

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02211

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His referral enlisted performance report (EPR) for the reporting period 1 Dec 17 to 25 Aug 18 be void and removed from his record.
2. He be granted supplemental promotion consideration for the rank of master sergeant (E-7).

APPLICANT'S CONTENTIONS

The EPR includes inaccurate information. His supervision provides statements showing they feared reprisal and was forced to include falsified information in the EPR. He attempted to contact the squadron commander on the EPR but he refused to speak with him.

On 16 Aug 22, the evaluation reports appeal board (ERAB) denied his request for removal of the EPR.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a technical sergeant (E-6) in the Air Force.

AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt thru CMSgt)*, dated 12 Apr 18, shows the applicant received an Article 15 for wrongfully abusing a certain public animal from 1 Jun 17 to 30 Nov 17, in violation of Article 134, Uniform Code of Military Justice (UCMJ). The applicant also violated a lawful order to not contact any military working dog (MWD) handlers from 21 Feb 18 to 26 Feb 18, in violation of Article 92, UCMJ. The applicant's punishment included reduction to the rank of staff sergeant (E-5), suspended through 25 Oct 18, forfeiture of \$1,655.00 pay per month for two months and 15 days of extra duty.

AF Form 2096, *Classification/On-the-Job Training Action*, dated 20 Jun 18, shows the applicant's Air Force Specialty Codes (AFSC) 3P071 and 3P051A (Security Forces and MWD Handler) were removed for cause. The military personnel data system (MilPDS) shows the applicant was reclassified into AFSC 3F071 (Personnel).

AF Form 590, *Withdrawal/Reinstatement of Authority to Bear Firearms*, the applicant's commander initiated withdrawal of the applicant's right to bear firearms for Article 15 for wrongfully abusing a public animal (MWD). The conduct was to the prejudice of good order and discipline in the Armed Forces.

The applicant received a referral EPR for the reporting period ending 25 Aug 18 for nonjudicial punishment (NJP) for violation of Article 92, failure to obey an order or regulation, and Article 134, abusing a public animal.

On 6 Jun 22, the applicant requested the ERAB remove his referral EPR for the period ending 25 Aug 18. He stated he was the kennel master for the squadron and was accused of acts that were never proven to be true. There was no evidence to support the accusations and he was not even on base at the time of the events but was deployed to Qatar. Further, he was never supervised by the flight chief who signed the EPR as his rater. The applicant provided letters of support to include from the flight chief who signed the EPR as his rater dated 17 Jun 22. He stated the accusations were found to be false. He was also not the applicant's supervisor but was forced to write the referral EPR by the squadron commander (SQ/CC). The applicant was also not even in the country at the time but was deployed. It was not discovered until after the applicant received the punishment and was reassigned on a permanent change of station (PCS) assignment that the accuser had made the false statements because she was angry for being marked down on her EPR. The operations superintendent who signed the referral EPR also provided a letter of support dated 22 Jun 22. He stated the investigation was rushed. The charges were based on hearsay and brought forward when the applicant was deployed. The member who made the accusations seemed to have had a personal vendetta.

On 8 Dec 22, the applicant requested voluntary retirement effective 1 Dec 23. Per Special Order dated 27 Dec 22, the applicant's request for retirement effective 1 Dec 23 was approved.

The applicant advised he filed an IG complaint on 14 Nov 22 (FRNO 2022-20122). SAF/IGS advised in an email on 19 Jan 23, the applicant's IG case was closed as an IG assist on 22 Nov 22. The IG assistance is the process of providing a complainant with information that allows the complainant to engage with an outside agency or alternate grievance channel to address their concerns.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 90-301, *Inspector General Complaints Resolution*, paragraph 3.19.1, IGs will assist or refer complaints when they fall under the purview of another office or agency, or when they are covered by other directives with established grievance channels. Paragraph 3.24. Dismissing a Complaint, A complaint may be dismissed following a complaint analysis if there is no assertion or evidence of a standard being violated.

AIR FORCE EVALUATION

AFPC/DP3SP recommends denial. The EPR was completed in accordance with existing instructions at the time and was signed by all parties as an accurate and objective report. The applicant did provide documents from the rating chain, with the exception of the unit commander, and those who worked directly with the applicant supporting his claim. The applicant contended his rating chain feared alleged reprisal; however, an inspector general (IG) or equal opportunity (EO) complaint was not filed by the applicant or any of the signatories substantiating the claims of the applicant. The applicant and those who feared reprisal had the opportunity to pursue an IG/EO or other avenue of justice to substantiate the claims.

The applicant filed an ERAB on 6 Jun 22 but the board disapproved the request on 16 Aug 22.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 Nov 22 for comment (Exhibit D), and the applicant replied on 17 Nov 22. In his response, the applicant contended he did not file an IG complaint at the time due to fear of reprisal from the SQ/CC as stated in the flight chief's signed statement. He recently submitted an IG complaint to his local IG who forwarded the complaint to the IG office at his last base. Along with proof of the complaint, he provides screen shots of the MilPDS that shows he was not on base during the alleged timeframe.

The applicant's complete response is at Exhibit E.

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 the victim of an error or injustice. While the Board notes the recommendation of AFPC/DP3SP against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, the Board finds the letters of support provided from the rater dated 17 Jun 22 and additional rater dated 22 Jun 22 sufficient to conclude the referral EPR was factually incorrect, based on false accusations and a rushed investigation. Moreover, it appears the applicant was not on station but deployed during the timeframe the alleged misconduct occurred. Accordingly, the Board finds the applicant has sustained his burden of proof for removal of the referral EPR for the period ending 25 Aug 18 and he receive supplemental promotion consideration for promotion to the rank of master sergeant. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

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

- a. AF Form 910, *Enlisted Performance Report (AB thru TSgt)*, for the reporting period of 1 Dec 17 to 25 Aug 18 be void and removed from his records and an AF Form 77, *Letter of Evaluation*, be placed in lieu of with the comment "Not rated for the above period. Evaluation was removed by Order of the SecAF."
- b. He be considered for supplemental promotion consideration for promotion to master sergeant (E-7) for the CY19, CY20, CY21, CY22 and CY23 Master Sergeant Promotion Cycles.

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-2022-02211 in Executive Session on 7 Feb 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 17 Aug 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP3SP, dated 15 Nov 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Nov 22.
Exhibit E: Applicant's Response, w/atchs, dated 17 Nov 22.
Exhibit F: Email, SAF/IGS, dated 19 Jan 23.

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.

X

Board Operations Manager, AFBCMR