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**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00171

Work-Product

**COUNSEL:** Work-Product

**HEARING REQUESTED:** YES

**APPLICANT'S REQUEST**

Her referral AF Form 910, *Enlisted Performance Report (AB thru TSgt) (EPR)*, issued during the rating period of 1 Dec 16 to 30 Nov 18, be removed.

**APPLICANT'S CONTENTIONS**

The referral EPR was improperly issued and should be removed from her military records. She was unsupervised for 491 of the 730 days and was not counseled nor mentored on corrective behavior. According to AFI 36-2406, *Officer and Enlisted Evaluation Systems*, paragraph 1.10.2.1., vague comments about work performance were made and does not exactly state how, when, and what "requires continued improvement in initiative and NCO leadership skills" so that she would know what improvements need to be made. Also, the referral EPR does not state what simple tasks she needs proper supervision and coaching in. It does not state when, where, how, and what the supervisor trained and mentored her in. The referral EPR does not state how, when, where, and what exactly the rater wanted communicated and how, when, where, and what leadership skills she needed improvement in. Throughout the 10 contact days she was graded on, the rater consistently failed to communicate to her the wants and needs expected of her. When the rater was unavailable or absent from drill and/or exercise she represented the rater by attending administrative functions and informing personnel when medical equipment was not in compliance and needed repair or replacement. She briefed assemblies on improvements needed to be made in exercises. At various meetings she took the initiative to represent her rater and made sure various tasks were completed.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air National Guard technical sergeant (E-6).

On 7 Mar 18, according to Work-Product dated 23 Mar 18, the applicant was honorably discharged from the Air Force Reserve.

On 8 Mar 18, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the Air National Guard for a period of six years.

On 5 May 19, the applicant's rater notified her she was referring her EPR for the period 1 Dec 16 through 30 Nov 18 to her because it contains ratings that make the evaluation a referral as defined by AFI 36-2406, paragraph 10. Specifically, her ratings of "met some but not all expectations" in Section III, *Performance in Primary Duties/Training Requirements* and Section IV,

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*Followership/Leadership*. The memorandum informed the applicant if she believed this evaluation is inaccurate, unjust, or unfairly prejudicial to her career, she may apply for a review of the evaluation under AFI 36-2406, Chapter 10, *Correction of Officer and Enlisted Evaluation Reports*.

On 5 May 19, the applicant acknowledged receipt of the referral EPR and indicated “I do not wish to make a rebuttal.”

On 6 Jun 19, according to AF Form 910, for the period 1 Dec 16 through 30 Nov 18, Section XII, *Ratee’s Acknowledgment*, the applicant acknowledged all required ACA [Airman Comprehensive Assessment] feedback was accomplished during the reporting period and feedback was provided upon receipt of this report.

On 14 Jul 20, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was honorably discharged from the Air National Guard. She was credited with 2 years, 4 months, and 7 days of net service for this period.

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

#### **APPLICABLE AUTHORITY/GUIDANCE**

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

Paragraph 1.10. *Referral Evaluations*. Referral procedures are established to allow the ratee due process by giving the ratee an opportunity to respond and/or rebut any negative ratings or comments before it becomes a matter of record. Additionally, it allows evaluators to consider all the facts, some they may not have been aware of, prior to the evaluation becoming a matter of record.

Paragraph 1.10.2.1. *Vague Comments*. Do not make non-specific and/or vague comments about the individual’s behavior or performance. EXAMPLE: "Due to a recent off-duty incident, Lt Jackson’s potential is limited." Vague comments do not fully explain the incident or behavior, nor do they justify how and why potential is limited (see paragraph 1.12.4. for examples of acceptable statements). When doubt arises as to whether a comment is a referral comment or not, refer the evaluation. NOTE: If the comment was on your evaluation, would you want the opportunity to respond to that comment; if yes, refer the evaluation. It is better to afford the ratee the due process now while all evaluators are available, than to try and refer it later if directed by the ERAB or AFBCMR.

#### **AIR FORCE EVALUATION**

NGB/A1PP (Force Management) recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. Identified in Section I, Block 9 and Section III, Block 2, *Performance In Primary Duties and/Training Requirements*, of AF Form 910, the EPR articulates the applicant was not rated for 491 days as a result of transferring from the Air Force Reserve to the Air National Guard. Section I, Block 10 annotates 239 days were under supervision. Section II, Block 2, *Job Description*, identifies key duties, tasks, and responsibilities the applicant was being rated on. The applicant received the referral EPR on 5 May 19, in conjunction with a referral document from the referring evaluator which is in compliance with AFI 36-2406, dated 8 Nov 16, paragraph 1.10.5.1.1. Furthermore, in accordance with AFI 36-2406, under Ratee Responsibilities, paragraph 1.10.5.2.3., “the ratee will provide rebuttal comments to the referral reviewer within 3 duty days, (30 calendar days for non-EAD members) from the date of receipt...” The applicant signed,

acknowledging receipt of referral EPR and referral document on 6 Jun 19, which included a hand-written statement “I do not wish to make rebuttal.”

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 21 Jul 23 for comment (Exhibit D), and the applicant replied on 10 Aug 23. In her response, the applicant through counsel contended before she signed the referral EPR, she was harangued of her supposed wrongs of which she did not know how to make right. She did not provide a rebuttal to the referral EPR because she did not realize the full consequences of her actions and felt both, rushed and discouraged from utilizing her rights.

The referral EPR was given to her without warning, and she was unable to improve since she was never given any paperwork nor was she on probation to improve on her supposed wrongs. Without being counseled or given time to correct her shortcomings, which are necessary actions and lacking in her record as they do not exist, her referral EPR is a violation of the AFI. She at no time had a face-to-face interaction with her supervisor. In fact, she never received any administrative action nor midterm feedback nor counseling on her job performance to correct any subpar job performance.

A closer look at the referral EPR also highlights that the evaluation violates paragraph 1.10.1 of the above-mentioned regulation, as it contains the vague comment “satisfactorily perform job tasks when asked; requires continued improvement in initiative & NCO leadership skills.” This sentence does not state what the applicant failed to do and thus is a vague, generic comment that violates the controlling regulation and ultimately makes this evaluation unjust.

The advisory opinion ignores the missing information and is solely focusing on the applicant signing “no rebuttal” submitted. The applicant’s lack of submission does not negate the improper actions by leadership and failure to follow the regulation. A member should be given the opportunity to correct before a referral EPR is issued, and vague comments are inappropriate, both of which occur here.

The applicant’s complete response is at Exhibit E.

### **FINDINGS AND CONCLUSION**

1. The application was not 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 applicant contends her EPR was improperly issued because she was unsupervised for the majority of the reporting period and was not counseled nor mentored on her behavior. The applicant’s contentions are duly noted; however, she has failed to provide sufficient evidence she was rated unfairly or the report is in error. Therefore, the Board concurs with the rationale and recommendation of NGB/AIPP and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Evaluators are responsible for assessing the applicant’s performance during the period in question and are presumed to have rendered their evaluations based on their observation of the applicant’s performance. Specifically, evidence indicates the applicant received a referral EPR because she “met some but not all expectations” listed in Section III and Section

IV of her EPR; therefore, the OPR had to be referred to her. This allowed the applicant due process by giving her an opportunity to respond to, or rebut any negative ratings or comments before it became a matter of record. Specifically, the applicant was informed if she believed this evaluation was inaccurate, unjust, or unfairly prejudicial to her career, she may apply for a review of the evaluation per AFI 36-2406, chapter 10, *Correction of Officer and Enlisted Evaluation Reports*. However, on 5 May 19, the applicant indicated she did not wish to provide a rebuttal despite given the opportunity to do so. In addition, according to Section XII, *Ratee's Acknowledgment*, the applicant acknowledged all required feedback was accomplished during the reporting period and feedback was provided upon receipt of this report. Now, over four years later, she claims the comments on her EPR were inappropriate, vague, and cannot be substantiated. In view of the forgoing, the Board finds the EPR was accomplished in direct accordance with the applicable guidance. Once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The burden of proof is on the applicant and she has not substantiated the contested EPR was not rendered in good faith by all evaluators based on knowledge available at the time. Accordingly, the Board recommends against correcting the applicant's records.

4. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement.

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 Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-00171 in Executive Session on 19 Oct 23:

- Work-Product, Panel Chair
- Work-Product, Panel Member
- Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 30 Dec 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PP, w/atchs, dated 12 Jul 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jul 23.
- Exhibit E: Applicant's Response, w/atchs, dated 10 Aug 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.

12/12/2024

X *Work-Product*

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Board Operations Manager, AFBCMR  
Signed by: *Work-Product*