

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00205

XXXXXXX

COUNSEL: [REDACTED]  
[REDACTED]

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

1. His Officer Performance Report (OPR) rendered for the period of 1 Mar 07 through 29 Feb 08 be removed from his Officer Selection Record (OSR).
2. His Joint Service Commendation Medal (JSCM) be upgraded to a Defense Meritorious Service Medal (DMSM). (Counsel amended request in rebuttal)
3. His corrected record meet a Special Selection Board (SSB) for the Calendar Year 2008B (CY08B/P0508B) Lieutenant Colonel Central Selection Board (CSB).

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APPLICANT CONTENDS THAT:

The contested OPR was diluted to reduce his chances of promotion in reprisal for identifying, as a Defense Travel System (DTS) reviewer, expenses the rater had claimed for a TDY that were not allowed.

In his supplemental statement, the applicant compares his 1 Mar 2007 through 29 Feb 2008 OPR and PRF with the previous one (1 Mar 2006 through 29 Feb 2007) written by the rater. He identifies the rater's failure to include the applicant brokered a \$3 billion deal to sell C-17's and C-130Js to Qatar in his OPR, although it was included in his PRF. Further, he identifies that the rater used words that downplayed his other accomplishments such as "assisted with foreign military sales" when the applicant "led the teams". Also, he used "challenge, groom, and advocate" which the applicant believes suggests that he is not immediately ready to take on command responsibilities.

In the Rater's Overall Assessment where previously his OPRs strongly pushed for Professional Military Education (PME) and recommendations for positions of increased responsibility, the rater failed to include a strong push statement which indicates he did not want him to be promoted; especially compared to the PRF the rater prepared for his 2007 Below-the-Primary-Zone (BPZ) consideration. In the first line of the 2008 PRF the term "foreign advisor" was substituted for the word "diplomat" in the 2007 PRF giving it less impact. Also, the statement "SDE a

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must, then reconnaissance SQ/CC" in the 2007 PRF is downgraded to "SQ command! Then send to SDE!" in 2008 and signals that he is not yet ready for SDE and, therefore, not ready for promotion.

He never received performance feedback sessions, as required. The 6 Dec 2007 date of the last feedback session completed that is indicated on the contested report was the meeting during which the rater expressed his belief that his Chinese background would lead him to become a Chinese spy if he became an Assistant Air Attache' and was not a feedback session.

The rater downgraded the duty description in the PRF using words that signaled a reduction in importance and breadth of duties. The phrase "directs/coordinates" in the 2007 PRF is downgraded to "executes" in 2008 which implies followership.

Although the applicant did not request the upgrade of his JSCM to a DMSM in his original application, in his rebuttal to the advisory opinions, his counsel states the applicant requests it be upgraded, contending the rater deliberately and improperly downgraded the decoration in retaliation for the applicant's efforts to ensure he did not make an improper TDY expense claim.

The applicant's complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The applicant is presently serving on active duty in the grade of major having assumed that grade effective and with a date of rank (DOR) of 1 Mar 2005.

On 15 Jan 2009, after the applicant left for a new assignment, he filed a complaint with the Inspector General (IG) citing nine allegations against the rater. On 8 Oct 2009 the initial investigation determined that none of the allegations were substantiated including two regarding the rater's fraudulent submission of travel vouchers and one regarding the rater directing the applicant to take leave. The IG Report of Investigation (ROI) is at Exhibit B.

The applicant requested a second investigation and on 17 Nov 2010 the Central Command (CENTCOM) IG submitted their report. The investigating officer (IO) agreed with all but one of the previous analyses and determinations. The IO did not concur with the Not Substantiated violation of AFI 36-03003, Military Leave Program, noting commanders cannot require members to take leave for the convenience of the government. He acknowledged this to be the case even though the applicant was initially granted holiday leave in conjunction with his TDY and the travel costs were at the government expense. When the applicant decided to return early, even though it violated the intent for

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granting him leave, and would cause the government to incur additional travel costs, it was still in violation of the regulation. The remaining eight allegations were Not Substantiated. The CENTCOM IG ROI is at Exhibit B.

On 14 Mar 2011, SAF/IGQ provided their final response to the applicant, advising him the leave he was forced to take would be reinstated and the other issues identified in his complaint, along with their analysis and documentation, would be provided to the rater's current leadership for them to take action as they see fit and they considered the matter closed. The SAF/IGQ letter is at Exhibit B.

The applicant has four non-selections for promotion to the grade of lieutenant colonel by the CY08B/P0508B, CY09B/P0509B, CY10A/P0510A, and CY11A/P0511a Lieutenant Colonel Central Selection Board (CSBs). The governing directive is AFI36-2501, *Officer Promotions and Selective Continuation*, 16 Jul 04.

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AIR FORCE EVALUATION:

HQ AFPC/DPSID recommends denial of voiding the contested OPR because there is no evidence it was unjust or inaccurate as rendered. The applicant did not prove that the feedback did not occur as recorded on the contested OPR; that he was the victim of reprisal resulting from filing an IG complaint against his rater; and the report was erroneous or unjust based on its content. The applicant only provided his personal opinion regarding what the applicant felt should or should not have been included on the OPR in order to make it a stronger report.

The complete DPSID evaluation is at Exhibit C.

HQ AFPC/PB recommends denial of the applicant's request for an SSB on the grounds his medal was not contained in his OSR. The applicant's JSCM was placed in his OSR on 5 Sept 2008 and seen by the board on 8 Sep 2008.

The complete PB evaluation is at Exhibit D.

HQ AFPC/DPSOO recommends denial of the applicants request to void the 29 Feb 2008 OPR and SSB consideration. This is based on the DPSID OPR denial recommendation and PB's verification that the citation was filed in the applicant's OSR in time to meet his 8 Sep 08 CSB.

The complete DPSOO evaluation is at Exhibit E.

HQ AFPC/DPSIDRA states the applicant's actual request is vague regarding a decoration. They were unable to verify that an injustice exists as the decoration was awarded to the applicant within the time limits outlined in AFI 36-2803, and it was in

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the applicant's folder when he met the CY08 Promotion Board. Therefore, they recommend disapproval for a change of the Given Under My Hand Date of the JSCM which they believed was the applicants request.

DPSIDRA also identifies that they do not have the authority to deal with Joint decorations which are awarded by the Department of Defense. However, upon the request of the applicant, the office will contact a Joint Agency for assistance in locating the appropriate Joint Decoration Headquarters so the applicant can submit a correction request.

A complete copy of the DPSIDRA evaluation is at Exhibit F.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Regarding the OPR, Counsel states the applicant did sign the contested OPR, but checked the "No" block stating he did not receive feedback as required. The applicant also requested a meeting with his additional rater to discuss feedback, but the rater refused to allow the applicant to contact the additional rater.

Counsel also objects to the claim that the applicant did not substantiate his claims of reprisal. She references the 14 Mar 2011 SAF/IGQ final response which identifies the leave the applicant was forced to take will be reinstated. Also, the indication that the applicant's complaint along with their analysis and documentation would be provided to the rater's current leadership for them to take action, led them to believe there was more wrong doing on the part of the rater, although Counsel admits they were not provided a copy of the analysis.

The applicant's IG complaint is used several times in the applicant's review of the Air Force evaluation to substantiate claims about the motivation of his rater and argue against DPSID's recommendations. Additionally, Counsel identifies that the applicant is not contending that his failure to be promoted is a reason to void the OPR. The applicant's position is that it is a consequence of the rater's deliberate and inappropriate retaliation and therefore should be removed.

In response to DPSIDRA addressing the JSCM, Counsel acknowledges that the medal was in his records when meeting the promotion board. Also, in response to the comment that the request was vague, Counsel says that in the first paragraph of the application, the applicant requests that his medal be upgraded from a JSCM to a DMSM in line with the standard decoration awarded for the applicant's tour. Counsel states the rater deliberately and improperly downgraded the decoration in retaliation for the applicant's efforts to ensure the rater did not make an improper TDY expense claim. Also, the deliberate delay in submitting the medal until right before the applicant's

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promotion board was done so the applicant would not have time to address the fact that he should have received a DMSM.

Counsel contends the applicant provided extensive and substantial information the rater took improper retaliatory action against him by drafting and signing an improper OPR and delaying and downgrading his decoration. The OPR was improper and should be removed and the decoration was improperly downgraded and should be replaced with the DMSM.

Counsel's complete response, with attachments, is at Exhibit H.

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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 error or injustice. After thoroughly conducting our independent review of the evidence of record and noting the contentions and documentary evidence presented by the applicant's counsel, we are not persuaded the applicant has been the victim of reprisal. Further, based on a totality of the evidence presented, we are not persuaded the applicant has met his burden of establishing the existence of an error or an injustice in his records. In this respect, we note the following:

a. The CENTCOM IG conducted two investigations of the applicant's allegations of misconduct by two officers, to include that his rater had reprised against him by removing him as a DTS review/approving official because of the questions he raised concerning a travel voucher he had submitted. Other than his allegation that his command required him to take additional leave prior to a TDY in violation of the governing Air Force Pamphlet, none of the allegations were substantiated, noting the removal of the applicant as a DTS review/approving official did not constitute a negative personnel action. In view of this finding, the applicant's leave was restored. The SAF/IGQ reviewed the investigations, provided their analysis to the rater's leadership for appropriate action, and considered the matter closed, as the final resolution was within the command's authority. The findings of the CENTCOM IG, as reviewed by SAF/IGQ, appear to be supported by the evidence of record and the applicant has failed to provide sufficient evidence to warrant overturning their decision. Moreover, there has been no showing the investigations were improperly conducted. Given the presumption of regularity in the operation of governmental affairs and in the absence of corroborative documentary evidence establishing impropriety, it is presumed that officers of the government, like other public officials, discharge their duties

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correctly, lawfully, and in good faith. The applicant has not provided sufficient evidence to overcome this presumption. As such, we find no basis to exercise our statutory authority to request further investigation.

b. We are not persuaded the contested OPR is an inaccurate assessment of his performance during the contested period. Although the applicant's counsel now contends the report was rendered in reprisal, we find no evidence the applicant raised this allegation in his previous complaints to the IG. While the applicant contends the report was written in such a way as to dilute and lessen his accomplishments, he provides no documentary evidence to substantiate this contention, other than his own personal statement. The applicant cites differences between the wording of the report in comparison to the previous report rendered by the same rater; however, we do not find this confirms the report is in error or unjust, as raters are tasked with evaluating an individual's performance and accomplishments during the period for which the report is rendered, and not those which occurred outside of the rating period. We are not convinced the rater was incapable of rendering a fair and unbiased evaluation of his performance. The rater was responsible for assessing his performance and in the absence of evidence to the contrary, he is presumed to have rendered his evaluation, honestly and to the best of his ability, based on his observations of the applicant's performance. We have thoroughly reviewed the documentation provided with this application and the evidence of record, and find no persuasive evidence showing he was rated unfairly or the rater and other evaluator were biased and prejudiced against him. With respect to the performance feedback the applicant did not receive, while such feedback is certainly desired and to be expected, Air Force policy holds that failure to conduct such sessions is not a valid basis to invalidate a performance report. Moreover, although the applicant states the rater refused to allow him to contact the additional rater to discuss feedback, nothing has prevented him from subsequently contacting him to garner his support of his request to void the report. Based on the foregoing, we do not believe the decision of the ERAB to deny his request to void the report should be overturned.

c. Although the JSCM was not listed on his OSB reviewed by the CY08B Lieutenant Colonel CSB, a copy of the citation to accompany the award was placed in his records prior to the board convening. In view of this and given our above findings concerning the contested report, we find no basis to recommend that he meet an SSB.

d. This Board is without authority to act on his request to upgrade the JSCM to a DMSM, since we are limited to those actions which the Secretary of the Air Force may take and note the DMSM is awarded in the name of the Secretary of Defense. Regardless, there is no evidence that he has pursued available avenues of administrative relief within the Department of Defense to request an upgrade of this decoration. We must also

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note that, although the applicant's counsel contends the decision not to award him an end-of-tour DMSM was an act of reprisal, as allegedly was the contested report, the applicant made no such allegation in either of his previous IG complaints.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered AFBCMR Docket Number BC-2012-00206 in Executive Session on 28 June 2012, under the provisions of AFI 36-2603:

XXXXX, Vice Chair  
XXXXX, Member  
XXXXX, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 28 Dec 11, w/atchs.
- Exhibit B. Master Military Personnel Records and IG Investigations (withdrawn)
- Exhibit C. Memorandum, AFPC/DPSID, dated, 27 Feb 12.
- Exhibit D. Memorandum, AFPC/PB, dated 23 Mar 12.
- Exhibit E. Memorandum, AFPC/DPSOO, dated 5 Apr 12.
- Exhibit F. Memorandum, AFPC/DPSIDRA, dated 5 Mar 12
- Exhibit G. Letter, SAF/MRBR, dated 18 Apr 12.
- Exhibit H. Letter, Counsel, dated 15 May 12, w/atchs.

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Vice Chair