

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SEP 23 1998

IN THE MATTER OF:

[REDACTED]
[REDACTED]

DOCKET NUMBER: 97-03508

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

The Enlisted Performance Report (EPR) rendered for the period 13 December, 1995 through 12 December 1996, be removed and declared void.

APPLICANT CONTENDS THAT:

The contested report is an inaccurate assessment of his performance during the contested period.

The applicant states he believes there is an unjust comment in Section VI and that the integrity of the entire EPR system was breached in this report.

In support of the appeal, applicant submits a personal statement, the contested report, performance feedback worksheet, AF Form 948 with appeal decision, warrant arrest, and other documentation.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of technical sergeant.

The applicant appealed the contested report under the provisions of AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports, and the appeal was considered and denied by the Evaluation Report Appeal Board (ERAB).

APR/EPR profile since 1993 reflects the following:

PERIOD ENDING	OVERALL EVALUATION
14 Aug 93	5
31 May 94	5
12 Dec 94	5

	12 Dec 95	5
*	12 Dec 96	4

* Contested report.

AIR FORCE EVALUATION:

The Chief, BCMR & SSB Section, Directorate of Personnel Program Management, HQ AFPC/DPPPAB, reviewed this application and states that although the rater contends the applicant would have received a "5" had he not been involved in an alcohol related incident, she does not admit she erred when she rendered the evaluation report. The applicant believes the report is inconsistent because the comments in Section V do not support ratings given in Sections III and IV. In particular, he points out the rater marked the "Acceptable" block in Section III, paragraph 4, rather than the "Unacceptable" block. The applicant asserts "How can the fact that I had an alcohol related incident which caused me to lose my base driving privileges for a year be deemed "ACCEPTABLE"? I would think this would be considered UNACCEPTABLE behavior." They agree. Alcohol related incidents are "unacceptable." They, therefore, determine the applicant's supervisor marked the "Acceptable" block in Section III, paragraph 4, to preclude rendering the applicant a referral report, with perhaps even a lower overall rating. She obviously considered him to be an exceptional performer, who had a one-time breach of judgment, and therefore, was willing to give him the benefit of the doubt. 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. The letter from outside the rating chain is not germane to this case. While the individual is entitled to his opinion of the applicant, we do not believe he was in a better position to evaluate the applicant's duty performance than those who were specifically charged with this responsibility.

The contested EPR was rendered to the applicant as a result of unacceptable off-duty behavior. A court of law found him not guilty of driving under the influence, his base commander considered drinking any amount of alcohol and driving, to be a serious offense worthy of reproof and this impropriety was reflected in his EPR. Therefore, they recommend denial of applicant's request.

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

The Chief, Inquiries/AFBCMR Section, Airman Promotion Branch, HQ AFPC/DPPPWB, also reviewed this application and states that should the Board void the contested report, and providing the applicant is otherwise eligible, he will be entitled to supplemental consideration beginning with the 97E7 cycle.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and states there are inconsistencies in the way his EPR was written. He is not admitting that his behavior was unacceptable. The rater's comments in the EPR failed to justify a low rating for conduct. When this situation first occurred, he filed a report with the Inspector General's office. However, their findings was there are other channels to take to have the EPR corrected. The applicant states if the rating chain thought that his behavior was unacceptable, some form of counseling should have been administered. It was not. The rater stated had it not been for the alcohol related incident, the EPR would have been a "5". The question is whether this comment belongs in this report and is it a just comment?

The Command Section for the squadron never made him enter the Substance Abuse Reorientation and Treatment (SART) Program. The AFI clearly states Awareness Education is the minimum requirement for a member involved in a substance abuse incident. If his first sergeant and command section felt that this wasn't applicable, they didn't feel this was a substance abuse incident.

This appeal is not about a couple of points on a promotion test. This is about clearing my professional conscious and not making me pay dearly for something that I shouldn't have to pay for. It's about being fair. It's about having my EPR accurate based on fact and not opinion.

Applicant's complete response is attached at Exhibit F.

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. Applicant was involved in an alcohol related incident and the contested EPR contains comments concerning the incident. We note that the applicant was found not guilty of driving under the influence of alcohol in a civilian court *of* law. While we note that the decision of the civilian court does not render the contested report flawed, we do believe that, based on the circumstances of the incident and after taking into consideration applicant's prior and subsequent performance, the contested report is unduly harsh. We also believe that the applicant's behavior was an isolated incident. In view of the above, we recommend the contested EPR be declared void and removed from his records. In addition, we recommend he be provided supplemental promotion consideration to the grade of master sergeant for cycle 97E7.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Enlisted Performance Report (EPR), AF Form 910, rendered for the period 13 December 1995 through 12 December 1996, be declared void and removed from his records.

It is further recommended that applicant be provided supplemental consideration for promotion to the grade of master sergeant for all appropriate cycles beginning with cycle 9737.

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 on the date of rank 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 27 August 1998, under the provisions of AFI 36-2603:

Mr. David W. Mulgrew, Panel Chair
Mr. Jackson A. Hauslein, Member
Mr. Terry A. Yonkers, Member

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

- Exhibit A. DD Form 149, dated 18 Nov 97.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPAB, dated 13 Dec 97.
- Exhibit D. Letter, HQ AFPC/DPPPAB, dated 7 Jan 98, w/atch.
- Exhibit E. Letter, SAF/MIBR, dated 27 Jan 98.
- Exhibit F. Applicant's Response, dated 26 Feb 98, w/atch.


DAVID W. MULGREW
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

SEP 23 1998

Office of the Assistant Secretary

AFBCMR 97-03508

MEMORANDUM FOR THE CHIEF OF STAFF

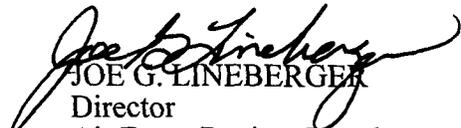
Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

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 910, rendered for the period 13 December 1995 through 12 December 1996, 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 master sergeant for all appropriate cycles beginning with cycle 97E7.

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 on the date of rank 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