

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02840

COUNSEL: None

HEARING DESIRED: No

APPLICANT REQUESTS THAT:

1. The Enlisted Performance Report (EPR) for the period 30 January 1995 through 18 October 1995 be replaced with a reaccomplished report covering the same period but reflecting an overall rating of "5."

2. His reenlistment eligibility (RE) code on his DD Form 214 be changed.

[Based on some of the comments in his letter to his Senator, applicant may also want retroactive promotion to the grade of staff sergeant and reinstatement on active duty with no break in service].

APPLICANT CONTENDS THAT:

No written feedback was ever given. Verbal feedback was misleading and the session was not conducted on 6 February 1995 as indicated on the EPR. The report also does not include current work accomplishments but lists false work statements. An overall rating of "5" would have easily resulted in his making technical sergeant, which would have allowed him to continue his career.

In support, applicant provides, in part, a reaccomplished EPR, his similar appeals submitted under AFI 36-2401, and statements from the contested report's indorser and commander. His complete submission is at Exhibit A.

STATEMENT OF FACTS:

Applicant was honorably released in the grade of sergeant from active duty due to reduction in force on 24 September 1996 and transferred to the Air Force Reserves, where he currently serves in the grade of staff sergeant (date of rank: 1 Jan 97). He has an RE code of "4D" (*Grade is senior airman/sergeant, completed at least 9 but less than 16 years of total active Federal military service, and has not been selected for promotion to staff sergeant*). He had 9 years, 11 months and 8 days of active service.

Applicant submitted two similar appeals on the contested EPR under AFI 36-2401. The first appeal was returned without action to allow him the opportunity to obtain an acceptable substitute report or modify his request. The applicant resubmitted the appeal and it was subsequently denied by the Evaluation Report Appeal Board (ERAB).

HQ AFPC/DPPPWB informally advised the AFBCMR Staff that the first time the report was considered in the promotion process was cycle 96E5 to staff sergeant. Should the Board void or upgrade the report, applicant would be entitled to supplemental promotion consideration. However, he would not become a selectee unless the contested EPR is upgraded to a "5." If promoted, the effective date and date of rank would be 1 September 1996.

AIR FORCE EVALUATION:

The Chief, BCMR & SSB Section, HQ AFPC/DPPPAB, reviewed this appeal and states that the letter from the rater's rater [sic] merely states the applicant did not receive either an initial or midterm feedback session. Lack of feedback does not invalidate a report. While current Air Force policy requires performance feedback for personnel, a direct correlation between information provided during feedback sessions and the assessments on evaluation reports does not necessarily exist. For example, if after a positive feedback session, an evaluator discovers serious problems, he/she must record the problems in the evaluation report even when it disagrees with the previous feedback. The applicant claims the rater had verbally attested he would give an overall "5" rating at the initial feedback session conducted telephonically. Since the rater is not heard from, one must assume a problem occurred and, due to the number of days the applicant was away from his primary duty station, there was no opportunity for the rater to provide the applicant written feedback before the report closed out and the rater rendered an overall rating of "4" vice "5." Applicant has failed to provide anything specific to prove he received anything less than a fair and accurately written evaluation. The author has labeled the various versions of the contested report and AF Form 77s provided by the applicant and has attached a copy of the original report, which the applicant did not provide. Denial is recommended.

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

The Special Programs & BCMR Manager, HQ AFPC/DPPAES, evaluated the case and states that the RE code is correct.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Complete copies of the evaluations were forwarded to the applicant on 11 November 1997 for review and comment within 30 days. As of this date, no response has been received by this office.

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 contested EPR should be replaced or that his RE code should be changed. Applicant's contentions and the supporting statements 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. Neither the applicant nor the evaluators have submitted persuasive evidence specifically demonstrating why the contested report is in error. The documentation provided does not reveal what the indorser and the commander know now that was not available for their consideration when the EPR was first rendered. Most significantly, the rater provides no explanation for why he is now willing to upgrade his original evaluation. Finally, failure to conduct a required or requested feedback session does not, by itself, invalidate an EPR. As for applicant's RE code, since it is a fact that he had at least 9 but less than 16 years of active service and had not yet attained the grade of staff sergeant, we find no error warranting correction. Inasmuch as we have concluded that applicant's records are not in error, we find no basis for reinstating him to active duty and promoting him to staff sergeant. 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.

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 11 June 1998, under the provisions of AFT 36 2603:

Mr. Thomas S. Markiewicz, Panel Chair
Mr. Robert W. Zook, Member
Ms. Olga M. Crerar, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 28 Aug 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPAB, dated 28 Oct 97, w/atch.
- Exhibit D. Letter, HQ AFPC/DPPAES, dated 28 Oct 97.
- Exhibit E. Letter, AFBCMR, dated 11 Nov 97.



THOMAS S. MARKIEWICZ
Panel Chair