

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01609

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He be promoted to the ranks of technical sergeant (E-6) and master sergeant (E-7).
2. He receive the associated back pay for the promotions.

APPLICANT'S CONTENTIONS

He requests the promotions for the injustices he incurred in 2016. He was wrongfully accused and further punished when he provided evidence of his innocence. He was accused of fraud when he requested emergency leave travel to attend his wife's grandmother's funeral on the basis of loco parentis. He received a letter of reprimand (LOR) and then received an additional LOR when he provided his response explaining the LOR was in error. He also received a referral enlisted performance report (EPR), control roster (CR) action, unfavorable information file (UIF), his decoration was canceled and he was not allowed to test for promotion. He went to the inspector general (IG) and they instructed the first LOR be removed.

On 24 Jan 22, the referral EPR was removed by the evaluation report appeals board (ERAB). However, removing the EPR left an incomplete story. He is still a staff sergeant (E-5) with 15 years of service. He was also denied higher ratings and decorations because of a lie. Every EPR after the referral EPR was affected as he did not receive the higher endorsements. He also did not receive decorations he otherwise would have received due to a lie.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a staff sergeant (E-5) in the Regular Air Force.

On 13 Oct 16, the applicant received an LOR from the Officer in Charge (OIC) of Maintenance Operations. In Jul 16, he approached his first sergeant for emergency leave to visit his wife's grandmother who was in the hospital. The first sergeant explained his wife's grandmother would need to meet specific loco parentis requirements for his family to qualify for emergency leave in accordance with AFI 36-3003, *Military Leave Program*. The applicant stated his wife's grandmother did not meet the criteria. Several months later, on or about 10 Sep 16, while on a temporary duty (TDY) assignment, the applicant approached his TDY first sergeant and requested emergency leave to visit his wife's grandmother who was in the hospital again. The applicant repeatedly answered affirmatively his wife's grandmother met the requirements of loco parentis. Based on his false representations, he took emergency leave from 11 to 26 Sep 16 and attempted to obtain funded airfare in the amount of \$4,707.78.

In his response to the LOR, UIF and CR dated 18 Oct 16, he stated he researched AFI 36-3003 and his wife's grandmother did in fact meet the requirements for loco parentis. It did not occur to

him to go back to his first sergeant to prove he was wrong. He also did not see a need to provide his first sergeant an update to his wife's grandmother's current health as there was no requirement to do so. On 10 Sep 16, while on TDY, he received a telephone call his wife's grandmother had fallen out of bed, was unconscious and on the way to the emergency room. He contacted his TDY first sergeant and informed him he needed to get his wife home to be with her grandmother. When asked if he qualified for in loco parentis, he responded "yes" because he did qualify. Upon his return from emergency leave on 27 Sep 16, not even three full hours after his flight, he was called into his first sergeant's office, and accused of being a liar. There was no empathy or concern for his family's well-being. He was assumed to be guilty before any facts were considered. He wrote in his response to the LOR on 13 Oct 16 he was being punished due to suspicion and that he had never lied to anyone. He also wrote he did not feel as though an apology was warranted as he had done nothing wrong. He wrote establishing a UIF and CR for a staff sergeant with nine years' service who had never done anything wrong was appalling.

AF Form 1058, *Unfavorable Information File Action*, dated 21 Oct 16 reflects a UIF was established, the applicant was placed on the CR and the LOR was placed in the UIF.

On 1 Nov 16, the OIC of Maintenance Operations issued the applicant a second LOR for his response to the initial LOR dated 13 Oct 16. The LOR stated he took the occasion to be disrespectful to a superior commissioned officer and accused him of personally attacking him.

In a response to the LOR on 7 Nov 16, the applicant stated it was never his intent to be disrespectful. His intent was to be factual as possible. While his response was emotional, it was a very frustrating situation. There was nothing he could do to prove he did not lie. He apologized that his rebuttal response was perceived as negative and disrespectful.

In a memorandum for record (MFR) dated 8 Dec 16, the applicant affirmed his wife's grandmother was in loco parentis for his wife for a period of at least 5 years before she became 21 years of age or entered military service in accordance with AFI 36-3003.

On 13 Jan 17, the IG informed the applicant an analysis of his complaint was conducted under AFI 90-301, *Inspector General Complaints Resolution System*. Since the matter was not appropriate for the IG, it was referred to the group commander (GP/CC) for further review. The GP/CC conducted an inquiry and found the applicant's complaints were partially substantiated. It was found the emergency leave/travel requirements were met and therefore the LOR and CR were rescinded and that the emergency leave/travel voucher was approved. However, the second LOR for actions following the first was found to be valid and therefore that LOR would be maintained in the UIF until its disposition. The IG found the response satisfied the requirements of the applicant's complaint and closed his case.

On 31 Jan 17, the ERAB voided the applicant's referral EPR for the period ending 31 Jan 17 and replaced it with an AF Form 77, *Letter of Evaluation (LOE)*, due to the IG complaint resolution memorandum. The EPR was also missing mandatory comments from the additional rater as well as missing a referral memorandum.

The applicant received a "Promote" recommendation on his EPR for the period ending 31 Jan 16.

The applicant's records includes AF Form 77, for the period 1 Feb 16 to 31 Jan 17, "Not rated for the period. Evaluation removed by order of the Chief of Staff, USAF, Member received promotion recommendation of "Promote."

The applicant also received "Promote" recommendations on his EPRs for the periods ending 31 Jan 18, 31 Jan 19, 31 Jan 20, 31 Jan 21 and 31 Jan 22 EPRs.

The Case Management System (CMS) shows the applicant was granted supplemental promotion consideration for promotion to technical sergeant for promotion cycles 17E6, 18E6 and 19E6 and was not selected for promotion. The CMS case shows the applicant's 2018 test scores and promote rating were applied back to 2017.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2501, *Enlisted Promotion and Demotion Programs*, paragraph 2.6.1.1., Promotion selections are made using the weighted airman promotion system (WAPS) and data in the military personnel data system (MilPDS). Only EPRs received during each grade's period of promotion eligibility (maximum of three force distributed evaluations) are used to compute the EPR weighted factor score. Table 2.4, Calculating Points and Factors for Promotion to SSgt and TSgt. Factors include specialty knowledge test (SKT), promotion fitness examination (PFE), decorations and EPR Promotion Recommendations.

AIR FORCE EVALUATION

AFPC/DP2SPP recommends denial. The applicant was not eligible to test for Cycle 17E6 due to the referral EPR. On 31 Jan 17, the ERAB removed the applicant's referral EPR. His record was corrected with an LOE with a "Promote" recommendation as a result of the IG complaint resolution memorandum. The removal of the referral EPR initiated supplemental consideration. On 24 Jan 22, he was granted supplemental consideration for promotion cycles 17E6, 18E6 and 19E6 and was rendered a nonselect for each cycle.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 23 Jan 23 for comment (Exhibit E). In an undated response, he states the injustice occurred when he was accused and denied WAPS testing because of the accusation. The IG substantiated his case. There never would have been a second LOR if the first one was not issued. The ERAB should have removed his EPR immediately because it was unjust but it was not rectified until much later. This caused him extreme emotional distress. It caused his wife and newborn son to not return to England. Divorce followed the incident. The same OIC and first sergeant spread the story he defrauded the government and never told anyone he was proved innocent. He heard the story from random people and had to explain what had happened and how he attempted to rectify the situation and was still being punished.

The applicant's complete response is at Exhibit F.

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 concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant

contends the removal of his referral EPR did not remove the injustice and his future promotion opportunity was impacted. However, the Board finds the applicant has provided insufficient evidence to warrant direct promotions to the ranks of technical sergeant and master sergeant. In this respect, the applicant's GP/CC conducted an inquiry into the applicant's IG complaint. Based upon the findings, the applicant's LOR dated 13 Oct 16, referral EPR and CR action were removed and his leave/travel voucher was approved. The applicant then received supplemental promotion consideration for promotion cycles 17E6, 18E6 and 19E6 and was rendered a nonselect for each cycle. The Board finds the actions taken to rectify the applicant's records based on the findings in his IG complaint were proper and fitting and no additional relief is warranted. Therefore, the Board recommends against correcting the applicant's records.

4. 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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01609 in Executive Session on 16 Feb 23:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Jun 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: CMS Case #14091769 dated 23 Feb 22.
Exhibit D: Advisory Opinion, AFPC/DP2SPP, dated 31 Oct 22.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Jan 22.
Exhibit F: Applicant's Response, undated.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.