1) who was applicant's rater, and (2) did that rater rate the applicant. The issue of performance feedback is a judgment call on the part of the supervisor. When the supervisor genuinely feels at the time the initial feedback session is scheduled that insufficient supervisory time has elapsed, the supervisor is justified in withholding formal feedback. In this case, however, applicant clearly had ample formal feedback about his performance in the form of two verbal counselings, a letter of counseling, a LOR, and three LORs with UIF entries. The applicant has provided no evidence of error or injustice in his records and the Board should deny his application.

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

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluations and indicated, in part, that the documentation he submitted to request the EPR be voided from his records is, in fact, directly related regarding the EPR. The person who wrote the EPR was not his supervisor/rater. The initial feedback on 15 Oct 96 and the official entry into his 623a shows factual proof that his supervisor was SSgt T---, not SRA N--- and this proves there were errors and an injustice invoked on him. He has proven the EPR to be illegal because of the rater's signature. The contents of the EPR is irrelevant at this time. The focus of his challenge is the illegal signature based on the documentation and facts he submitted. This, by itself, is reason to void the EPR.

Applicant's complete response is attached at Exhibit G.

In a letter, dated 25 Jun 98, the applicant requests that should the Board deny his requests to void his discharge and reinstatement into the Air Force, he requests his RE code of "2B" be changed so that he can serve his country again on active duty in the Armed Forces (see Exhibit H).

---

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. Applicant's contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. We noted applicant's request that his RE code be changed; however, in view of our determination to not void his discharge and reinstate him in the Air Force or to remove the contested report from his records, this issue is moot. In view of the above and absent persuasive evidence to the contrary, we find no compelling basis to recommend granting the relief sought.

---

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 4 August 1998, under the provisions of Air Force Instruction 36-2603:

Ms. Martha Maust, Panel Chair  
Mr. Richard A. Peterson, Member  
Mr. Patrick R. Wheeler, Member  
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 97.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRP, dated 25 Aug 97.
- Exhibit D. Letter, AFPC/DPPPAB, dated 29 Aug 97.
- Exhibit E. Letter, AFPC/JA, dated 12 Nov 97.
- Exhibit F. Letter, AFBCMR, dated 1 Dec 97.
- Exhibit G. Letter fr applicant, dated 28 Dec 97.
- Exhibit H. Letter fr applicant, dated 25 Jun 98.

  
MARTHA MAUST  
Panel Chair