

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SEP 11 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-02709

COUNSEL: NONE

HEARING DESIRED: NO

---

APPLICANT REQUESTS THAT:

1. The Enlisted Performance Reports (EPRs) rendered for the periods 2 April 1993 through 1 April 1994 and 2 April 1994 through 15 November 1994 be declared void and removed from his records.
2. Letters of Reprimand (LORs) dated 28 October 1993 and 18 January 1994 be removed from his records.
3. He be provided supplemental promotion consideration to the grade of technical sergeant for each promotion cycle from December 1994 through December 1997.

---

APPLICANT CONTENDS THAT:

The EPRs are inaccurate, unjust and prejudicial to his military career. He states that they are inaccurate because he's being rated as an otolaryngology surgical specialist (ENT technician), for which he was not serving in that capacity during the reporting periods. He states that he should have been rated as a surgical services craftsman. He states that the reports are unjust and prejudicial to his career due to the absence of an objective and non-partial evaluation of his talents as an ENT technician. He states that he was never afforded the opportunity to be evaluated in an ENT environment as his career counterparts.

His rater would have rated him an overall "4" had it not been for the LORs he received. The first LOR was for his wife's debt (two late payments on her privately owned vehicle that was obtained via a credit union loan), and the second LOR was for failure to pay his Deferred Payment Plan (DPP) bill (in the amount of \$106) between 12 December 1993 and 17 January 1994. He states that he should not have been responsible for his wife's debts. In reference to the failure to pay the DPP bill, he states that after providing Christmas for his four small children, he found himself a little short of money.

In support of the appeal, applicant submits a personal statement, copies of the EPRs, letters from individuals outside the rating chain, a copy of a letter to his congressman, a copy of a financial statement from a credit union, a copy of the two LORs, a copy of the Army and Air Force Exchange Service (AAFES) statement, a copy of a telephone contract, and other documents.

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 staff sergeant.

On 28 October 1993, the applicant received an LOR for failure to pay debts. He provided a rebuttal stating he should not have received the LOR because the debt was incurred by his spouse not him. He also states that the failure to pay a part of this debt was a credit union error. It appears this LOR was filed in the applicant's Personnel Information File (PIF).

On 18 January 1994, the applicant received a second LOR for failure to pay a debt to the Army and Air Force Exchange Service (AAFES). Based on documentation submitted by the applicant it appears this LOR was placed in the applicant's Unfavorable Information File (UIF) and updated in the Personnel Data System (PDS). The applicant provided rebuttal comments for this LOR as well. In his rebuttal he stated he contacted AAFES and made arrangements to pay a portion of the amount due. A receipt from AAFES reflects the applicant did pay a portion of the amount due, on the due date.

The applicant received a referral EPR for the period 1 April 1993 through 1 April 1994. The EPR is considered referral due to an unacceptable marking/evaluation in the category of conduct on or off duty. The EPR for the period 2 April 1994 through 15 November 1994 was not a referral report, however, it did state that the applicant on occasion loses focus and uses poor judgment which overshadow periods of quality performance.

EPR profile since 1992 reflects the following:

<u>PERIOD ENDING</u>	<u>EVALUATION OF POTENTIAL</u>
1 Apr 92	5
1 Apr 93	5
*1 Apr 94	2
*15 Nov 94	3
15 Sep 95	4
15 Sep 96	5

\*Contested reports.

---

AIR FORCE EVALUATION:

The Chief, Commander's Programs Branch, AFPC/DPSFC, reviewed this application and states that the use of the LOR by commanders and supervisors is an exercise of supervisory authority and responsibility. The LOR is used to reprove, correct and instruct subordinates who depart from acceptable norms of conduct or behavior, on or off duty, and helps maintain established Air Force standards of conduct or behavior. The LOR is optional for file in the UIF for enlisted personnel. They further state that UIFs may be used by commanders to form the basis for a variety of adverse actions as they relate to the member's conduct, bearing, behavior, integrity and so forth (on or off duty), or less than acceptable duty performance. Commanders have the option to remove an enlisted member's UIF early. Based only on the **LORS** received, they recommend denial of applicant's request.

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

The Chief, Appeals and SSB Branch, AFPC/DPPAB, also reviewed this application and states that it appears the contested reports were accomplished in direct accordance with Air Force policy in effect at the time they were rendered. In reference to the applicant stating that he worked outside his specialty and therefore could not have been rated properly, and that his rater did not obtain input from others before finalizing the contested EPRs; they state, ...it is the rater's ultimate responsibility to determine which accomplishments are included on the EPRs and whether or not it is necessary to gather additional information from other sources in order to render an accurate assessment of the individual. The rater obviously considered she had sufficient knowledge of the applicant's performance and rendered a valid assessment of his performance. 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. In regards to the applicant stating that the contested EPRs are inconsistent with previous performance; the EPR was designed to provide a rating for a specific period of time based on the performance noted during that period, not based on previous performance. They point out that the EPR was rendered to the applicant as a result of unacceptable off-duty behavior. Although the applicant contends the debts were not attributable to him, or a result of living beyond his means, they do not agree. They state that the applicant and his dependent made a series of decisions that ultimately led to his financial problems. The fact is, the applicant was expected to maintain standards of conduct and

responsibility at least as stringent as the rest of the non-commissioned officer (NCO) corps. While the applicant served overseas in an international environment, he allowed his personal priorities to influence his duty performance, which was appropriately reflected in his EPR. As members of the United States Air Force, we are sworn to and required to perform duties under all conditions. The fact is, the applicant was expected to maintain job performance at the level of the rest of the NCO corps. Rather than putting the mission first, the applicant chose to blame his lack of performance on the environment around him. His supervisor accurately portrayed the applicant's unsatisfactory duty performance and inability to meet standards on the contested EPRs. To remove them from his record would be unfair to all the NCOs who rose above their circumstances and satisfactorily performed their duties. They understand the applicant's desire for the board to direct voidance of the contested EPR because of the promotion advantage. However, removal of the contested report would make the applicant's record inaccurate. The contested reports were accomplished in direct accordance with Air Force policy in effect at the time they were rendered. Therefore, they recommend denial of applicant's request.

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

The Chief, Inquiries/AFBCMR Section, AFPC/DPPPWB, also reviewed this application and states that should the Board void the contested report in its entirety, upgrade the overall rating, or make any other significant change, providing the applicant is otherwise eligible, the applicant will be entitled to supplemental promotion consideration commencing with cycle 97E6.

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 states that the recommendations from DPPPAB and DPSFC appear to be opinionated and not based on facts nor supported by any clear Air Force Regulation or civilian law holding military members financially responsible for a spouse's alleged failure to honor their debts. He states, in fact, their recommendation is based on the unsupported assumption that military members are responsible for their spouse's debt regardless of whether or not they were a party to a contract or loan agreement. He notes, members are responsible for dependents when it concerns destruction of government property. He does not know of any requirement of an individual to be responsible for the actions of another emancipated adult without a court order requiring that individual to be liable for the debt. For which, in this case has not been accomplished.

In further review of his appeal, he contacted the NCOIC, Commanders Programs Branch, and asked him to prepare a response to the question "Are military members responsible for their spouse's debt and should letters of reprimand and other disciplinary tools be used against them for financial incursions of their spouse?" He also asked for clarification of the current Air Force Instruction AFI 36-2906, Financial Responsibility. He (the applicant) provided a copy of an E-mail document referencing AFI 36-2906.

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

---

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing laws or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After reviewing the evidence of record, we believe that the contested EPRs and **LORs** are unduly harsh based on the circumstances involved during the periods in question. It appears that applicant is being punished for debts his wife incurred. In addition, we note that applicant's financial problems were caused due to his short notice to PCS overseas. Applicant incurred many problems trying to prepare for this move and under the circumstances, we can understand why he incurred financial problems. In view of the totality of the evidence submitted and in the interest of justice and equity, we believe the contested EPRs and **LORs** should be declared void and removed from his records. In addition, we recommend he be provided supplemental promotion consideration beginning with cycle 97E6. His request for supplemental promotion consideration for cycles 9536 and 96E6 was reviewed; however, it has been determined that he would not have been selected by these cycles with a corrected record.

---

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

- a. The Enlisted Performance Reports, AF Forms 910, rendered for the periods 2 April 1993 through 1 April 1994 and 2 April 1994 through 15 November 1994, be declared void and removed from his records.

b. The Letters of Reprimand dated 28 October 1993 and 18 January 1994, be declared void and removed from his records.

It is further recommended that applicant be provided supplemental consideration for promotion to the grade of technical sergeant for all appropriate cycles beginning with cycle CY97E6.

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 applicant was promoted to the higher grade on the date of rank established by the supplemental promotion and that applicant is entitled to all pay, allowances, and benefits of such grade as of that date.

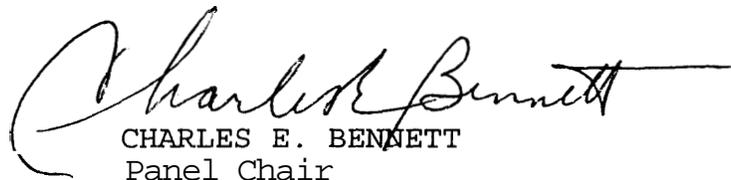
---

The following members of the Board considered this application in Executive Session on 6 August 1998, under the provisions of AFI 36-2603:

Mr. Charles E. Bennett, Panel Chair  
 Mr. Loren S. Perlstein, Member  
 Ms. Peggy E. Gordon, Member  
 Ms. Phyllis L. Spence, Examiner (without vote)

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

Exhibit A. DD Form 149, dated 18 Aug 97, w/atchs.  
 Exhibit B. Applicant's Master Personnel Records.  
 Exhibit C. Letter, AFPC/DPSFC, dated 17 Feb 98.  
 Exhibit D. Letter, AFPC/DPPPWB, dated 23 Feb 98.  
 Exhibit E. Letter, AFPC/DPPPAB, dated 27 Feb 98.  
 Exhibit F. Letter, AFBCMR, dated 23 Mar 98.  
 Exhibit G. Applicant's Response, dated 8 Apr 98, w/atchs.

  
 CHARLES E. BENNETT  
 Panel Chair



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

SEP 11 1998

Office of the Assistant Secretary

AFBCMR 97-02709

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:

a. The Enlisted Performance Reports, AF Forms 910, rendered for the periods 2 April 1993 through 1 April 1994 and 2 April 1994 through 15 November 1994, be, and hereby are, declared void and removed from his records.

b. The Letters of Reprimand dated 28 October 1993 and 18 January 1994, be, and hereby are, declared void and removed from his records.

It is further directed that applicant be provided supplemental consideration for promotion to the grade of technical sergeant for all appropriate cycles beginning with cycle CY97E6.

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 applicant ~~was~~ promoted to the higher grade on the date of rank established by the supplemental promotion and that applicant is entitled to all pay, allowances, and benefits of such grade ~~as~~ of that date.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency