

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00266

COUNSEL: None

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

The Enlisted Performance Reports (EPRs), closing 21 July 1989 and 18 November 1989, reflecting an overall promotion recommendation of "4" be removed from his records, and the EPRs, closing 21 July 1989 and 18 November 1989 reflecting an overall promotion recommendation of "5" which he has provided, be filed in his records in their proper sequence.

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APPLICANT CONTENDS THAT:

The rater and indorser of the contested EPRs have provided statements indicating that if it had not been for a local policy of no "5" EPRs for airmen, he would have received a "5" on both EPRs.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letters prepared by the appropriate offices of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

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AIR FORCE EVALUATION:

The Chief, BCMR and SSB Section, AFPC/DPPPA, reviewed this application and states that both reaccomplished EPRs not only have a change in the overall promotion recommendations from a "3" to a "5", but also upgrades in several of the performance factors in Section III as well. However, the rater has not explained why he has upgraded these performance factors. Further, neither of the evaluators have dated their signatures on either reaccomplished EPRs, and there is no commander's review and

signature on either report. Therefore, they recommend denial of applicant's request.

A complete copy of the Air Force evaluation is attached at Exhibit C.

The Chief Inquiries/AFBCMR Section, AFPC/DPPPWB, reviewed this application and states that the first time the two EPRs impacted applicant's promotion consideration was cycle 94A5.

A complete copy of the Air Force evaluation is attached at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and provided a response which is attached at Exhibit F.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of a probable error or injustice to warrant removing the contested reports from the applicant's records. The applicant contends that based on a local Consolidated Base Personnel Office (CBPO) policy as a result of a misunderstanding of the new Enlisted Evaluation System (EES), no airmen were assigned overall promotion recommendations of "5" on their EPRs. In support of this contention, the applicant has provided reaccomplished reports and statements from the rater and indorser of the contested EPRs indicating that if it had not been for the local CBPO policy, the applicant would have received an overall recommendation of "5" on the contested reports. However, the reaccomplished reports are not dated by the rating and indorsing officials, and the commander's review section has not been completed. Furthermore, although the reaccomplished reports contain upgrades in several of the performance factors in Section 111, there is no explanation provided by the rater for these upgraded performance factors. Should the applicant provide a statement from the commander at the time the contested reports were rendered, the Board would entertain his request for reconsideration. Based on the statements from the reporting officials, it appears the contested reports were influenced by the local CBPO policy and are not an accurate assessment of the

applicant's performance during the contested periods. In view of the statements from the rating officials and since the applicant has indicated that if the contested reports are not replaced with the reaccomplished reports, they be voided, we believe the contested reports should be removed from the applicant's records. In addition, we recommend he be provided supplemental promotion consideration for all appropriate cycles beginning with cycle 94A5. Therefore, we recommend his records be corrected to the extent indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Enlisted Performance Reports, AF Forms 910, rendered for the periods 22 July 1988 through 21 July 1989 and 22 July 1989 through 18 November 1989, be declared void and removed from his records.

It is further recommended that he be provided supplemental promotion consideration to the grade of staff sergeant for all appropriate cycles beginning with cycle 94A5.

If AFPC discovers any adverse factors during or subsequent to supplemental consideration that are separate and apart, and unrelated to the issues involved in this application, that would have rendered the applicant ineligible for the promotion, such information will be documented and presented to the board for a final determination on the individual's qualification for the promotion.

If supplemental promotion consideration results in the selection for promotion to the higher grade, immediately after such promotion the records shall be corrected to show that he was promoted to the higher grade on the date of rank established by the supplemental promotion and that he is entitled to all pay, allowances, and benefits of such grade as of that date.


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The following members of the Board considered this application in Executive Session on 7 April 1998, under the provisions of AFI 36-2602:

Mr. Vaughn E. Schlunz, Panel Chair  
Mr. Robert Zook, Member  
Mr. Michael P. Higgins, Member  
Mr. Phillip E. Horton, Examiner (without vote)

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form **149**, dated **28 an 98**, w/atchs.
- Exhibit **B**. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPA, dated **5 Feb 98**, w/atchs.
- Exhibit D. Letter, AFPC/DPPPWB, dated **30 Jan 98**.
- Exhibit E. Letter, AFBCMR, dated **11 Feb 98**.
- Exhibit F. Letter, Applicant, dated **23 Feb 98**, w/atchs.

  
VAUGHN E. SCHLUNZ  
Panel Chair



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS

5 FEB 98

MEMORANDUM FOR AFBCMR

**FROM:** HQ AFPC/DPPPA  
550 C Street West, Suite 8  
Randolph AFB TX 78150-4710

**SUBJECT:** AFI 36-2603 Application—Staff Sergeant

Requested Action. The applicant requests removal and replacement of the 21 Jul 89 and 18 Nov 89 enlisted performance reports (EPRs).

Basis for Request. The applicant contends the two EPRs were written based on a consolidated base personnel office (CBPO) policy as a result of the misunderstanding of the new enlisted evaluation system (EES). The "policy" was that airmen would not receive a "5" EPR.

Recommendation. Time-bar. If, however, the AFBCMR considers, then we recommend denial.

Facts and Comments.

a. The application is not timely filed. The application may also be dismissed under the equitable doctrine of laches, which denies relief to one who has unreasonably and inexcusably delayed in asserting a claim. Laches consists of two elements: inexcusable delay and prejudice to the Air Force resulting therefrom. In the applicant's case, he has waited over eight years to file and took no action on the claim before that. The applicant claims the reason he did not file sooner was because he did not want to give the impression that he was trying to "beat the system" since he is a personnelist. This is in spite of the fact that the applicant has letters of support from his rater and indorser—both dated in 1991. The applicant has inexcusably delayed his appeal (providing no explanation) and, as a result, the Air Force no longer has documents on file, memories fade, and this complicates the ability to determine the merits of his position. In addition, the test to be applied is not whether the applicant discovered the error within three years, but whether, through due diligence, it was discoverable (see OpJAGAF 1988/56, 28 Sep 88, and the cases cited therein). Clearly, the alleged error(s) upon which he relies has/have been discoverable since the alleged error(s) occurred. In short, the Air Force asserts that the applicant's unreasonable delay regarding a matter now dating back eight years has greatly complicated its ability to determine the merits of the applicant's position.

b. If the AFBCMR considers, then we recommend denial due to lack of merit. By law, a claim must be filed within three years of the date of discovery of the alleged error or injustice (10 U.S.C.1552[b]). It is obvious that the errors claimed here were discoverable at the

time they occurred. The applicant has not offered a concrete explanation for filing late. While we would normally recommend the application be denied as untimely, we are aware that the **AFBCMR** has determined it must adhere to the decision in the case of *Detweiler v. Pena*, 38F.3d591 (D.C. Cir 1994)--which prevents application **of** the statute's time bar if **the** applicant has filed within three years of separation or retirement.

c. No similar application was submitted under AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. We did not return the application since the contested reports are more **than** three years old.

d. The governing directive is AFR 39-62, Enlisted Evaluation System (EES) , 1 Mar 89.

e. The applicant contends that when the two contested EPRs were written, they were written based on a CBPO policy **as a result of** a misunderstanding of the **EES** which was implemented on 1 May 89. The policy was "airmen would not receive a '5' **EPR.**" The applicant states that had these EPRs been "5s" "as they should have been," he would have been promoted to staffsergeant in **an** earlier cycle which would have given him 10 months more time-in-grade. In addition, he stated he would have received an additional five weighted points. He states, "The lack of these five points may very well jeopardize my chance for promotion to TSgt in future cycles."

f. As support, the applicant provides statements, dated 31 Jan 91 and 13 May 91, from **both** his rater and indorser, respectively. Both of these individuals state the applicant far exceeded expectations and was deserving of a "5" rating. However, due to a "misinterpretation" of the new EES, the applicant was given **an** overall promotion recommendation **of** "4." Both individuals mentioned either a **CBPO** or squadron policy, but neither individual nor the applicant has provided a copy of this policy to support this claim.

g. The applicant included a copy of the Air Force Chief of Staffs 14 Dec 89 letter addressed to all EES senior raters in which he discusses distribution of ratings and levels of indorsement. The Chief of Staff clearly explains that a middle block of "3" reports satisfactory performance. In the applicant's case, only 25% of airmen first class (A1C) were expected to receive "5" ratings. The Chief of **Staff** also explains that this percentage is not a quota. He states, "They **are** to provide raters with an understanding of general expectations. And, it is important to note that with over 42,000 A1C EPRs processed since the changes to EES, the rating distribution for that group matches our expectation." AIG 8106 message, dated 1 Nov 91 (attached), states that expectations are still in effect; however, raters at all levels are reminded that they are just a guide, **and** each individual should receive the rating they have earned **and** deserve.

h. In reviewing both reaccomplished **EPRs**, we noted not only a change in the overall promotion recommendations from "3" to "5," but upgrades in several **of** the performance factors in section III **as** well. The rater has not explained why he **has** upgraded these performance factors. Further, neither **of** the evaluators have dated their signatures on either reaccomplished

**EPR**, and there is no commander's review and signature on either report. Further, neither of the reviewers from either reporting period have been heard from in support of this appeal, (If the AFBCMR decides in favor of the applicant, the reaccomplished versions of the report submitted with the appeal cannot be accepted for file until all the dates and commander's review and signature have been obtained.) **In** our opinion, the ratings in section III are commensurate with the overall promotion recommendations of "4" on both of the contested reports. The purpose of the promotion recommendation is **to** evaluate the ratee's performance and how it compares with the performance of others in the same grade and Air Force specialty (AFS). Neither of the evaluators have discussed how well the applicant compared to other A1Cs in the same AFS.

i. Evaluation reports are considered accurate as written unless substantial evidence to the contrary is provided. As such, they receive exhaustive reviews prior to becoming a matter of record. Any report can be rewritten **to** be more hard hitting, to provide embellishments, or enhance the ratee's promotion potential. But the time to do that is before the report becomes a matter of record. None of **the** supporters of the applicant's appeal explain how they were hindered from rendering a fair and accurate assessment of the applicant's performance prior to the report being made a matter of record. The appeals process does not exist to recreate history or enhance chances for promotion. It appears this is exactly what the applicant is attempting to do--recreate history. As such, we are not convinced **the** contested reports are not accurate as written and do not support the request for removal and replacement.

Summary. We strongly **recomm**end this appeal be time-barred from consideration. If, however, **the** AFBCMR considers, then we recommend denial due to lack of merit.



**JOYCE E. HOGAN**

Chief, BCMR and SSB Section  
Directorate of Pers Program Mgt

Attachment:

**AIG 8106** Msg, 012210Z Nov 91

cc:

**SAF/MIBR**



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS

30 JAN 1998

MEMORANDUM FOR **AFPC/DPPPAB**  
**AFBCMR**  
**INTURN**

**FROM: HQ AFPC/DPPPWB**  
**550 C Street West, Ste 09**  
**Randolph AFB TX 78150-4711**

**SUBJECT: Application for Correction of Military Records**

Requested Action. The applicant is requesting the AFBCMR void his Enlisted Performance Reports (EPRs) closing 21 Jul 89 and 18 Nov 89 rated "4" and replace them with the two reaccomplished EPRs he has provided, rated "5". We will address the supplemental promotion consideration issue should the request be approved.

Reason for Request. The applicant has provided statements from both the rater and indorser of the two EPRs who state that if it had not been for a local policy of no "5" EPRs for airmen, he would have received a "5" on both reports.

Facts. See Hq AFPC/DPPPAB Letter.

Discussion. The first time the two EPRs impacted his promotion consideration was cycle 94A5 to SSgt (promotions effective Sep 93 - Aug 94). Should the AFBCMR void the contested reports and replace them with the two reports provided, providing he is otherwise eligible, the airman will be entitled to supplemental promotion consideration beginning with cycle 94A5. He would become a selectee for this cycle pending a favorable data verification and the recommendation of the commander.

Recommendation. We defer to the recommendation of Hq AFPC/DPPPAB.

  
TONY R. MERRITT  
Chief Inquiries/AFBCMR Section  
Airman Promotion Branch

cc:  
SAF/MIBR