

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]

[REDACTED]

DOCKET NUMBER: 97-02723

COUNSEL: NONE

OCT 09 1998

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. Two Article 15s, imposed on 15 January 1997 and 1 April 1997, be declared void and removed from his records.
2. He be reinstated to the grade of master sergeant (E-7).
3. He and his spouse receive a join-spouse assignment.
4. The Enlisted Performance Report (EPR), for the period 27 August 1996 through 13 May 1997, be declared void and removed from his records.

~~APPLICANT CONTENDS THAT:~~
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A woman, not associated with the military in any way, falsely accused him of a consensual sexual relationship with her for a three week period. This was a deliberate attack against his career in the Air Force. Applicant states that this woman was on probation in [REDACTED] for fraud.

with regard to the contested EPR, applicant contends that his first sergeant and commander used the referral EPR to cancel his join-spouse assignment to [REDACTED]. He states the report is inaccurate and the [REDACTED] statement on the EPR regarding his midpoint feedback.

In support of his appeal, applicant submits four EPRs for the periods closing 26 August 1993 through 26 August 1996, two Air Force Achievement Medal certificates, an Air Force Commendation Medal certificate and, newspaper articles.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant reenlisted in the Regular Air Force on 19 May 1995 for a period of four years in the grade of Technical Sergeant (E-6).

On 26 December 1996, while serving in the grade of master sergeant, applicant was served with nonjudicial punishment proceedings under Article 15, Uniform Code of Military Justice (UCMJ), by his Squadron Section Commander. The allegations were: Specification 1: Applicant did, within the state of [REDACTED], on or about 31 October 1996, contribute to the delinquency of [REDACTED], a female under eighteen years of age, by giving her alcoholic beverages, in violation of [REDACTED] Statutes. Specification 2: Applicant, a married man, did, at or near [REDACTED] on divers occasions from about 31 October 1996 to about 19 November 1996, wrongfully have sexual intercourse with [REDACTED], a woman not his wife. The applicant, after consulting his defense counsel, waived his right to demand trial by court-martial and accepted nonjudicial proceedings under Article 15, UCMJ and elected to submit a written presentation.

On 15 January 1997, the Squadron Section Commander considered the matters presented by the applicant and found that he did not commit the offense of Specification 1, contributing to the delinquency of a minor. However, the commander found that applicant did commit the offense of adultery in Specification 2 of the Article 15. On 15 January 1997, the applicant's commander imposed the punishment which consisted of reduction to the grade of technical sergeant and forfeiture of \$975.45 pay per month for two months. The forfeiture was suspended until 14 July 1997. Applicant indicated he did not wish to appeal.

The Squadron Section Commander served the applicant his second Article 15 on 19 March 1997. The allegation was: Applicant did, at [REDACTED] AFB, [REDACTED] on or about 27 December 1996, with intent to deceive, sign an official statement that he stayed in [REDACTED] until 11 November 1996, which statement was totally false, and was then known by applicant to be so false. The applicant, after consulting his defense counsel, waived his right to demand trial by court-martial and elected to make a written presentation.

On 1 April 1997, the commander found that the applicant did commit the offense alleged and imposed punishment which consisted of reduction to the grade of staff sergeant and 30 days' extra duty. The applicant appealed and the appeal was denied on 21 April 1997.

Applicant received a referral EPR for the period 27 August 1996 through 13 May 1997. In his appeal, he does not submit information or support from the rating chain officials of the contested report.

Applicant's EPR profile is as follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
26 Aug 93	5
26 Aug 94	5
26 Aug 95	5
26 Aug 96	5
* 13 May 97	2 (Referral report)
13 May 98	5

* Contested report

AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, Air Force Legal Services Agency, AFLSA/JAJM, states that the applicant has not offered any new evidence to support his position that he was falsely accused with regard to the allegation of adultery in the 15 January 1997 Article 15. That issue was considered during the Article 15 process and was resolved against him. Nor has the applicant submitted any evidence or argument as to why his 1 April 1997 Article 15, for making a false official statement, should be set aside. In fact the applicant admitted to his commander and the Inspector General (IG) that he made the false statement. Based on the facts available, the applicant's nonjudicial punishment action was properly accomplished and he was afforded all the rights granted by statute. There are no legal errors requiring corrective action regarding the nonjudicial punishments. They recommend applicant's request to reinstate him to the rank of master sergeant be denied.

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

The Chief, Inquiries/BCMR Section, Enlisted Promotion Branch, AFPC/DPPPWB, states that they defer to the recommendation of AFLSA/JAJM. However, should the AFBCMR grant the applicant's request, his former effective date and date of rank for master sergeant was 1 June 1996.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in summary, that he is providing information to prove that the two Article 15s received were unjust and the commander made his decision based solely on a travel itinerary that was provided in a written presentation put together by his Area Defense Counsel on 8 January 1996. This information was not

provided to deceive the commander on any allegations. The allegation of adultery wasn't true then and isn't true today.

Applicant had submitted three responses, dated 8 January, 1 March and 30 April 1998.

Copies of the applicant's responses, with attachments, are attached at Exhibits F, G and H.

ADDITIONAL AIR FORCE EVALUATION

The Noncommissioned Officer in Charge (NCOIC), AF CONUS Assignment Procedures, Directorate of Assignments, HQ AFPC/DPAPP1, states that on 19 September 1996, applicant was selected for a join spouse assignment to ██████████ AFB, ██████████. This assignment was canceled on 22 May 1997 due to his demotion to the grade of staff sergeant and referral EPR. Applicant's spouse applied for and received a special duty assignment to ██████████ AFB, ██████████ in June 1997. They have no record with regard to applicant applying for a join spouse assignment to ██████████ AFB, ██████████. However, since he was reduced in rank and received a referral EPR, at the time of such application, he may not have been eligible to apply. Also due to the reduction in rank, he now does not have required retainability for a join spouse assignment.

A complete copy of this evaluation is attached at Exhibit I.

The Chief, BCMR and SSB Section, HQ AFPC/DPPAB, states, with regard to the contested EPR, that Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. 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 support from the rating chain of the contested EPR.

The burden of proof is on the applicant. He has failed to substantiate his contention that the contested report was not rendered in good faith by all of the evaluators, or that he was excessively punished. Based on the lack of evidence provided, they recommend denial of applicant's request.

A complete copy of this Air Force evaluation is attached at Exhibit J.

APPLICANT'S RESPONSE TO ADDITIONAL AIR FORCE EVALUATION:

Applicant submitted a response to the additional Air Force evaluations and attached a copy of a Security Police investigation.

Applicant's response, with attachments, is attached at Exhibit L.

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. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that the two Article 15s, imposed on 15 January 1997 and 1 April 1997, should be declared void and removed from his records; that he be reinstated to the grade of master sergeant; that he and his spouse receive a joint spouse assignment; or, that the Enlisted Performance Report (EPR), for the period closing 13 May 1997, be declared void and removed from his records. His contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the offices of the Air Force. We believe applicant's contentions have been adequately addressed by the Air Force and we therefore agree with their recommendations and adopt their 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. Therefore, we find no compelling basis to recommend granting the relief sought.
4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. 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

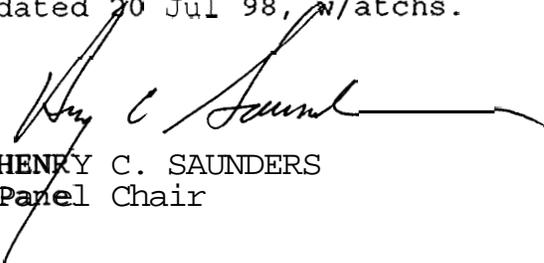
appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 3 September 1998, under the provisions of AFI 36-2603.

Mr. Henry C. Saunders, Panel Chair
Mr. Joseph G. Diamond, Member
Ms. Peggy E. Gordon, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 3 Sep 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSA/JAJM, dated 29 Oct 97.
- Exhibit D. Letter, AFPC/DPPPWB, dated 18 Nov 97.
- Exhibit E. Letter, AFBCMR, dated 8 Dec 97.
- Exhibit F. Applicant's Letter, dated 8 Jan 98, w/atchs.
- Exhibit G. Applicant's Letter, dated 1 Mar 98, w/atch.
- Exhibit H. Applicant's Letter, dated 30 Apr 98, w/atchs.
- Exhibit I. Letter, HQ AFPC/DPAPP1, dated 5 Jun 98.
- Exhibit J. Letter, HQ AFPC/DPPPAB, dated 17 Jun 98.
- Exhibit K. Letter, AFBCMR, dated 29 Jun 89.
- Exhibit L. Applicant's Letter, dated 20 Jul 98, w/atchs.



HENRY C. SAUNDERS
Panel Chair