



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01077

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Officer Performance Report (OPR) for the period of 2 Sep 19 through 1 Sep 20 be expunged from his records.

APPLICANT'S CONTENTIONS

His subpar performance report was the result of a retributive act by his primary rater, thereby invalidating the OPR under DAFI 36-2406, *Officer and Enlisted Evaluations Systems*, Attachment 2. His 2019-2020 OPR is invalid due to three factors: pre-existing bias, inconsistency of ratings, and interpersonal conflict. He filed a reprisal compliant with the Defense Intelligence Agency Inspector General (DIA/IG), alleging his OPR was an act of reprisal by his rater. His rater conceded he had preconceived notions regarding his performance.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force lieutenant colonel (O-5).

The applicant was issued an OPR for the reporting period of 2 Sep 19 through 1 Sep 20. Block III, *Performance Factors*, reflects "Meets Standards."

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

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 1034 and AFI 90-301, *Inspector General Complaints Resolution* reprisal against military members for making protected disclosures is prohibited.

10 U.S.C. § 1034(g)(2), Correction of Records When Prohibited Action Taken. In resolving an application for which there is a report of the IG, the AFBCMR shall review the report of the IG.

10 U.S.C. § 1034(h), Review by the Secretary of Defense (SECDEF). Upon the completion of all administrative review, the member or former member who made the allegation, if not satisfied with the disposition of the matter, may submit the matter to the SECDEF. The SECDEF shall decide to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2023-01077

Work-Product

Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

AFPC/DP3SP recommends denying the application. Paragraph 3.15.1.1 of AFI 36-2406, dated 20 May 20, states “Stratification statements, when authorized, are not mandatory. The omission of stratification does not constitute an error or injustice.” A2.5.1. states “an evaluation is not erroneous or unfair because the applicant believes it contributed to a non-selection for promotion or may impact future promotion or career opportunities. Requests to add optional statements such as Developmental Education/Professional Military Education, assignment/job/command "push" recommendation, add an omitted award or stratification to an evaluation or PRF will normally not form the basis for a successful appeal. These statements are not mandatory for inclusion and their omission does not make the evaluation inaccurate. It must be proven the evaluation is erroneous or unjust based on its content. A2.5.2 further states “ratings are not erroneous or unjust simply because they are inconsistent with previous ratings. An evaluation documents performance during a specific period and reflects performance, conduct, and potential at that time, in that position. An ability to function well in one position at a given time may change in another job at another time. Sometimes an individual can stay in the same job and a change in supervisors will produce a change in performance standards which, depending on how well the individual adapts, could cause a marked change in the next evaluation. The Board will not approve requests to void evaluations simply because they are inconsistent with other evaluations.

The applicant has not provided the required evidence of the error/injustice done to him. The evidence he submitted consisted of his version of the story and character statements from friends/coworkers. Furthermore, all of the alleged offenses were found to have insufficient evidence by an independent IG investigation. Lack of supporting documentation, unsupported accusations, and the applicant’s personal opinion provide no valid basis for voiding a report. An evaluation report is considered to represent the rating chains best judgment at the time it is rendered.

DIA/IG case 2021-000004-OI, Reprisal Investigation, found “there is insufficient evidence to list any of the subjects for retaliation; abuse of authority; gross mismanagement; obstruction of justice; witness intimidation; and fraud, waste, and abuse.”

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 26 Sep 23 for comment (Exhibit D), and the applicant replied on 25 Oct 23. In his response, the applicant reiterated his contention the DIA/IG report is proof of his rater’s pre-existing subjective biases. He concedes his character reference letters do not by themselves override the assessment, but he believes they offer credibility to the overwhelming amount of evidence to conclude he was not objectively rated, and the OPR should be expunged. Additionally, his rater violated DAFI 36-2406 by providing an assessment of his performance during his initial performance feedback session, also a clear indicator of pre-existing biases against him.

The applicant’s complete response is at Exhibit E.

FINDINGS AND CONCLUSION

AFBCMR Docket Number BC-2023-01077

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. Therefore, the Board recommends against correcting the applicant's records.

The applicant alleges his OPR assessment was the result of a retributive act by his primary rater. Based on the authority granted to this Board pursuant to 10 U.S.C. § 1034, the Board reviewed the complete evidence of record to reach our own independent determination of whether reprisal occurred. Based on our review, the Board concludes the applicant has failed to establish within the supporting evidence provided, he was reprised against. Therefore, in the absence of persuasive evidence to the contrary, the Board does not find the applicant has been the victim of reprisal pursuant to 10 U.S.C. § 1034.

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 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-2023-01077 in Executive Session on 11 Jun 24:

, 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 3 Apr 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SP, dated 19 Sep 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Sep 23.
- Exhibit E: Applicant's Response, dated 25 Oct 23.
- Exhibit F: DIA/IG Report, Case 2021-000004 (WITHDRAWN) dated 16 Sep 21.

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

AFBCMR Docket

Work-Product

Work-Product

Manager, AFBCMR