

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-05342

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to correct his official military records to:

- a. Void his AF IMT 911, *Senior Enlisted Performance Report (MSgt thru CMSgt)* for the period 1 Apr 05 through 30 Sep 06.
- b. Void his AF Forms 911, *Enlisted Performance Report (MSgt thru CMSgt)* for the periods 1 Oct 08 through 30 Sep 09 and 1 Oct 09 through 30 Sep 10.
- c. Retroactively promote him to the rank of senior master sergeant (E-8) on the 07E8 promotion board applying his promotion board score used in the 06E8 promotion cycle.
- d. Directly promote him to the rank of chief master sergeant (E-9) using 09E9 board scores.

RESUME OF THE CASE

The applicant is a retired Air Force senior master sergeant (E-8).

On 10 Sep 13, the Board considered and partially granted his application, denying his request to void his Enlisted Performance Reports (EPR) for the periods 1 Apr 05 through 30 Sep 06 and 1 Oct 07 through 30 Sep 08, finding the applicant had provided insufficient evidence of an error or injustice to justify relief, and partially granting his request for supplemental promotion consideration to the rank of senior master sergeant for promotion cycles 06E8, 07E8, 08E8, 09E8, and 10E8. Supplemental consideration was granted for the 08E8, 09E8, and 10E8 cycles as the applicant should have received supplemental consideration when his EPR closing 30 Sep 07 was removed from his records. The applicant contended the EPRs were issued in reprisal for his Inspector General and Article 138 complaints against his leadership for their selective enforcement of the Senior Rater Endorsement policy. Additionally, the EPR closing 30 Sep 06 was not signed by the appropriate individual in his command chain, in violation of Air Force Instruction (AFI) 36-2406, *Officer and Enlisted Evaluation Systems*, paragraph 3.2.5.4., which prohibits making rating chain deviations solely for reasons of convenience. Further, he was unjustly denied multiple supplemental promotion considerations that should have resulted from missing decorations, wrong duty title on his Senior Noncommissioned Officer Evaluation Brief, late EPR submissions, and Evaluation Report Appeals Board decision to remove/replace EPRs from his records.

On 24 Feb 14, the applicant submitted an application for reconsideration requesting his EPRs for the periods 1 Apr 05 through 30 Sep 06 and 1 Oct 07 through 30 Sep 08 be voided and removed from his records and that he receives supplemental consideration for promotion cycles 07E8, 08E8, 09E8, and 10E8, with a promotion board score for each cycle. The applicant reiterated his contention that the EPR closing 30 Sep 06 was in violation of AFI 36-2406, due to deviations in his rating chain.

On 20 Jan 15, the Board denied the applicant's request for reconsideration for lack of newly discovered relevant evidence. The memorandum of support provided by the applicant was simply a reiteration of the statements previously provided and considered by the Board.

On 11 Feb 16, the applicant submitted an application for reconsideration, again requesting his EPR closing 30 Sep 06 be voided and removed from his records. In addition, he requested retroactive promotion to senior master sergeant by the 07E8 promotion board by applying the promotion board score used in the 06E8 promotion cycle, and upon retroactive promotion to senior master sergeant, he be directly promoted to the rank of chief master sergeant and returned to active duty. Alternatively, he be granted supplemental promotion opportunities to the rank of chief master sergeant which he was unfairly denied after his Board-directed supplemental promotion board for senior master sergeant. The applicant contended his promotion to senior master sergeant due to the supplemental consideration for the 09E8 promotion board, after his EPR closing 30 Sep 07 was removed from his records, validates his claim the EPR closing 30 Sep 06 could have unfairly affected his promotion due to rating chain deviations and a weak evaluation.

On 30 Nov 17, the Board considered and partially granted the applicant's request for reconsideration directing his EPRs for the periods 1 Oct 08 through 30 Sep 09 and 1 Oct 09 through 30 Sep 10 be corrected to reflect the rank of senior master sergeant and he be provided supplemental promotion consideration to the rank of chief master sergeant beginning with promotion cycle 11E9 and continuing with all subsequent promotion cycles for which he was eligible.

For an accounting of the applicant's original request and the rationale of earlier decisions, see the AFBCMR Letters and Records of Proceedings at Exhibit Q.

On 10 Feb 21, the applicant applied for reconsideration again requesting his EPR for the period 1 Apr 06 through 30 Sep 06 be voided and removed from his records. In addition, he requested his EPRs for the periods 1 Oct 08 through 30 Sep 09 and 1 Oct 09 through 30 Sep 10 be voided and removed from his records, and once voided, he be retroactively promoted to senior master sergeant using promotion board scores from the 07E8 cycle and then directly promoted to the rank of chief master sergeant on the 09E9 cycle using those promotion boards scores. He again contends his EPR closing 30 Sep 06 violated AFI 36-2406, paragraph 3.2.5.4. due to deviations in his rating chain. Further, his EPRs closing 30 Sep 09 and 30 Sep 10 violated AFI 36-2406, paragraph 3.15 through 3.15.2, *Inappropriate Stratification and Board Statement*. The Board directed the rank change on his EPRs closing 30 Sep 09 and 30 Sep 10, but this created an AFI violation as it did not address the impact these reports would have on promotion board consideration. His 2009 EPR, Section VI reflected #1/8 E7s, and Section VII reflected #1 of 43 AF E7s, stratifying him against master sergeants instead of other senior master sergeants. The applicant contended he asked Air Force Personnel Center (AFPC) Promotions to address this matter before his supplemental promotion board consideration but was directed to apply again to the Air Force Board for Correction of Military Records (AFBCMR). In support of his reconsideration request, the applicant submitted the following new evidence: a statement on his behalf signed by his immediate rater during the report period closing out on 30 Sep 06.

The applicant's complete submission is at Exhibit R.

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2406, *Officer and Enlisted Evaluation Systems*, dated 15 Apr 05:

3.2. Responsibilities.

3.2.5. The Unit Commander or Appropriate Staff Officer:

3.2.5.4. Determines the rating chain for assigned personnel based on Air Force and ML policy. The ratee's parent ML must approve rating chains that involve evaluators from other MLs. The following applies to flight commander and flight chief rating chains and applies

to both the operational and functional communities. When an officer heads a flight, the position is flight commander and is rated by the squadron commander. When an enlisted person or civilian heads a flight, the position is a flight chief. **NOTE:** Commanders may deviate from the normal (supervisory) rating chain only when necessary to meet rank requirements or to accommodate unique organizational structures and situations where personnel are temporarily loaned or matrixed to other activities outside the ratee's assigned PAS. It is prohibited to make rating chain deviations (such as skipping an evaluator) solely for reasons of convenience. **EXAMPLES:** Do not skip a rater's rater who is temporarily unavailable (on leave, TDY, etc.). Do not skip a rater's rater for the sole purpose of affording another official in the supervisory chain (i.e., the rater's rater's rater or the senior rater) the opportunity to endorse or comment in a report.

AFI 36-2406, *Officer and Enlisted Evaluation Systems*, dated 8 Nov 16:

Table 10.2. *Correcting Minor Errors on Evaluations.*

Rule 3. If a Supplemental Promotion Board (SSB), or the AFBCMR has changed an individual's rank due to retroactive promotion resulting from a review, submit a request according to Table 10.1. In these cases, the evaluation will be annotated with a statement that reads "Member promoted to **** with a retroactive effective date prior to the date this evaluation was rendered."

AFI 36-2406, *Officer and Enlisted Evaluation Systems*, dated 14 Nov 19 (Incorporating Change 2, 16 Mar 22):

3.15. *Prohibited Evaluator Considerations and Comments.* Certain items are prohibited for consideration in the performance evaluation process and will not be commented upon on any Officer Evaluation System form (see Chapter 8 for the PRF). Except as authorized in the following paragraphs, do not consider, refer to, or include comments regarding:

3.15.1. *Inappropriate Stratification and Broad Statements.*

3.15.1.1. Stratification statements, when authorized, are not mandatory. The omission of stratification does not constitute an error or injustice. Note: An evaluator may remove or change a stratification at any point during the drafting process of an evaluation.

3.15.1.2. Company Grade Officers (CGOs) and/or Field Grade Officers (FGOs) are not authorized peer groups for stratification purposes.

3.15.1.3. Officers will not be stratified based on additional duty positions and will not be stratified against enlisted personnel.

3.15.1.4. Awards are recognition based on a given set of criteria. Accordingly, stratification statements based on awards are not authorized (i.e. #1/50 as Squadron CGO of the Quarter).

3.15.1.5. Stratification statements for Second Lieutenants (O-1s) are prohibited. While this quantitative comparison against a peer group is prohibited, evaluators should provide these officers with clear feedback regarding their performance in relation to Air Force standards and major performance areas (e.g. executing the mission, leading people, managing resources, improving the unit).

3.15.1.6. Stratification Quotes. The use of stratification statements from anyone other than the evaluator is prohibited. Exceptions: (1) Senior rater/senior leader stratification may be quoted if they are a signatory on the officer evaluation and do not have the opportunity to provide comments (e.g. Reviewer), (2) an evaluator (must be a signatory) may stratify at a level below, as long as it is within their scope of responsibility, (3) stratification from a deployed wing commander/equivalent or higher level evaluator who is not a signatory on the evaluation and the evaluation is signed by the deployed rater, additional rater, and home station senior rater is authorized, and (4), optional deployed LOE stratifications may be quoted in future evaluations as long as stratification meets the criteria described in this guidance and is not previously documented in the permanent record.

3.15.2. Statements outside the Scope of Responsibility. Stratification and broad statements outside the scope of the evaluator's responsibility or knowledge are prohibited. Evaluators can only stratify personnel within the confines of their direct rating chain and/or scope of responsibility (i.e., within the senior rater identification). A broad statement is one which implies knowledge of Air Force members not assigned within the evaluator's realm of knowledge.

AFI 36-2502, *Enlisted Airman Promotion/Demotion Programs*, dated 12 Dec 14 (Incorporating Change 2, 14 Oct 16):

2.9. *Supplemental Promotions for SSgt Through CMSgt.* AFPC/DPSOE conducts in-system supplemental promotion consideration monthly after initial promotion selection and announces supplemental selection board dates for eligible Airmen. See paragraph 1.15 for DOR and effective date corrections. Supplemental promotion consideration will not be granted if the error or omission appeared on/in the Airman's DVR, PRDA/ARMS record, or senior NCO selection folder and no corrective or follow-up action was taken by the Airman prior to the promotion selection date for SSgt through TSgt and prior to the original evaluation board for MSgt through CMSgt. Fully documented supplemental consideration requests will be submitted in writing, to include the Airman's unit commander's recommendation to the MPS. MPSs will review and forward requests to AFPC/DPSOE via CMS.

2.9.1. If an Airman missed one or more testing cycles (due to deployment or hospitalization, etc.), he/she is considered retroactively. This is done using scores from the first available WAPS tests upon return. If selected for previous cycles, the Airman will receive a retroactive date of rank and back pay.

AIR FORCE EVALUATION

AFPC/DP3SP (Evaluation Program) recommends denying the applicant's request to void and remove his EPRs closing 30 Sep 06, 30 Sep 09, and 30 Sep 10. The EPRs are in compliance with AFI 36-2406 governing at the time of the evaluation close out dates. The AFBCMR directive, dated 19 Jan 18, ordered the applicant's EPRs closing 30 Sep 09 and 30 Sep 10 be corrected to reflect his rank as senior master sergeant. In accordance with AFI 36-2406, dated 8 Nov 16, Table 10.2., Note 3, retroactive promotions are to be reflected on evaluations with the statement, "Member promoted to **** with a retroactive effective date prior to the date this evaluation was rendered."

The applicant contended he received unauthorized stratifications against a lower rank due to the above referenced corrections. While he did receive multiple stratifications on his 2010 report, he was not rank stratified on his 2009 report as he claimed. In his 30 Sep 09 EPR, the stratification of "1 of 8 SNCOs" did not make a rank reference. The 30 Sep 10 EPR did contain multiple rank stratifications among E-7s, and does not match the corrected rank; however, the stratifications were accurate at the time the evaluation was rendered. Typically, the rank is not corrected due to retroactive promotion, but a statement is annotated at the top of the evaluation in accordance with AFI 36-2406. The statement should have been placed on the top of the evaluations rather than void the evaluations entirely.

Additionally, the applicant again contended the Additional Rater on his EPR closing 30 Sep 06 was intentionally skipped and the squadron commander signed in their place; however, did not provide sufficient evidence to indicate an unauthorized Additional Rater signed the evaluation.

The complete advisory opinion is at Exhibit T.

AFPC/DPMSPP (Enlisted Promotions) recommends denying the applicant's request for retroactive promotion to senior master sergeant using 07E8 promotion board scores followed by

direct promotion to chief master sergeant during the 09E9 promotion cycle. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant contended his EPRs with closing dates of 30 Sep 06, 30 Sep 09, and 30 Sep 10 were unfair and affected his promotion opportunity. He additionally contended the rating chain deviation was made to affect his promotion by writing a weak evaluation and excluding major accomplishments. AFBCMR directive, dated 16 Sep 13, provided the applicant supplemental promotion consideration to senior master sergeant for cycles 08E8, 09E8, and 10E8, with him being selected for promotion during the 09E8 cycle and receiving a 1 Jul 09 date of rank. His new date of rank rendered him eligible for supplemental promotion consideration to chief master sergeant beginning with the 11E9 promotion cycle.

On 19 Jan 18, AFBCMR directive ordered the correction of the applicant's EPRs closing 30 Sep 09 and 30 Sep 10 to reflect his rank as senior master sergeant and updates were made to his evaluations as directed. The applicant was provided supplemental promotion consideration to the rank of chief master sergeant for cycles 11E9 and 12E9 but was not selected.

The Air Force Personnel Center Evaluations office recommended the applicant's request to remove his 30 Sep 06 EPR be denied due to insufficient evidence. Consequently, his request for promotion to senior master sergeant for cycle 07E8 cannot be granted. Additionally, recommend his request for direct promotion to chief master sergeant be denied as current Air Force policy does not provide for automatic promotion.

The complete advisory opinion is at Exhibit U.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 27 Apr 23 for comment (Exhibit V), and the applicant replied on 10 May 23. In his response, the applicant reiterated his contentions from his application for reconsideration. Regarding the AFPC/DP3SP advisory opinion, he referred to his new evidence, the letter from his immediate rater, which identified her rater as the Military Personnel Flight Chief, and contended this individual should have been his Additional Rater on the 30 Sep 06 EPR. He also referred back to supporting documentation he provided during his original application. The applicant further noted the advisory stated ranks are not corrected due to retroactive promotion, but instead a statement is annotated on the top of evaluations. He remarked the Evaluations section did not follow their own guidance, and while they recommended a denial, they only suggested the AFBCMR place the statement on top of the evaluation rather than void it entirely. The applicant continued to contend the reports should be voided as the unauthorized stratifications against a lower rank negatively impacted his promotion board scores and continued to impact his career, as all Air Force members know evaluations are the most important part of the promotion board, accounting for over half of the member's score. When correcting the rank and not including the statement, it did not give the promotion board members' clear guidance on why the stratifications were not for the current rank level.

The applicant's complete response is at Exhibit W.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits the Board remains unconvinced the evidence presented demonstrates an error or injustice regarding his EPR for the period closing 30 Sep 06. The Board concurs with the rationale and recommendation of AFPC/DP3SP and finds a

preponderance of the evidence does not substantiate the applicant's contention an unauthorized Additional Rater intentionally signed the evaluation. Further, based on this finding, the Board also concurs with the rationale and recommendation of AFPC/DPMSPP regarding the applicant's request for retroactive promotion to senior master sergeant, which renders his request for direct promotion to chief master sergeant on the 09E9 cycle moot. Therefore, the Board finds no basis to recommend granting this portion of his requested relief.

4. Sufficient evidence has been presented to demonstrate the existence of an error or injustice concerning the execution of AFBCMR directive, dated 19 Jan 18, correcting the applicant's EPRs closing 30 Sep 09 and 30 Sep 10. For this portion of the applicant's request, the Board notes and adopts the AFPC/DP3SP rationale regarding administrative correction of the applicant's rank on these evaluations in accordance with AFI 36-2406, Table 10.2., Note 3., and consequently, recommend the applicant receive supplemental promotion consideration to chief master sergeant for cycles 11E9 and 12E9 once the evaluations are corrected. Therefore, the Board recommends the applicant's records be corrected as indicated below.

5. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

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

Upon administrative correction of AF Forms 911, *Enlisted Performance Report (MSgt thru CMSgt)*, closing 30 Sep 09 and 30 Sep 10, to comply with Air Force Instruction 36-2406, *Officer and Enlisted Evaluation Systems*, Table 10.2, Note 3, he be provided supplemental promotion consideration to the rank of chief master sergeant for promotion cycles 11E9 and 12E9.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2012-05342 in Executive Session on 15 Jun 23 and 26 Jun 23:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit Q: Record of Proceedings, w/ Exhibits A-P, dated 30 Nov 17.
Exhibit R: Application, DD Form 149, w/atchs, dated 10 Feb 21.
Exhibit S: Documentary evidence, including relevant excerpts from official records.
Exhibit T: Advisory Opinion, AFPC/DP3SP, w/atch, dated 8 Apr 23.
Exhibit U: Advisory Opinion, AFPC/DPMSPP, dated 27 Apr 23.
Exhibit V: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Apr 23.
Exhibit W: Applicant's Response, w/atchs, dated 10 May 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR